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**Costs and opportunities
of the Islamic finance in Italy** 

The Arab world has always paid great attention to the Italian economy, as various important investments document. However, this propensity has not shown aspects of continuity due to the well-known reasons of structural rigidity which characterize our national State-System (the excessive bureaucracy, the quality of the infra-structures, the inefficiency of the distributive networks, the proprietary structures of the companies and their dimensions, the intruding fiscality, the strong union influence, the scarce productivity of the employee factors). Powerful limitations are also derived from the credit-financial system support for the scarce internationalization of the Italian system. In perspective, this latter criticality could be accentuated by the growing demand, in the financing of the Arab investment, of technical particulars tied to the respect for the Islamic religion. Relative to this aspect, the Italian Banking Association (ABI) and the Union of Arab Banks (UAB) are designing a project of Italo-Arab banking federation finalized to ease the introduction into the Italian banking-credit system of the Islamic financial contracts (or rather, of contracts based on the precepts of the Shariah, the Islamic Law), as a competitive factor in the raising and employment of funds, both retail and wholesale.

The financial activity tied to the religious precepts of the Shariah represents a yet unknown phenomenon in Italy, but is extremely widespread abroad. In the Middle-East and in the strongly Islamic Countries, its dimension is in rapid growth, representing not only a financial reference point, but above all a structural and ethical one.

Standard Poor's estimated in 2007, that the existence in the world of Shariah-compliant financial assets were equal to circa 500 billion dollars. A broader estimation is that of the London Institute, "International Finance Services", which had already estimated, at the end of 2006, that the world Shariah-compliant assets were 531 billion dollars. An analysis of "The Banker" indicated Iran as being the leader-Country in the holding of Shariah-

compliant assets, followed by Saudi Arabia and Malaysia. The one European exception is Great Britain, present among the first ten Countries in the world.

The diffusion of such financial instruments in Italy is certainly a necessity for the competitiveness of the State-System, but their introduction and their use require an adequate management and supervision, owing to the many difficulties connected to their interpretation. Such a process, in fact, also has consequences on the internal economic security. There exists, in fact, an opposite relation (trade-off) between competitiveness and economic security, for which it is necessary to consider an holistic institutional approach (in other words, tied to the aspects of banking-financial surveillance, but also economic and social vigilance) and in this respect a governmental intervention could ensure a greater coverage of the aspects involved. Therefore, an approach similar to that experimented in Great Britain with the Islamic Finance Expert Group (instituted within Her Majesty's Treasury, which involves members of parliament, State agencies, important investment banks, Islamic authorized banks, international consultant societies, research bodies on the subject, representatives of the Moslem community, representatives of the financial services industry), where different interests, also those opposed, can find their equilibrium and compensation.

In consideration of the trade-off, among the aspects of competitive growth, there are: the largest overall foreign investment; a larger (and more observable) bank collection of funds originating from the Islamic Community in Italy; a larger (and better) employment of the same funds of the national banking system towards direct Arab investment in Italy; the potential synergies (in terms of experience, knowledge and instruments) with other European experience; the greater capacity of internationalization of the companies, in particular, directed towards the Countries of Islamic religion, thanks to the "expert" support of the national banking-financial system.

However, there exist also aspects of safeguarding the economic security, among which the presence of typical risks (Shariah risk, moral hazard); the absence of both a court of the last resort and a Shariah-compliant lender of the last resort; the concern relative to the proprietary requirements necessary in occasion of the authorization procedure; the high costs of learning the subject matter; the competition in the gathering of European bank deposits; a careful and constant vigilance by the responsible bodies. The development, in the medium term, of the Shariah-compliant finance in Italy responds not only to the need of investment, but also of savings by the Islamic Community present in our Country. The progressive growth of the Islamic presence has determined, in fact, a multiplication both of commercial societies and of places of worship, often in places which are already in private or commercial use. With the consolidation of their presence on the territory, the



Mosque of Rome

Islamic Community has begun purchase operations of real estate, financed from funds collected from believers, from private or public donations (mostly coming from Islamic States), from financial support from Islamic religious organizations, and from commercial activities connected to places of worship, as well as extemporary solutions offered by national credit institutions.

The financial instruments utilized were those of the conventional banking system (current accounts, deposits, mortgages), or the informal ones, the hawala type. The choice of the latter has been adopted by many Moslems seeking privacy, rapidity, ethics and respect for the religious precepts, in the absence of financial services on the part of the national banking-credit system that favour the custom of the Islamic Community of forms of liquid assets and loans permitted by the Koran. The adoption of the hawala system has shown – sometimes – vulnerability in relation to the illicit infiltration with an end to money recycling or of financing terrorism. This has led to preferring the easier path of repression (with the worsening of the regulations of fighting illicit phenomena) instead of the more complex (but lasting) solutions of prevention, aimed at the integration of this cash flow into the domestic economic-financial system (in this way the monitoring would be guaranteed).

The aversion of the Moslem Community towards the use of traditional banking channels, and the suspicions tied to the use of hawala networks, favour, today, the tendency to start new financial structures in respect of the religious precepts of Islam. Many ventures are developing in the European Union, particularly in

France, Germany, Holland, Switzerland, Belgium and in Great Britain. Through the Community mechanism of the "European passport", these ventures are a presage of favouring a flow of savings, created in Italy by the internal Moslem Community, to foreign banking systems, on the basis on a sort of "arbitrage based on ethics" (or rather, a strategy of "asset allocation" which contemplates, among the variables of choice, the offer of Shariah-Compliant financial services.

To be Shariah-compliant, the financial activity must pose objectives both in the economic sense (maximization of earnings, equilibrium between liquidity and profitability) and religious (respect for the precepts of the Shariah, limitations of the alternatives to legitimate goods and chattels, avoiding the prohibited activities). Among the principal difficulties for the Islamic Banks, due to the prohibition of interest charges (riba), is the management of the liquidity in the absence of a Shariah-compliant inter-banking market, together with the impossibility of investing in low-risk, short-term expiry conventional securities. The solution offered for the re-financing of the Islamic banks is represented by the sukûk, defined as "Islamic bonds" issued by the State or by other Public Administrations through the scheme of selling-off large public real estate.

The positive aspects of the binomial "more gathering of liquidity by the Moslem Community/strong message of social integration" at the base of the strategy of London, Berlin, Paris and Amsterdam should be taken up also in Italy. Attention must be given also to the social and economic aspects. For example, when speaking of "bank integration", there is a fairly difficult cultural "problem" to be considered. While in the case of the Islamic clients, the religious principles apply equally to both the profit and to the loss: in the case of the non-Moslem clientele – being accustomed to the typical western set patterns – could create difficulty in understanding the distinctive aspects of the Islamic bank in the case of the negative outcome of investments.

The great uncertainty which permeates the introduction of Islamic financial contracts into the Italian standard banking procedures must be faced, therefore, from the safeguarding viewpoint of both the economic and financial aspects, and the scientific and industrial aspects. There where the Islamic contractual procedures and regulations can become a financing instrument to the development of these sectors, the little knowledge of the subject material would open to distortions in the "normal comportment" of the involved operators. Therefore, a management, respectful and with a sense of perspective is necessary, not only from the regulations viewpoint, but above all, from the systemic and social viewpoint (in the protection of its consequences on the religion) also through instruments of prevention, or rather of intelligence, held to be more suitable.

Islamic Finance as a factor of competitiveness

The economic relations between Italy and the Arab Countries are facilitated by an almost natural partnership. Beyond the advantages of geographic contiguity, Italy represents the optimal interlocutor in the effort of the Arab Countries of extending the productive base, thanks to the Italian specialization in productions of low and medium intensity of capital and to the flexibility of the national productive system favoured by the high concentration of small and medium businesses.

Successes of this partnership can be seen by the investments of the small emirate *Mubadala Development Company* in Ferrari and in Paggio Aereo Industries; the *Libyan Arab Foreign Investment Company* (LAFICO) in Juventus, in FIAT and in Tamoil (1) ; of the Omani *State General Reserve Fund* (which refers to the Oman Royal Family) in the project of construction of the new base of Milan of RCS Media Group; of the Qatar Investment Authority (sovereign fund of Qatar) in the Excelsior Hotel Gallia of Milan; of the Dorchester Group (investment society in the real- estate sector of the Brunei Investment Agency) in the Hotel Principe di Savoia of Milan.

Added to these investments are the negotiations between the Limitless (subsidiary of the World Dubai group dedicated to real estate) and the Palermo Municipality (for the improvement of the historic centre of the City, the management of the Port, the contracts for the infrastructures and the possibility of creating new tourist areas); between Risanamento (Luigi Zunino Group, *Limitless*, and *Mubadala Development Company* to share

development projects relative to the former area, Falck of Sesto San Giovanni, and to the new Quarter of Milano-Santa Giulia (2); the interests and economic investment (3), in particular, in the zone of Valle d'Itria, in Puglia, on the part of the Sultan of Oman, Qaboos Bin Said, who visited – in a private capacity – the region in May, 2008, (4) .

Therefore, the strong interest in Italy is clear even though an expansion strategy that shows signs of investment continuity is lacking. The attention of the Arab investors towards our Country is, in fact, frustrated by a structure of the Italian State-System, which makes it still more unattractive due to the well-known motives tied to the excessive bureaucracy; to the quality of the infrastructures; to the transport services; to the inefficiency of the distribution network; to the proprietary structures of the businesses and to their dimensions; to the interfering fiscality; to the strong union influence; to the scarce productivity of the factors of the work and capital employed. Powerful limitations are found also in the credit-financial support, due to the scarce internationalization of the Italian System. This latter criticality could be accentuated due to the growing demand, in the Arab investment, of technical particularities connected to the respect for the Islamic religion.

Relative to this last aspect, the Italian Banking Association (ABI) and the *Union of Arab Banks* (UAB) (5) are designing a project of Italo-Italian banking federation (6) intended to ease the introduction of the Islamic financial contracts into the Italian banking-credit system (or rather, contracts based on the precepts of the *Shariah*, the Islamic Law) (7) , as a competitive factor in the raising and in the employment of funds, both retail (8) and wholesale (9) .

In this respect, in September, 2007, in occasion of the signing of a memorandum between ABI and UAB (10), the wish was announced to institute, by the end of 2008, a permanently operating banking reality in Italy, in accordance with the rules of the *Shariah* (11).

The Islamic financial activity (12) represents a yet unknown phenomenon in Italy, but is extremely widespread abroad.

Altogether, the world *Shariah-compliant* financial assets (13) were estimated at over 500 billion dollars, in 2007, with an average annual growth rate (over the last ten years) of 10% (14).

And if the Middle-East sovereign funds are always more interested in the acquisition – also with *Shariah-compliant* instruments – of strategic assets in the international financial and economic panorama (15), also the Koran-compatible savings industry is in full expansion. According to the Ernst&Young Report presented in Bahrain, in May, 2008, at the present time, the *Shariah-compliant* funds of investment are circa 500 (compared to the 22 of 2003) (16), the larger part of which is posed as benchmark of yield, indexes which repeat the performance of the international blue chip investments which operate in the *Shariah-compliant* manner.

In the face of this "firing power", the diffusion of such financial instruments also in Italy becomes more of a need than of competitiveness, of adaptation of the State-System to the international trend.

But how and why the introduction and the use of the Islamic finance can be held to be a factor of competitiveness for a State-System? The interest in the Islamic finance is posed as a question of strategic-political positioning, also in view of the creation of the '*Union pour la Méditerranée*' (UPM).



photo by <http://info.rsr.ch/>

On the 14th July, 2008, the Heads of State and Government of 43 Countries (17) met in Paris to launch the project with which the French President, Nicolas Sarkozy intends to assert the hegemony of Paris over the Southern Basin of Europe and with respect to which the European Commission has already expressed reservation (18).

To the contrary of the Community approach regarding the Mediterranean, adopted in 1995 – the so-called Process of Barcelona, today – Paris promotes a system based on the impressive economic projects, in order to produce politically useful results. The idea is to involve, from an economic viewpoint, the Countries of the South and East Mediterranean, seeking their participation in specific activities of the private and public sector.

The French project combines with the particular attention to the Islamic finance reserved by the French Minister of Finance, Christine Lagarde (19). The wish of the French to be the world hub of the *Shariah-compliant* finance answers the needs connected to the UPM, but also and above all, the retail requirements of the Moslem Community present in France (circa 6 million people), still without response from the few great national banks (BNP Paribas (20), Société Générale, Credit Agricole), the services of which are limited to the wholesale segment (21).

In fact, while in the past, the Arab banks have imported the largest part of the financial products from Europe, today, it is the European banks that are importing financial products from the Arab world, to respond to a demand that comes not only from large clients who seek respect for religious precepts, but – in a way that is always progressively more significant – from the growing Moslem population in Europe (22).

The idea of a UPM can explain, also from an Italian perspective, why the Islamic finance can be held to be a factor of competitiveness. Italy has supported the proposal of Paris in a decisive manner. The Undersecretary for Economic Development, Adolf Urso, in his recent meeting with his French counterpart, Anne

Marie Idrac, defined the Italian-French partnership as a "commercial axis". (23). The greater knowledge and integration of the national financial-banking system with religious precepts of Islam can permit, therefore, the reinforcement of the economic collaboration between Italy and the Arab Countries.

Contextually, the intensification of the financial relations through the reinforcement of the exchange of information, data and managerial experience, can allow the individuation of both the criticality and the opportunities of investments to be made (24).

Integration between banking systems as a security factor

The intention of creating an Italo-Arab banking federation is connected to the need for development, in the medium-term, of the Shariah-compliant finance in Italy, oriented not only to favour a consolidation of the Arab investments in Italy, but also to supply new forms of saving and financing to the Islamic Community in our Country.

In fact, the progressive increase of the Islamic Community (25) has determined a multiplication of both the commercial societies (circa 60-70 thousand, registered by Moslems, associations and Islamic centres) and of places of worship in premises already in private use (habitations) or commercial (warehouses, storehouses and basements) (26).

With the consolidation of the Moslem presence on the territory, the need has been felt to launch operations of purchase of real estate property (free from the conditions of logistic precariousness) financed by funds raised among the religious faithful, by private and public donations (mostly coming from Islamic States) by financial support assured by Islamic Religious organizations, by commercial activities connected to the places of worship (27), as well as extemporary solutions offered by national credit institutions (28).

The financial instruments utilized have been those of the conventional banking (current accounts, deposits, mortgages) or the informal ones, the *hawala* kind (29). The choice of these last has been adopted by many Moslems seeking privacy, rapidity, ethical dealing and respect for the religious principles, in the absence of financial services from the national credit-banking system that would favour the search, on the part of the Islamic Community, of forms of liquid cash flow and loans permitted by the Koran.

The adoption of the *hawala* system has shown- sometimes- to be vulnerability in relation to illicit infiltration intended for recycling or terrorist financing. This has urged the preference of the easier path of repression (with the exacerbation of the regulations concerning the fight against the illicit phenomena (30), instead of more complex (but lasting) prevention solutions, aimed at the integration of this liquidity with the internal financial-economic system (in this way having guaranteed the monitoring).

The aversion of the Moslem Community towards the use of the traditional banking channels, and the suspicions connected with the use of the *hawala* networks, favours the process of the opening of new financial structures based on the religious precepts of Islam, also to draw advantage from the Islamic "clusters" (31) present on the national territory.

To date, the Rome branch of the Iranian *Bank, Sepah* is the only Islamic Bank present in Italy (32), while the sensitivity of the Italian credit institutes with regard to this market has been, until now, scarce.

However, multiple ventures in the European Union correspond to the Italian "void". In particular, in France, Germany (33), Holland (34) Switzerland (35) Belgium (36) and in the United Kingdom.

These decisions are a presage, through the European Union mechanism of the "European passport" (which we shall see, subsequently, in more detail) of favouring a draining- different from the common remittances made to Countries of origin- of savings created in Italy by the internal Moslem Community towards foreign banking systems, on the basis of a sort of "arbitrage based on ethics", or rather a strategy of *asset allocation* which contemplates among the variability of choice, the offer of *Shariah compliant* financial services (37).

The Islamic vision of the economy and finance

The Islamic finance must be explained starting from the religious principles which govern it. Contrary to capitalist thinking (38), the Islamic economy starts from a very precise judgement of values, developing a system of logic, coherent with the precepts of the Shariah. In the western world the conventional economy, as a science, supplies explanations about the functioning of the economic system in terms of imbalance, injustice and lack of equality. Vice versa, the Islamic economy is not born to "correct" phenomena.

For the Islamists the problem - which is at the bottom of all the western economic theories (be it Liberalist or Marxist) i.e. the scarcity of the resources with respect to the needs of the population - is a problem of the western homo oeconomicus, but not of the homo Islamicus. According to the Koran, God created everything in the right quantity to satisfy human needs. Therefore, the scarcity is a result of human behaviour and the avarice of accumulation. For this reason, the homo Islamicus, through sacrifice and altruistic behaviour (as opposed to the egoistical behaviour, of the maximum kind, of the homo oeconomicus) can obviate the problem of the scarcity of the resources.

The Koran nominates human beings as custodians of God in the world. Within this mandate, private property is allowed although each proprietary activity held by anyone is to be understood as a "loan" from God. Consequently, it derives that the management of all property/goods by Moslems must follow a moral guide, avoiding, without exception, any forbidden behaviour.

To be Shariah-compliant, the financial activities must present objectives both in the economic sense

(conservation of the capital, maximization of the gains, equilibrium between liquidity and profitability) and the religious sense (respect for the precepts and for the behavioural standards of the Koran and the Shariah: consideration for only the legitimate property/goods -halal- and avoiding the forbidden activities -haram-).

From this derive the five pillars of the Islamic finance:

- **the prohibition to receive interest.** The interest on loaned capital (*riba*) (39), as it is understood in the conventional banking, is considered exploitation and usury, inasmuch as it is applied in absence of an underlying productive asset. According to the Islamic belief, profit is legitimated only, (I) by the existence of a risk, and (II) by its sharing between the parties. The classic notion of interest as "remuneration for the deferment of the consumption" is, therefore, rejected: the intelligence and physical effort of a person can be remunerated, but not the mere waiting (40). Saving, in the Islamic belief is not a choice of "inter-temporal consumption", but a choice made to face a future necessity and therefore, does not merit the payment of a price, in other words, interest (41).

The Islamic prohibition placed on interest does not mean that capital has no cost in the Islamic economy. Islam recognizes capital as a factor of production, inasmuch as the Islamic approach distinguishes between the inter-temporal value of the currency (as a measure of the efficiency of the investment) and the means of the determination of profit. The Islamic scholars maintain that in the definition of *riba* can be included not only usury, but also any interest charge, whatsoever, on yield, positive, fixed and pre-determined, which is guaranteed irrespective of the *performance* of an investment (42);

-**the prohibition of introducing elements of uncertainty or speculation into the contractual conditions.** The investment in economic activities which involve forms of *gharar* (risk, uncertainty, hazard, i.e. gambling etc.,) (43) is prohibited. The assumption of a risk is permitted when the terms and conditions of the transaction are defined and known to the parties;

- **the prohibition of the financing of sectors banned by the Shariah** The carrying out of activities having (direct or indirect) ties with businesses relative to alcohol, arms, tobacco, the utilization of certain animals (swine), pornography, is prohibited;

- **purification of the wealth:** anyone who possesses a minimum amount of wealth is obliged to purify himself, or his assets with the payment of an offering (44). The two types of offerings are the *zakat* (obligatory, calculated on the yield and on the profit (45) and the *sadaqat* (voluntary and at the discretion of the donor).

In the Islamic banking system there is an associative scheme between bank and client in force, which represents the ethically legal alternative to the calculation of the interests, - as much in giving as in having - (46). The cooperation (*partnership*), which legitimates the obtainment of profits from the assets underlying the transaction, tends to substitute the competition concept at the bottom of the market economy.

In **Table 1**, the principal differences between conventional and Islamic finance (47)

Table 1. Principal differences between conventional and Islamic finance	
Finanza convenzionale	Finanza islamica
Basata sul tasso di interesse	Il tasso di interesse è proibito
Strutturata e formalizzata	Ancora non strutturata e, per certi versi, informale
Standard definiti in termini di rischio e contabilità	Standard in corso di definizione in termini di rischio e contabilità
Normativa legale stabilita	Normativa legale in corso di definizione con dubbi ancora esistenti in molte aree
Esistenza di un mercato monetario convenzionale	Assenza di un mercato monetario convenzionale
Disponibilità di finanziamento interbancario	Assenza di finanziamento interbancario
Mercato secondario strutturato	Assenza di un mercato secondario

More than compete; the businesses constitute *partnership* based on the principle of the *profit-loss sharing* (PLS), through which the business risk is shared. The scheme of *profit-loss sharing* is applied both to the operations to supply and management of the savings, and in the area of its employment. On the side of the financial deposits, even though there cannot be a conventionally agreed remuneration, at the end of every financial year and at the discretion of the bank, clients who have opened current accounts of a certain entity can be compensated with gifts in kind (*hadiyya*), with small donations (*hiba*), with some privileged conditions in the access to credit (*tamwil*) for the purchase of durable or instrumental consumer goods. As theoretical consequence of the general application of the participative principle and of the consequent idea of risk which influences the whole Islamic banking activity, any form of guarantee on the deposited capital is not theoretically allowed (48). On the side of its employment, the financing can assume the following forms (49):

- synthetic loans (*debt-based*) realized with agreements of sale-repurchase of *asset*, or of sale of assets held by third parties on behalf of the debtor (*back-to-back*). *Salem and Murabahah* are types of synthetic loans;
- *lease contracts (asset-based)*, realized with agreements of sale-repurchase in *leasing (lease operative)* or through lease of assets purchased - by third parties with obligation to the repurchase (financial lease). *Ijarah* is a type of *lease*;
- *profit-loss sharing contracts (PLS, equity-based)*, in which a bank, normally, furnishes the financing and the entrepreneurial time and effort. At the end of a pre-determined period, in the case of profit,

this is shared out in the established proportions, while, if there are losses, these are assumed by the bank (at least, if there has not been clear negligence on the part of the entrepreneur). *Mudarah* and *Musharakah* are PLS contracts. The contractual structure of the major part of the Islamic financial products (both on the side of collection and on the side of its employment) makes reference to seven general characteristics (50):

- ***musharakah*** it is an agreement between the bank and the client in which the capital is contributed jointly (in terms of goods or liquidity) and subdivided into shares. The profit-sharing ratio of the operation is decided at the moment of the stipulation of the agreement. In the case of loss, the sharing is in function of the quotas of participation;

Esempio di Musharakah c.d. permanente

Un cliente X della Banca Y pianifica lo start-up di un impianto di produzione per la manifattura di piastrelle di ceramica, chiedendone alla Banca Y il finanziamento. La banca Y stipula un contratto con il cliente X in base al quale l'apporto al capitale è del 40% a carico della banca e del 60% a carico del cliente X. La delega alla gestione del progetto viene affidata al cliente. L'accordo sulla condivisione di profitti e perdite è così impostato: il *profit ratio* è 1:4 (il 20% dei profitti va alla banca e l'80% al cliente), mentre il *loss ratio* è 2:3 (il 40% delle perdite è a carico della banca ed il 60% a carico del cliente).

Partendo dall'assunto che la banca è già posta in una situazione negativa (causata dalla svantaggiosa condivisione sia dei profitti sia delle perdite), l'istituto è esposto al rischio operativo insito nel *business* specifico che potrebbe tradursi in perdite di esercizio causate da un qualsivoglia evento esterno legato al mercato (tipo una caduta nella domanda delle piastrelle di ceramica). Se il cliente X, amministratore delegato alla conduzione del progetto, fallisce nel fornire il profitto richiesto, la banca incorre anche in un rischio di credito.

- *mudarah*

it is a partnership in which one partner (*rabb-ul-mal*) contributes capital and the other (*mudarib*) contributes the *management*. The investor *partner* does not participate in the management of the enterprise, and can bind the transaction only by requiring that the funds are invested in a specific business (so-called restricted *mudarah*). With the *mudarah*, the party who sustains, entirely, the burden of the economic losses is the financier, while the entrepreneur suffers only the loss of his time and effort. Vice versa, in the case of profit, this is shared between the entrepreneur and the financier according to the pre-established quotas.

Esempio di Mudarah

Un cliente X propone alla Banca Y l'investimento in uno *start-up* di produzione di piastrelle di ceramica, affermando però di non avere alcun capitale da apportare. Ritenendo profittevole il progetto, la banca accetta il contratto con il cliente X in base al quale l'istituto apporta il 100% del capitale ed il cliente X apporta il management del progetto.

Il rischio operativo a cui è esposta la banca è desumibile da eventi sopravvenuti sia interni sia esterni. Nel caso di incapacità da parte del cliente X di generare i profitti, la Banca Y può essere esposta ad un rischio di liquidità. Qualora la banca non fosse in grado di rifinanziare il *business*, questo potrebbe rischiare la chiusura della società.

While the *mudarah* contract can be compared to a limited partnership society, the *musharakah* is similar to a *joint venture*, where the capital brought by the entrepreneur entitles him to claim a larger quota of profit compared to the *mudarah*(51) (**Table 2**(52)).

Table 2 PRINCIPALI DISTINZIONI		
Caratteristica	Musharakah	Mudarah
Tipologia di <i>partnership</i>	Unica (tutti i partner apportano capitale e contribuiscono alla gestione d'impresa)	Duplice (<i>rabb-ul-mal</i> apporta capitale, <i>mudarib</i> cura la gestione)
Diritti inerenti la gestione di impresa	Tutti i partner hanno diritto alla gestione, nonché ad attribuire la delega ad altri	<i>rabb-ul-mal</i> non può essere parte del management. Tale funzione resta esclusiva del/dei <i>mudarib</i>
Condivisione di profitti e perdite	Tutti i partner condividono i profitti (in proporzioni predefinite) e le perdite (in proporzione alla loro partecipazione)	Non definito
Responsabilità sociale	Tutti i partner hanno una responsabilità illimitata.	La responsabilità dei <i>rabb-ul-mal</i> è limitata al capitale sottoscritto. I <i>mudarib</i> hanno una responsabilità illimitata.
Proprietà degli <i>asset</i>	Tutti gli <i>asset</i> della <i>partnership</i> sono controllati in maniera congiunta da tutti i partner.	La proprietà degli <i>asset</i> è solo del <i>rabb-ul-mal</i>

- *murabahah*

It is a typology of contract, which operates in two phases:

- a. a client asks the bank to purchase, spot cash payment on his behalf, a certain asset, promising to repurchase it on the terms of the bank. The promise is a non-binding condition from which the client can withdraw (at the expenses of the bank);
- b. after having held the asset for a period of time sufficient to assume the risk of the purchase, the bank re-sells it to the client at a pre-established price given by its cost (the purchase price) increased by a pre-determined margin of profit (*mark-up*).

An important requisite to be respected is the net distinction between the two transactions. A *murabahah* contract can concern (i) the sale-repurchase agreement of an *asset* held by the debtor ("*negative short sale*") or (ii) the purchase by the lender of a tangible asset by a third party on behalf of the debtor ("*back-to-back sale*"). The more common case concerns the short-term commercial financing (*short-term trade*), often requested to cover a temporal *gap* between the billing and the payment of a transaction. The debt (which is determined by the difference between the contract purchase and re-sale contract of an *asset*, existent or future) is limited by the price of purchase of the underlying *asset*.

Esempio di Murabahah

Un cliente X della Banca Y desidera acquistare per 25.000 dollari una macchina da un concessionario. Il cliente X propone alla sua Banca l'acquisto anticipato, fornendo dettagli relativi al tipo di autovettura, al modello e al concessionario dove effettuare l'acquisto.

La Banca Y accetta la proposta e la formalizza in un contratto preliminare, nel quale il cliente X promette di acquistare la stessa auto dalla Banca Y in una certa data, ad un prezzo maggiorato di un *mark-up* (in questo caso, 32.000 dollari), funzione di diversi parametri, tra cui il valore totale, il periodo di finanziamento le condizioni di rimborso, l'affidabilità del cliente. Il pagamento viene stabilito in rate mensili.

La Banca Y acquista l'autovettura dal concessionario a 25.000 dollari e conclude un contratto di vendita con il cliente X, nei termini stabiliti nel primo contratto. La Banca Y è esposta ad un rischio operativo nel caso in cui il cliente non onori la sua promessa di riacquisto dell'autovettura. Inoltre, come nel caso di contratti *Murabahah* non vincolanti, con l'esercizio dell'opzione di rifiuto da parte del cliente di consegna della macchina, la Banca si espone anche ad un rischio di mercato, insito nella possibilità di oscillazione del prezzo del bene. La Banca è esposta, inoltre, ad un rischio di credito nel caso di insolvenza del cliente relativamente alla sua capacità di onorare l'impegno finanziario del pagamento rateale.

Murabahah being a contract of sale, and not of loan, all the requisites of validity provided must be honoured, such as:

- * existence of the asset. The subject of the contract need not be available in the future (to produce or to cultivate);
- * ownership of the asset on the part of the seller, at the moment of the transaction;
- * the sale need not be conditioned;
- * the value of the asset must be established in a precise manner at the moment of the transaction (this is in contrast with respect to the use of the *trading su index future* in the Islamic finance);

- *salam*

It is a (*forward*) contract of sale with (*spot*) payment.

It represents an exception to the condition of "full availability of the asset, subject of the transaction" essential for the validity of a contract of sale. The buyer is *rabb-us-salam* and the seller is *muslam ilaih* (53). The conditions under which a *salam* transaction can take place are:

- * the payment of the price must be complete and immediate *spot*;
- * the asset, subject of the transaction must be specified in quality and quantity;
- * the moment and place of delivery must be defined;
- * exchange in goods/assets is not permitted (not valid for bartering);

Esempio di Salam c.d. parallelo

Un cliente X propone ad una Banca Y un accordo di vendita *forward* dei prodotti delle sue coltivazioni. La banca accetta e stipula un contratto *salam* iniziale, in cui fornisce al cliente X il finanziamento richiesto, accettando di acquistare i prodotti delle coltivazioni dopo un tempo specificato. La situazione principalmente apporta benefici ad entrambe le parti: il cliente è sollevato dall'onere del rimborso del prestito (in quanto ripagato con i beni prodotti), e dall'incertezza della vendita della sua produzione nel futuro (avendone già venduta una parte o tutto).

A questo punto la banca stipula un altro contratto *salam* per vendere ad una terza parte i prodotti frutto della coltivazione, minimizzando così il rischio della possibile fluttuazione del prezzo della coltivazione.

La Banca Y è soggetta ad un rischio operativo e ad un rischio di credito, in funzione di eventi esogeni che ritardino la consegna della produzione. Dopo che la banca ha accettato la consegna, nel caso in cui il prezzo della coltivazione sia aumentato in maniera sostanziale, il compratore può non essere più solvibile, lasciando la Banca Y con costi di immagazzinamento, rischi di credito e commodity risk.

- *istisnā*

It is applied to the goods produced on order, to the forward contracts relative to manufactured goods, to the financing of activities of construction and manufacturing, to the financing of real-estate, and to the financing of

goods whose production is at elevated employment of capital (*capital-intensive*). It allows both spot payment with subsequent delivery and the deferment of the payment and delivery.

The difference between *salam* and *istisnā* are essentially ascribable to the following:

- * *salam* can be used for almost all types of assets (excluding gold, silver and currency). *Istisnā* can be used only for manufactured goods, which require a production;
- * the price in the *salam* contract is always *spot*, while the price in the *istisnā* contract can also be forward;
- * the payment in a *salam* transaction is always complete, while in the *istisnā* case, it can also be by instalments;
- * in the *salam* contracts the unilateral rescission does not exist, to the contrary of *istisnā*;
- * the date of delivery is fixed in *salam* and variable in *istisnā*;
- * the material and the manufacture can be fixed by the buyer alone in *istisnā*, to the contrary of *salam*.

Esempio di Istisnā

Un cliente X intende acquistare una barca. Per questo richiede un finanziamento alla Banca Y, la quale (conclude le istruttorie di rito) si rende disponibile a finanziare l'acquisto mediante un contratto *istisnā*. Per tale motivo, la Banca Y stipula un contratto con il costruttore della barca per la realizzazione di un prodotto che abbia precise specifiche e si accorda per fornire il finanziamento in modo rateale, dilazionando il pagamento sul periodo di costruzione della barca. Contestualmente, la Banca Y stipula con il cliente Y un contratto di vendita della barca ad un prezzo specificato.

La Banca Y è esposta ad un rischio operativo nel caso il costruttore non riesca a consegnare la barca nel tempo concordato. La sopravvenuta incapacità del cliente di pagare il prezzo di vendita espone la Banca al rischio di credito al momento della consegna della barca.

- ijarah

Commonly known as *leasing*. The connotation of the *ijarah* contract in the Islamic law is relative to the location of *assets* and real-estate property, purchasing a usufruct through payment of a premium (*reward*). The Islamic finance makes wide use of the contractual typology of *ijarah*, in particular, among the banks, which make use of the Islamic *leasing* to guarantee the availability of different types of *assets* (equipment, machinery, motor vehicles) (54).

The requisites of the *ijarah* contract are:

- * a yield value for the *assets*, subject of the contract;
- * the owner of the *asset*, the lessor, concedes to the lessee, the right to use the *asset* in exchange for the payment of a periodic rent, determined in the initial phase of the contract;
- * the relative liabilities to the owner of the *asset*, while those connected to the use are responsibility of lessee;
- * the precise definition of the period of *lease*;
- * in the case of joint ownership of the *asset*, the sharing of the rent of the location on the basis of the proprietary participation in the *asset*;
- * the start of the *lease* period in correspondence with the material delivery of the *asset*, and not of the use of same.

The *ijarah* contract can be relative also to a future employment of the *asset*, on condition that the payment of the rent begins only after the delivery of the *asset*, subject of the transaction. (55).

Esempio di Ijarah

Una compagnia aerea richiede ad una Banca Y di finanziare l'acquisto di un velivolo Airbus il cui prezzo è pari a circa 80 miliardi di dollari. La Banca Y si accorda per acquisire l'aeromobile in leasing mediante una transazione *Ijarah* e lo cartolarizza mediante l'emissione di certificati *Ijarah*.

Se la compagnia aerea non paga il canone di noleggio, ciò espone la Banca al rischio di credito. Nel caso in cui la compagnia decidesse di uscire dal *lease* prima della scadenza, la Banca è esposta al rischio di credito. Analogamente, la Banca è esposta ad un rischio operativo, nel momento in cui un evento esogeno dovesse influenzare negativamente l'aeromobile. Alla data di scadenza la Banca Y è esposta al rischio operativo dai danni che possono essere stati provocati all'*asset* durante il suo uso.

The *ijarah* contract finds ample application in the civil aviation and can be combined with sources of conventional financing and with the financing of societies of credit to the exportation (as in the case of the *Emirates* issues of 2001 (56)). In the case of long-term *lease*, the bank can apply variable rents, based on a constant percentage increase after a certain period of time, on the periodic negotiations of the contractual conditions (dividing, for the circumstance, the contract in more periods) or anchoring them to a tax of reference (of inflation or interest). (57). In the case of *ijarah* contracts of high value, the bank can issue *certificates* representative of fixed quotas of participation, so as to proportionally sub-divide the rent of location among the holders of the certificates.

It is important to clarify that the *islamic banking* does not represent a non-profit making industry. In certain cases, it has even emerged how the *profit rate* of a financing of an Islamic bank has resulted higher than the interest tax applied by a conventional bank. This aspect, however, must not be seen as an element of distortion with respect to what has been previously affirmed. It simply responds to a market logic, which also the *Islamic banking* must face although respecting their religious principles.

Table 3 is a summary of the types of contracts examined.

Table 3 PRINCIPALI CONTRATTI ISLAMICI						
	Mudarabah	Musharakah	Murabahah	Salam	Istin'a	Ijarah
Tipologia di contratto	Partnership in PLS (<i>investment financing</i>)	Partnership in PLS (<i>joint-venture financing</i>)	Vendita con <i>markup</i> (normalmente con pagamento differito)	Vendita a termine (<i>forward</i>), con pagamento a pronti (<i>spot</i>), ad una specifica data nel futuro.	Finanziamento acquisito su commessa per beni manufatti.	<i>Leasing</i>
Parti del contratto	<i>Rabb-ul-mal</i> (colui che apporta il capitale) <i>Mudarib</i> (colui che apporta il management)	Ogni partner è <i>Musharik</i> (investitore e <i>business manager</i>)	Principale (venditore del bene, normalmente una banca islamica). Utente finale (compratore del bene)	<i>Muslim ilaih</i> (venditore <i>salam</i> , normalmente in cerca di liquidità) riceve soldi in anticipo. <i>Rabb-us-salam</i> (acquirente <i>salam</i> normalmente un investitore o banca islamica) riceve il bene alla scadenza	Investitore finanzia una produzione in modo progressivo, sulla base di un calendario predefinito. Produttore produce i beni e viene pagato dall'investitore	Locatore (proprietario dell'asset) Utilizzatore (beneficiario dell'asset)
Tipologia del contratto nella prassi	<i>Mudarib</i> , che ha un business da sviluppare, e contatta gli investitori per ottenere finanziamenti oppure <i>Arbab al Mal</i> , contattano un <i>Mudarib</i> (banca islamica) per avviare un investimento <i>Shariah-compliant</i> con il loro finanziamento	L'apporto può essere in termini di asset o in contanti	La banca acquista a pronti (<i>spot</i>) il bene dall'acquirente (prima vendita: pagamento <i>spot</i>) + la banca islamica vende lo stesso bene all'acquirente (vendita <i>murabahah</i> : pagamento differito)	Il compratore <i>salam</i> (normalmente una banca islamica) anticipa denaro al venditore <i>salam</i> + il venditore <i>salam</i> fornisce il bene alla banca islamica a scadenza.	L'investitore contatta un produttore di manufatti per la produzione di un bene nuovo, che non esiste ancora alla stipula del contratto, formalizzando nel dettaglio le specifiche dell'oggetto che deve essere prodotto o costruito (contratto utilizzato nel <i>project financing</i>).	Il locatore (possessore dell'asset prestato) noleggia un asset <i>Shariah-compliant</i> all'affittuario (beneficiario dell'asset prestato) contro il pagamento di un canone periodico al locatore.
Come avviene la condivisione dei profitti tra le parti?	<i>Mudarib</i> e <i>Rabb-ul-mal</i> traggono profitto in base ad una percentuale definita nell'accordo.	Ogni <i>partner</i> trae profitto sulla base di una percentuale concordata nell'accordo.	Non vi è condivisione (<i>markup</i> , o margine di profitto, sono del principale, ossia generalmente la banca islamica)	Il profitto dell'investitore si basa sulla scadenza e sulla qualità del credito. Normalmente ha come <i>benchmark</i> il LIBOR.	I profitti degli investitori sono stabiliti inizialmente (includendo il materiale, il lavoro, i margini di profitto e i costi di progetto). I <i>mudarib</i> hanno una responsabilità illimitata.	L'affittuario paga un canone predeterminato per l'intera durata del contratto.
In caso di perdita, quale controparte se ne fa carico?	<i>Rabb-ul-mal</i> si assume l'onere delle perdite (a meno che il contratto sia un <i>Mudarabah</i> bilaterale o il <i>Mudarib</i> abbia mostrato palesi negligenze)	La responsabilità è limitata al capitale sottoscritto	In teoria non vi è nessuna perdita (a meno di un'insolvenza del cliente). Non è prevista una penalità a beneficio del principale	In teoria non vi è nessuna perdita (a meno di un'insolvenza del venditore <i>salam</i> , nel cui caso l'acquirente <i>salam</i> deve concedere un tempo supplementare per la consegna dei beni) Non è prevista una penalità a beneficio dell'acquirente <i>salam</i> .	In teoria non vi è nessuna perdita (a meno che il produttore non sia in grado di completare il lavoro) I danni e le perdite sono sostenute dall'investitore a meno di una palese negligenza del produttore.	Sostenuto dal locatore (a meno di una palese negligenza del locatario)
Cosa succede alla scadenza del progetto?	Termina il contratto. Il <i>Rabb-ul-mal</i> ha diritto a ricevere il rimborso del suo investimento. Gli eventuali profitti sono distribuiti	Termina il contratto. I <i>partner</i> ricevono il rimborso del loro investimento in conto capitale. Gli eventuali profitti sono	L'utente finale completa il rimborso al principale (banca islamica)	Il venditore <i>salam</i> fornisce i beni al compratore <i>salam</i> .	Il produttore fornisce i beni prodotti all'investitore contro denaro.	Gli asset ritornano al locatore

	tra <i>Mudarib</i> e <i>Rabb-ul-mal</i> , sulla base del contratto. Le eventuali perdite sono sostenute dal <i>Rabb-ul-mal</i>	suddivisi sulla base di un rapporto predefinito. Le eventuali perdite sono suddivise sulla base della partecipazione al capitale				
Tempi di vendita e di pagamento?	Il <i>Rabb-ul-mal</i> paga a pronti	Sono decisi dai partner (spot o differiti)	Vendita con consegna immediata, pagamento differito	I beni non esistono al momento del contratto. Il prezzo <i>spot</i> , sul quale le parti si accordano, è pagato completamente. La consegna è differita.	Il pagamento può essere spot e in un'unica soluzione; progressivo; alla consegna o a rate dopo la consegna. Vengono definite in anticipo penali per la consegna ritardata.	Non applicabile

The market of the *sukuk* The prohibition of an interest charge creates difficulties for the Islamic banks in the management of liquidity caused by the absence of a *Shariah-compliant* inter-banking market. This combined with the impossibility of investing in the short-term, low-risk conventional securities, (such as Government bonds). The solution offered for the refinancing of the Islamic banks is represented by the last typology of Islamic contracts, the *sukûk* (58), often defined as "Islamic bonds" (even if a more accurate translation of the Arab term would be "shares certificates of Islamic investment") issued by the State or by other Public Administrations through the scheme of selling-off large public assets. The *sukûk* are *Shariah-compliant* debt securities, guaranteed by the existence of underlying assets, at steady income (fixed or defined variability) (59). The *sukûk* belong to the category of securities guaranteed by activity (so-called Asset-Backed Securities, ABS), but, different from the conventional ABS structures, require the presence of tangible assets, owned or in usufruct, but not in debt. The *sukûk* represent, therefore, a right of property on the underlying assets, a right which takes form through the selling-off of the same assets, which property is divided in units of equal value and incorporated in the *sukûk* certificates. The unative aspect of the relation causes that while the holders of conventional securities do not share the losses of the issuers, the holders of *sukûk* share both the profits (generated by the underlying assets or from income from their eventual liquidation) and the losses (60). The market of the *sukûk* is growing very rapidly. According to the data of the Islamic Finance Information Service (IFIS), in 2007, 206 *sukûk* for almost 47 billion dollars were issued and in 2008, another 44 for 2.4 billion (61). Moody's rating agency has estimated an overall volume of 200 billion dollars by 2010(62). In 2007, 50 *sukûk* transactions were realized in the Persian Gulf, of which 28 in Bahrain, 12 in the United Arab Emirates, 5 in Saudi Arabia, 4 in Kuwait and 1 in Qatar. Originally, the market of the *sukûk* was the dominion of the Sovereign States (Malaysia, Qatar, Pakistan and Bahrain), after their legitimization by the Fiqh Academy of the Organization of the Islamic Conference, in February, 1988. More recently, also private companies have started to utilize the *sukûk* market (63). The major part of the issues of the *sukûk* is based on the constitution of a *Special Purpose Vehicle* (SPV) (64), to purchase assets and issue debt securities representative of the value of the assets. The value of the *sukûk* remains, consequently, always tied down to the value of the underlying assets. As an example of structurization, (to the side) the case of the *Global Sukuk* issued by Qatar, in 2003, is proposed.

Qatar Global Sukuk QSC (ottobre 2003)

Nell'ottobre 2003, il Governo del Qatar ha emesso il *Qatar Global Sukuk* QSC del valore complessivo di 700 milioni di dollari con scadenza 2010. Il valore di questa emissione è stato destinato al finanziamento della costruzione e dello sviluppo della Hamad Medical City, situata a Doha, in Qatar.

In occasione dell'emissione è stata costituita una Società per Azioni a Doha (che ha agito come SPV nell'emissione) partecipata dal Governo del Qatar, *Qatar International Islamic Bank* (QIIB) ed HSBC.

Le fasi dell'emissione sono state le seguenti:

a. il Governo del Qatar ha venduto allo SPV porzioni di territorio, destinato al complesso medico, valutate complessivamente 700 milioni di dollari;

b. lo SPV le ha rivendute ai sottoscrittori dei *sukuk*, i quali hanno così acquistato diritti reali di godimento. Lo SPV ha conservato tali partecipazioni (come fosse un trust), e su questa base ha emesso *trust certificates*, ossia i *sukuk*;

c. lo SPV, per conto dell'investitore, ha concesso in *leasing*, con un contratto *Ijarah*, la porzione di terreno al Governo del Qatar contro pagamento di canoni di *leasing* semestrali;

d. i sottoscrittori dei *sukuk* vengono remunerati periodicamente dallo SPV, il quale viene finanziato dai pagamenti governativi del canone sulle porzioni di territorio.

I rendimenti sono stati garantiti dal Governo del Qatar, replicando strumenti di debito sovrano del Qatar a tasso variabile. I titoli sono stati valutati A+ da *Standard & Poor's* (S&P) e quotati sia presso la Borsa del Lussemburgo sia presso la *Labuan International Financial Exchange* malaysiana.

The *Accounting and Auditing Organisation of Islamic Financial Institutions* (AAOIFI) has issued the standards for 14 types of *standard*, classifiable in categories which recall the financial contracts examined previously:

- *Musharakah Sukuk*, to which almost half of the *sukuk* issued between 2004 and 2006 belong.

- *Ijarah Sukuk*, an example of which is the issue on the 31st July, 2004, on the list of the Luxembourg Exchange, of 100 million euro on the part of the Federal State of Sassonia-Anhalt (65). The expiry of the *sukuk* is five years with a variable yield based on the six-monthly EURIBOR + 1 base point. The leader administrator is *Citigroup*, assisted by the *Kuwait Finance House*. The *Shariah Board* of *City Islamic Investment Bank* has certified the conformity with the religious dictates. The guarantee furnished by the entire German Federation has permitted the *sukuk* to receive the AAA rating from *Fitch* and the AA from *Standard&Poor's*. The underlying asset is constituted by a certain number of buildings owned by the Ministry of Finance, given in usufruct for 100 years to the Dutch foundation *Stichting* (66), utilized as SPV, which, in turn, ceded it again to the Ministry for five years. The yield (variably calculated according to the parameter of reference for the five-year period) represents the benefit for the holders of the certificate;

- *Istisna Sukuk*, an example of which is the *Durrat sukuk* (value equal to 120 million dollars), issued by Bahrain, a partial financing of the State project (to the value of 1.2 billion dollars) for the creation of luxury structures for entertainment and tourism (67). The society responsible for the project, *Durrat, Khaleej Al Bharain BSC*, is joint property of the Government of Bahrain and the *Kuwait Finance House*.

The expiry of the *sukuk* is at five years and the yield is three-monthly. The price of issue is fixed at a value equal to (LIBOR three-monthly + 125 base points). The organizer and investment agent for the collection of funds is the Liquidity Management Centre (LMC), with seat in Bahrain. The International Islamic Financial Market, with seat in Bahrain has carried out functions of *Shariah advisor*. The *sukuk* is quoted on the Stock Exchange of Bahrain (68);

- *Murabahah Sukuk*, on which is based the *Bithaman al Ajil Sukuk*, popular in Malaysia (69);

- *Mudarabah Sukuk*;

- *Salam Sukuk*, very much used in Bahrain as substitute for Government bonds.

In **Table 4** are listed the ten issues of the most important *sukuk* on the basis of their dimensions (70).

EMITTENTE	TIPOLOGIA DI EMISSIONE	DATA	ADVISOR	VALORE (Mln \$)	MARGINE	SCADENZA
Nakheel Sukuk (Emirati Arabi Uniti)	Corporate	Novembre 2006	Dubai Islamic Bank Barclays Capital	3.520	LIBOR + 1,2%	1 anno
PCFC Sukuk (Emirati Arabi Uniti)	Corporate	Gennaio 2006	Dubai Islamic Bank	3.500	7,125-10,125%	2 anni
Al Dar Properties Sukuk (Emirati Arabi Uniti)	Corporate	Gennaio 2007	Barclays Capital Credit Suisse National Bank of Abu Dhabi	2.530	5,676%	5 anni
Dubai Global Sukuk FZCO (Emirati Arabi Uniti)	Governativo	Novembre 2004	Dubai Islamic Bank Standard Chartered HSBC GIB Kuwait Finance Hous Arab Bank	1.000	LIBOR a 6 mesi + 0,45%	5 anni
ADIB Sukuk Company (Emirati Arabi Uniti)	Corporate	Dicembre 2006	HSBC Amanah	800	LIBOR a 6 mesi + 0,4%	5 anni
SABIC Sukuk (Arabia Saudita)	Corporate	Luglio 2006	HSBC Saudi Arabia Ltd HSBC Amanah	800	SIBOR + 0,4%	
DIB Sukuk Company (Emirati Arabi Uniti)	Corporate	Febbraio 2007	Barclays Capital Citigroup Standard Chartered Bank	750	LIBOR a 3 mesi + 0,33%	5 anni
Dubai Electricity & Water Authority (DEWA) (Emirati Arabi Uniti)	Governativo	Maggio 2008	Barclays Capital Citigroup Dubai Islamic Bank Emirates Bank International	749	EIBOR + 1,25%	5 anni
Governo del Qatar	Governativo	Settembre 2003	QIIB HSBC Amanah HSBC Bank Middle East	700	LIBOR a 6 mesi + 0,4%	7 anni
DAAR International Sukuk Company (Arabia Saudita)	Corporate	Gennaio 2007	ABC Islamic Bank Arab National Bank Standard Bank Unicorn Investment Bank	600	LIBOR a 3 mesi + 0,2%	3 anni

The *sukuk* sector is not confined to Countries of the Moslem world, neither is it the exclusive dominion of the Islamic financial institutions. In fact, always more *sukuk* are structured and linked to assets in the United Kingdom, in Continental Europe and the United States, thanks to non-Islamic issuers interested in drawing advantage from the greater liquidity present in the Islamic world. The diversification of the risk offered by the Islamic contracts, compared to conventional financial systems is among the principal factors of attraction. In fact, some analyses have shown that the presence of these instruments in portfolios reduces the *value-at-risk*

by about one third (71), compared to a portfolio composed of conventional bonds (72).

The strong diffusion of the *sukuk* has made it important to be able to have diffused platforms of *trading Shariah-compliant*. For example, the Dubai Stock Exchange (*Dubai Financial Market*, DFM), started to operate in December, 2006, as the first entirely Shariah-compliant Stock Exchange in the world. To have this requisite, the stock market platform turned to *Shariah-compliant* societies only, permitting access to the negotiations also non-completely Koran-compatible societies, on condition that they pay a special "purification" tax (73). The Islamic "purity" (*Tazkiya*) of the Dubai Stock Exchange has been approved by the Shariah Board of the AAI OFI (74).

Furthermore, to furnish investors with an international price *performance* reference of *sukuk* and middle-eastern conventional bonds, from October, 2007, the *Hong Kong and Shanghai Banking Corporation* (HSBC) and the *Dubai International Financial Exchange* (DIFX) have started a new group of indexes (75) concentrated on three categories (international *sukuk* middle-eastern conventional bonds, and aggregate Middle East). The indexes include over 100 issues from the middle-eastern Countries (from the 31st December, 2004), of dimensions, at least, equal to 100 million dollars.

Prospects: opportunities and risks

The *Shariah-compliant* finance is not a niche phenomenon. In the Middle East and in the Countries with a strong Islamic component, its dimension is in rapid growth, representing a reference point that is not solely financial, but above all, structural and ethical.

In 2007, *Standard&Poor's* estimated that the world *Shariah-compliant* financial assets are equal to circa 500 billion dollars. A more extended estimate was made by the *International Finance Services* of London, which, already at the end of 2006, evaluated the world *Shariah-compliant assets* as 531 billion dollars. Of this last amount, 75% was available in the Islamic commercial banks (397 billion dollars), 13% available in the investment banks (66 billion dollars), the rest subdivided between issuances of Islamic bonds (*sukuk*, 44 billion dollars), investments in share funds and other extra-budget financial instruments (14 billion dollars), and Islamic insurance assets (*takaful* (76), 10 billion dollars).

A disclosure of *The Banker* (77) has furnished an indication in terms of a composition of the Islamic financial services industry. At the end of 2006, the *leader-Country* in the holding of *Shariah-compliant* assets was Iran, followed by Saudi Arabia and Malaysia, (**Table 5**).

Posizione	Paese	Banche	Takaful	Totale	%
1	Iran	152,9	2,0	154,9	32,8
2	Arabia Saudita	68,5	1,6	70,1	14,8
3	Malaysia	64,1	1,2	65,3	13,8
4	Kuwait	37,3	1,2	38,5	8,1
5	Emirati Arabi Uniti	34,9	1,0	35,9	7,6
6	Bahreïn	25,6	0,8	26,4	5,6
7	Pakistan	15,9	----	15,9	3,4
8	Libano	14,3	----	14,3	3,0
9	Gran Bretagna	10,4	----	10,4	2,2
10	Turchia	10,1	----	10,1	2,1
11	Qatar	9,1	0,3	9,4	2,0
12	Bangladesh	4,3	0,3	4,6	1,0
13	Sudan	4,1	0,7	4,8	1,0
14	Egitto	3,8	0,1	3,9	0,8
15	Giordania	2,6	0,1	2,7	0,6

As seen from Table 5, the industry is concentrated, above all, in the middle-eastern region. The European exception is Great Britain.

The overall figure of 525 Islamic financial institutions found by *The Banker*, comprise 292 banks (both full Islamic and hybrids, or rather with separate windows dedicated to the sale of Islamic financial products (78), 115 between investment banks and Islamic financial societies, and 118 insurance companies.

Isolating a list of the first 15 world Islamic banks (**Table 6**), the Iranian banks occupy six of the first 15 places.

Table 6
Prime 15 Banche islamiche al mondo per asset Shariah-compliant

Pos.	Banca	Paese	Valore totale degli asset Shariah-compliant detenuti (mld \$)
1	Bank Melli	Iran	35,493
2	Bank Saderat	Iran	34,840
3	Takaful IBB Berhad	Brunei	31,535
4	Al Rajhi Bank	Arabia Saudita	28,093
5	Bank Mellat	Iran	25,128
6	AmIslamic Bank Berhad	Malaysia	22,263
7	Kuwait Finance House	Kuwait	21,836
8	Bank Tejarat	Iran	18,945
9	Dubai Islamic Bank	EAU	17,544
10	Blom Bank	Libano	14,219
11	Bank Sepah	Iran	13,913
12	Parisian Bank	Iran	10,483
13	Abu Dhabi Islamic Bank	EAU	9,881
14	HSBC Amanah	Regno Unito	9,725
15	National Commercial Bank Ltd.	Arabia Saudita	9,175

Two considerations arise when consulting the lists of *Table 5* , and *Table 6* . The first concerns China. A Country with a strong rate of economic growth, as well as, origin and destination of large foreign investments, at first direct, recently also financial). China is also a Country where energy consumption is growing at rhythms superior to any other in the world. For this reason, a closer relation with the Gulf Countries is strategic for Peking, and in this sense, also the interest for the *Shariah-compliant* finance, in the prospect that, in future, any contract stipulated with these Countries can be based on the respect of the religious dictates of Islam. In 2006, the first *Shariah-compliant* investments began in China: the *Shamil Bank*, with seat in Bahrein, launched its *Shamil China Realty Mudarabah* (with availability equal to 100 million dollars), the first real-estate fund dedicated to investments in the Chinese real-estate market; *DWS Investments*, branch of *Deutsche Bank* specialized in mutual funds of a global character has launched its first family of *Shariah-compliant* mutual investment funds; *Al Rajhi Investments* has introduced its own *Shariah Investment Fund* on the Chinese market, in partnership with *China Resources*, dominant State conglomerate in the Chinese real-estate market. Recently, *Mayfair Pacific Asset Management* (with seat in Hong Kong and previously experience of investment in the Pacific area) has created the *Mayfair Islamic Greater China Segregated Portfolio*, *Shariah-compliant* mutual fund (domiciled in the *Cayman Islands*) of 300 million dollars, principally directed to the indexes of *Dow Jones Islamic Market*, and geographically oriented towards the Great China region (area covering the administrated territories of China, including Hong Kong and Macao, as well as the territory of Taiwan) (79) . Administrator and Custodian of the fund is the *Deutsche Bank*, *Ernst & Young* is the auditor, and the Malaysian *ZI Shariah Advisory Services* is the *Shariah agent*. This experience, as others that will follow, will supply indications on how much it is possible to utilize the fertile Chinese market, in consideration of the great interest that Peking shows in the Islamic finance market. The second consideration regards Great Britain. In fact, its *leadership* in the western Countries, in the world industry of Islamic finance, does not represent a chance phenomenon. Over time, the London Government has allowed the Moslem Community (circa 3% of the total) access to financial services offered by national banks, which are coherent with the religious precepts of the *leadership* (80) . Since the first years of 2000, the strategy formulated by London have been directed towards: - the reinforcement of the competitiveness of the *City* through the consolidation of the position of the United Kingdom global *gateway* for the Islamic finance (81) ; - the creation of a *level playing field* for the *Shariah-compliant* finance on the British market, in the banking *retail* and *wholesale* sectors (82). Functional to this objective has been the introduction of fiscal and legislative modifications to remove the obstacles to the development of the Islamic finance, such as the tax concessions, introduced with the *Finance Act* of 2003, to prevent a double imposition on the Islamic mortgage loans (83) ; the measures of harmonization of the tax treatment of the Islamic products to that of conventional financial products, introduced by the *Finance Act* of 2005 and 2006, as well as a first hypothesis of fiscality for the creation of an internal market of *sukuk* , introduced with the *Finance Act* of 2007.

At a governmental *policy* level, within *HM Treasury*, the '**Islamic Finance Experts Group** (IFEG) has been instituted. This work group represents an example of world importance in the treatment of the material. Within this group are involved members of Parliament, State bodies, important bank investment, authorized Islamic banks, international consultancy societies, and authorities of research on the subject, representatives of the Moslem Community, and representatives of the financial services industry.

**Islamic Finance Experts Group (IFEG)
Composizione**

Shahid Malik, Membro del Parlamento

Sadiq Khan, Membro del Parlamento

Andrew Cahn, UK Trade & Investment
Clive Briault, Financial Services Authority
Raquel Hughes, London Stock Exchange
David Lewis, City of London
Robert Gray, International Capital Markets Association

Mulham Alwani, Royal Bank of Scotland
Peter Burnett, UBS
Arul Kandasamy, Barclays Capital
Afaq Khan, Standard Chartered Bank
Amjid Ali, HSBC Amanah
Usman Ahmed, Citigroup
Miyan Mansur, Credit Suisse
Neil Miller, Norton Rose
Yavar Moini, Morgan Stanley
Abid Shakeel, Lloyds TSB
Walid Sarieedine, West LB

Gerry Deegan, Islamic Bank of Britain
John Weguelin, European Islamic Investment Bank

Khursid Ahmed, British Muslim Forum
Iqbal Khan, Muslim Council of Britain

Mohammed Amin, PriceWaterhouseCoopers LLP

Stella Cox, DDCAP Ltd
Keith Leach, Alburaq, ABC International Bank

The first IFEG objective has been the evaluation of the feasibility of an issue by *HM Treasury* of *sukuk* denominated in sterling, in terms of issue options, parameters, potential benefits for the *City* finance and for the private investors, integration with the policies on public debt management, dimensions and nature of potential demand, potential costs and characteristics of risk, experience of other issues of *sukuk*, with the intention of gathering liquidity from the Moslem Community, sending, at the same time, a strong message of integration (84).

Last June the 8th, the British Government diffused the results of a consultation relative to the project of issue of *sukuk* (85). The Under-Secretary, *Ussher* confirmed that, even though a sure expiry had not yet been fixed, the materialization of the plan of collection was near. By the end of 2008, the London Government will publish a *paper* of update of the British strategy on the matter of Islamic finance, both for the State sector and for private industry. The balance between risks and advantages lies in certain choices regarding:

- the expiry of the *sukuk*: London would opt for a "bill-like" *sukuk* *Sukuk* (expiry under a year) rather than for a "bond-like" *sukuk* *Sukuk* (expiry within 5-10 years), insomuch as a short-term structure would allow a full integration with the structure of the conventional *Treasury bill* (at 1, 3 and 6 months);
- the contractual structure: the preference of London is directed towards an *Ijarah* contract (86);
- the amount of the issues: London is oriented to arrive at 2 billion sterling (a little less than 4 billion dollars).

An aspect of importance is given to the future acceptability of the Governmental *Sukuk* as collateral guarantee in the open market operations effected by the *Bank of England*. The expectations of the *City* are for a AAA rating (87) with the objective of not only attracting capital flows from the Arab Countries, but of establishing a *benchmark* to use as a *pricing base* for future corporate issues of *sukuk* on the London market (88).

Meanwhile, five entirely Islamic credit institutes have already obtained authorization from the *Financial Services Authority* (FSA) to operate on the British territory. These are the *Islamic Bank of Britain* (IBB), which launched its own operation in the *retail* sector in 2004 (89); the *European Islamic Investment Bank*, authorized, authorized for the *wholesale* sector in 2006; the *Bank of London and the Middle East*, also authorized for the *wholesale* sector in 2007 (90); the *European Finance House*, authorized in January, 2008 and the *Gatehouse Bank* authorized in April, 2008. The FSA has also authorized an Islamic *hedge fund*, the *Sharia-equity Opportunity Fund* (realized by the American *Meyer Capital*) and in the insurance sectors, in May, 2008, authorized the *Principle Insurance* operability, the first Islamic insurance company (*takaful provider*).

A fundamental component in the London strategy of expansion of the Islamic finance is, therefore, the integration with the conventional banking system, which represents the major problem, above all, in traditionally geographic areas of different religion.

In any integration strategy, one of the most important critical elements is constituted by the harmonization of the typical risks of management. Generally, the Islamic banks face the same risks as financial institutes operating in the conventional system (the *credit risk*; the *commodity risk*, the *liquidity risk*, the *market risk*, the *legal and regulatory risk*), as well as others deriving from the principle of risk sharing (moral hazard) and from the conformity to the religious precepts ([*Shariah risk*]).

Leaving aside the more common risks, we can concentrate on the more specific ones of the banking-financial system. *Shariah-compliant*: starting from the risk of "hidden action" (moral hazard), which represents one of the aspects connected to the *modus operandi* of the financial intermediary. In the "agency relations" (known in economy as "agent problem/principal"), the agent, working on behalf of a principal, can pursue interests

different from those of his buyer and follow opportunist behaviour which can cause damage to the principal. In a contract of the PLS type, the presence of informative asymmetry determines a double risk of "hidden action".

- between the agent (the entrepreneur) and his principal (the bank). While in the pre-contractual phase, the entrepreneur is stimulated to maintain transparency to obtain the requested funds, during the course of the activity the risk of *sub-reporting* could arise (in particular, in the absence of incentive clauses in the contract), to hide an inefficient use (or even an illegal one) of the funds received. Since the profit of the Islamic bank is directly proportional to the result of the activity tied to the financed projects, the *managers* must also carefully monitor the activities underlying the allocated loans;

- between the agent (bank manager) and the principal (the client of the bank) (91). The substitution of the interest rate with the PLS mechanism creates an incentive for the client of an Islamic bank in the monitoring of the comportment of the manager insofar as the client can see the increase (or reduction) of his deposit on the basis of the profits (or losses) realized by the bank. This is to the contrary of the typical client of a western bank, who, unless huge failures of the system occur, is guaranteed his own capital and the remuneration of a prearranged interest rate, independent of the economic result obtained by the bank in the period of reference (92).

Then there is a typical risk of the Islamic finance: the risk of non-conformity with the rules of the *Shariah* (*Shariah risk*). This can create serious reputation damage, which can lead to an outflow of Islamic investors' funds, causing failures and systemic risks.

With reference to the typical characteristics of the active assets/capital of an Islamic bank, the obligation to respect the limitations imposed by the *Shariah* is substantiated in the imposition of essentially negative criteria (first level screening: prohibition to invest in certain sectors) and onerous balance *ratio* (second level screening: the debit must not exceed a third of the total assets). Such practices shrink the investment universe with consequences both micro (lesser degree of diversification of the portfolio) and macro (in terms of the role of the banks in the development of the economic system) (93).

The products of the structured financial engineering which characterize the conventional financial system are at elevated *Shariah risk*. This limits the margins for the use of innovative financial instruments -

the need closely connected to the effort of handling the difficulties in the management of the liquidity and of the risk - and can constitute an element of disadvantage for the competitiveness of the Islamic banks compared to the conventional financial institutions (94).

To favour the activity of covering the risk also in the sectors of the *hedge fund*, occasions of *Shariah compliant* (95). *Barclays Capital e Dubai Multi Commodities Centre Authority* (DMCCA) have preannounced the availability of the first *hedge funds*, constructed with modality respectful of the Islamic Laws, on the part of an independent trust with headquarters in the *Cayman Island, Al Safi Trust*. DMCCA is committed to invest 250 million dollars in five *hedge funds* which invest in raw material through *Shariah-compliant* funds offered

by *Dubai Shariah Asset Management* (DSAM), a partnership between DMCCA and *Shariah Capital*.

The *Shariah Board* of the latter is responsible for the certification of the conformity to the Islamic Laws, while *Barclays Capital* will be prime broker and distributor of the structured products of *Al Safi Trust*. The other *investment firm* authorized by DMCCA for the launching of five *hedge fund* sono *BlackRock, Ospraie Management, Tocqueville Asset Management, Lucas Capital Management, Zweig-DiMenna International Managers*(96).



مركز دبي للسلع المتعددة
DUBAI MULTI COMMODITIES CENTRE
حكومة دبي
GOVERNMENT OF DUBAI

Prospective and opportunities in Italy

The absence in Italy of concrete experience on the subject of Islamic financial institutions necessitates an abstract evaluation of the opportunities and risks connected to the introduction of an Islamic bank. This obstacle could be partially removed by observing the experiences made in the European Community, considering the fact that the European regulations on the financial services has, in fact, created a single market also for the Islamic banking industry.

The verification of a potential compatibility between rules of the *Shariah* and the Italian system could be helped by the experience of Great Britain, which shows how the constitution of an Islamic bank is possible in a context where the vigilance regulations derived from the Community directives are applied to the banks. However, time for learning, proportionate to the difficulties which the problem introduces, should be considered. To force the moment could be quite damaging to the overall system (97).

The introduction of the Islamic finance is not only larger competitiveness. Such a process, in fact, also has reflections on the internal economic security.

The management of the *trade-off* between competitiveness and economic security (**Table 7**) requires a holistic institutional approach (i.e. that it contemplates aspects of financial-banking vigilance, and economic

and social aspects), for which a governmental intervention could ensure a major protection. Therefore, an approach similar to the English one of the British *Islamic Finance Expert Group* (instituted within *HM Treasury*) where different interests, also contrasting, can find their equilibrium and compensation.

Table 7 IL TRADE-OFF TRA COMPETITIVITA' E SICUREZZA ECONOMICA		
Fattori	Aspetti Positivi (COMPETITIVITA') Banca	Aspetti Negativi (SICUREZZA ECONOMICA)
Attrattività del Sistema-Italia per gli investitori arabi	Maggiori investimenti	Ingerenza nel Sistema economico
Innovazione nell'intermediazione finanziaria	Maggiore raccolta fondi dalla Comunità Musulmana (<i>retail</i>) Maggiore impiego fondi con finanziamenti del sistema bancario nazionale all'investimento infrastrutturale arabo in Italia (<i>wholesale</i>)	Necessità di vigilanza Forti costi di apprendimento
Consolidamento posizione Euro-Mediterranea dell'Italia	Potenziati sinergie con altre esperienze europee (Francia e Gran Bretagna)	Competizione non trasparente con altre esperienze europee
Capacità di Investimento del Sistema-Italia nel Bacino geografico di riferimento	Maggiore supporto bancario-finanziario all'internazionalizzazione delle imprese	<i>Shariah risk e Moral Hazard</i> Assenza di un tribunale di ultima istanza Assenza di un prestatore <i>Shariah-compliant</i> di ultima istanza

In consideration of the opposite relation (trade-off) between competitiveness and economic security, among the aspects of competitive increase, there are the largest overall foreign investments; a larger (and more observable) bank collection of funds originating from the Islamic Community in Italy (98); a larger (and better) employment of these same funds through the national banking system towards direct Arab investment in Italy; the potential synergies (in terms of experience, knowledge and instruments) with other European experience (principally, France and Great Britain); the greater capacity of internationalization of the companies, in particular, directed towards Countries of Islamic religion, thanks to the "expert" support of the national financial-banking system.

An important example of internationalization concerns the competitive advantage in a fundamental sector of the economy, that of energy, which a knowledge of the characteristics of the Islamic finance could guarantee. *Shariah-compliant* Arab investments in this sector are already in the launching phase, at a world level, and since April, 2008, the first *Shariah-compliant* bank, *First Energy Bank* (FEB), dedicated to the energy sector is in existence. On last June 24th, the Central Bank of Bahrain furnished a licence for the carrying out of wholesale activities, and at the present, the constitutive phases and the collection of capital are underway (from the foreseen 750 million, it could reach a billion dollars) (99).

Among the aspects of safeguarding the economic security which require careful and constant vigilance by the responsible bodies are: the heavy costs of learning the subject matter; the protection from a potential non-transparent competition in the banking collection by other European experiences; the coverage of typical risks (*Shariah risk, moral hazard*); the absence of both a 'court of the last resort' (100) and a '*Shariah-compliant* lender of the last resort'; the preoccupations relative to the patrimonial requisites necessary in occasion of the authorization procedure.

In an interesting study, Mohammad Bakkar (101) has considered the principal challenges which Italy will have to deal with in the introduction and in the use of the Islamic financial instruments. The critical factors have been individuated in the following:

-the regulations and taxation.

Examples of the authorization and tax system for the Islamic banks are already present in some European Countries (Great Britain, Switzerland, France, Spain, Germany, Holland) (102) and in the United States. In the majority of cases, the system is based on the taxation of the economic aspect of the transaction, while in the British system it is the juridical aspect of the transaction that guides the fiscal treatment applied. In many cases, however, the transactions of Islamic finance are through a simple adaptation of the existing legislation (103). This renders the quality and transparency of the *financial reporting* in the Islamic finance industry significantly different between jurisdictions, and inadequate for the absence of standardization with the international accounting principles. International Islamic regulatory bodies, such as the *Accounting and Auditing Organization for Islamic Financial Institutions* (AAOIFI) (104), *Islamic Financial Services Board* (IFSB) (105) and the *Shariah boards* within the companies (106) have elaborated *standards*, two of which were defined in 2006, (*Capital Adequacy*, (107) and *Guiding Principles of Risk Management*(108));

- functions of Islamic banking control (*Shariah Governance*).

The fundamental principles underlying Islamic financial products – even with a vast consensus tied to their formal content – are interpreted in different ways and utilized, in practice, in as many different way.

According to *Moody's* (2008), the lack of *standards* represents a notable obstacle to the development of the Islamic finance both as a model of investment and in terms of alternative financing. Besides, also the different views of the different *Shariah Boards* feed uncertainty. A transaction can be accepted by one Council, but refused by another. Two examples of the consequences of the lack of standards are represented by the important debate on the "purity" of the *sukuk*, developed from a criticism expressed in 2007 by *Sheikh Muhammad Taqi Usmani*, President of the *Shariah Standard Council* of the AAOIFI, eminent Indian scholar of Deobandi origin, belonging to the *Hanafi* Pakistani school, who aroused negative effects in the *sukuk* industry, to such a point that the realization of many transactions were suspended until the solution to the religious question was found (109), as well as the negative fatwa expressed, in 2007, by the religious member, *Mohammed al-Ossaimi*, against certain investments effected by the *Kingdom Holding* of the Saudi Prince, *Alwaleed bin Talal*, and against the First Public Offer, realized in 2006 of the Saudi *Red Sea Housing Services Co.*, subsidiary of the *Dabbagh Group* of Jeddah;

- instruction and training on the Islam of the banking management.

There is a strong lack of qualification in the sector, not only at the level of scholars, but also of operators of the financial services industry. An interesting undertaking of instruction, in this regard, is that of the Banca Popolare di Milano (BPM), which has provided, in collaboration with the Accademia di Studi Inter-religiosi di Milano, a course of instruction for its own *staff*. The objective being the close examination of inter-cultural themes, with particular reference to Islam. At the beginning, the *format* format of the courses will be dedicated to *managers*, to then extend to the employees, and will range from strictly religious themes (such as the meaning of the veil) to economic themes (such as the *islamic banking*) (110);

- competition with the conventional banks.

The *Shariah-compliant* financial transactions regard both the global conventional markets and regional and local Islamic markets. In these contexts, the following are important:

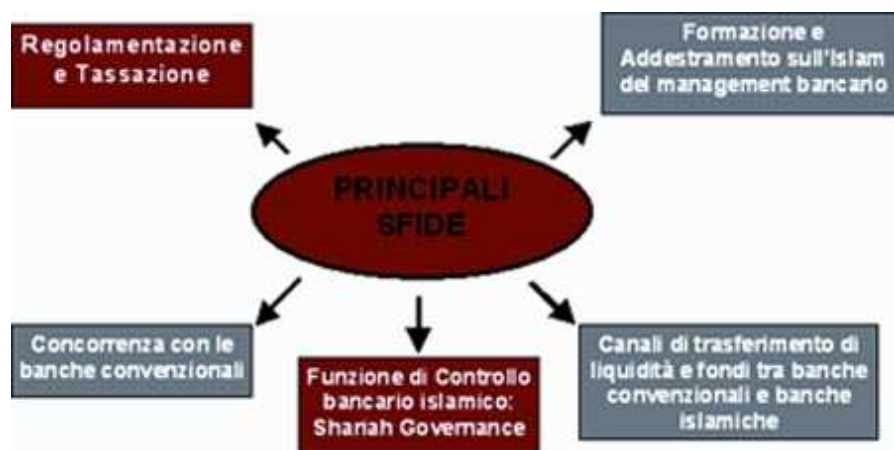
- * concerning the Moslem clients, respect for their religious precepts and the guarantee of privacy;
- * concerning non-Moslem clients, the comparative yield of the *Shariah-compliant* products with respect to the conventional finance products.

The objective of the new generation of Islamic financial products is, therefore, to guarantee *Shariah-compliant* competitive yields: hence responding to an ethical and denominational need (111), but also to a profit need, affirming itself with respect to the conventional finance. An example expressing *Shariah-compliant* competitive capacity is the *BNP Paribas Islamic Equities Optimiser*, the only *Shariah-compliant* mutual investment fund authorized in Italy. In the simplified prospectus of February, 2006, the Fund, of Luxembourg law, is said to be "offered, without distinction, to Islamic and non-Islamic investors". Although recognizing that "it is not permitted that the Fund pays or receives interest", it is held possible "the collection and payment of dividends from share securities" (112);

- channels of transfer of liquidity and funds between conventional and Islamic banks.

Many are the factors which render the management of the liquidity in an Islamic bank problematic: the excessive dependence on the current account for their available liquid; the existent restrictions on the re-negotiation of the debt; the absence of a market of instruments of *Shariah-compliant* refinancing; the absence of an Islamic "lender of the last resort" (113).

To sum up graphically:



The opening of an Islamic bank in Italy is, therefore, possible, but on condition that the rules and controls required in the case of the constitution of a new bank or the establishment of a branch of a foreign bank are respected. A specific requisite, with respect to the traditional ones provided by the Italian Law, is the clear definition of the role and responsibilities of the *Shariah Board*, to which, functions connected to the management and control of the bank must not be attributed (114). There exist two other paths to carry out activities of *islamic banking* in Italy:

- a. the opening of a branch of an Islamic bank of a European Community Country, the authorization procedure of which is, to a large extent, similar to that provided for the constitution of a new Islamic bank;
- b. the presence of a branch of an Islamic bank already constituted in an EC Country, the authorization

procedure of which is based on the Community principles of the "European Passport" and of the "recognition of the vigilance on the main branch", limiting itself to requesting the notification by the vigilance Authority of the Country of origin.

Passaporto Europeo

Il meccanismo del "passaporto europeo" è stato introdotto con la Direttiva 93/22/CE (c.d. *Investment Service Directive* -ISD) che prevedeva un'autorizzazione unica per l'esercizio di servizi di investimento rilasciata dall'Autorità di vigilanza del Paese d'origine e valevole (in linea di principio) per gli altri Paesi dell'Unione.

Con l'entrata in vigore della Direttiva 2004/39/CE (c.d. *Market in Financial Instruments Directive* - MiFID), recepita in Italia con D.Lgs. n. 164 del 17 settembre 2007, uno dei principali obiettivi è stato armonizzare "al massimo" il regime per le imprese di investimento.

Le imprese che prestano servizi di investimento (come occupazione o attività abituale a titolo professionale) sono tenute, ai sensi della MiFID, a richiedere l'autorizzazione preventiva al proprio Stato Membro di Origine. Una volta autorizzata, l'impresa sarà abilitata, avvalendosi del regime del passaporto europeo, a stabilire una succursale o a prestare i servizi in regime di libera prestazione in ogni Stato Membro.

A differenza di quanto previsto dalla ISD, sia la regolamentazione prudenziale sia quella riguardante le regole di condotta saranno esercitate dallo Stato Membro di Origine, con la sola eccezione delle attività svolte dalle succursali, nel qual caso alla sede secondaria si applicheranno le regole di condotta fissate dallo Stato Membro Ospitante.

A hypothesis of application of the Community mechanism of the "European Passport" is that of the British *European Islamic Investment Bank* (EIIB), which having legal seat in Great Britain, would establish or make its services available in Italy (115) .

Relative to such an hypothesis, the vigilance Authorities, in their standard procedure, do not permit a newly constituted bank to expand abroad immediately, for reasons pertinent to the stability and the wise and prudent management of the newly constituted bank. Only the consolidation of an Islamic bank in a European Union Country – under all the technical profiles equal to any other – can allow the expansion in other Countries without the vigilance Authorities of the host Member States having reasons of opposition.

Conclusion

The progressive growth of the Islamic financial market should be analyzed from a twofold point of view: for the Moslem, it is connected to the attraction of the ethical-religious lawfulness of the banking and financial practices, as well as to the possibility of sustaining, with its own contribution, the recovery and assertion of the Islamic principles in the contemporary economic context; for the Countries that offers products that respect the *Shariah* rules, it is connected to the possibility of enjoying a privileged access to the *Shariah-compliant* aggregate demand – at the moment relating to the Gulf Countries and the Asian South-East – in the future, relating, principally, to the resident Islamic population in Europe (116).

The extolling of the religious-ideological profile to consolidate market quotas does not seem, however, always accompanied by an adequate level of effective protection and transparency – important, on the contrary – in verifying the real competitive capacity of the Islamic banks, when a clientele different from the Moslem is addressed.

The Arab world has always given great attention to the Italian economy, as shown by various important investments. To open to the Islamic finance represents, for Italy, an opportunity of *business* which requires, at the same time, both a close study of the ethical and religious needs, and an interaction with the national Islamic Community, which, before the acquisition of financial and economic knowledge must know its composition and its ethical requirements.

The attention with regard to the liquidity, effective and potential, originating from the Islamic Community cannot be realized only in repressive solutions. Where possible, a more complex (but lasting) solution of prevention must be carried forward, aimed at the integration of this liquidity with the internal economic-financial system.

The positive aspects of the binomial "a larger collection of liquidity from the Moslem Community / a strong message of social integration" at the base of the strategy of London, Berlin, Paris and Amsterdam, should also be taken up by Italy. However, attention to the social and economic aspects must also be maintained. For example, when speaking of "bank integration", there is a rather difficult cultural "problem" to be taken into consideration. In the case of Islamic clients, the religious principles apply equally to both the profit and the loss, while in the case of non-Moslem clients – accustomed to typical western banking schemes – understanding the distinctive aspects of the Islamic banking in the case of the negative outcome of investments, could create difficulties.

Analogously, the great uncertainty that permeates the introduction of Islamic financial contracts into the Italian standard banking practices should also be handled in terms of protection both from the economic and financial security aspects and from the scientific and industrial aspects. Where the Islamic contractual procedures can become an instrument of financing to the development of these sectors, in fact, the little knowledge of the subject material would open to distortion in the "normal behaviour" of the operators involved. A respectful and perspectival management is, therefore, necessary not only at a regulations level, but above all, at a systemic and social level (in the protection of its effects inherent to the religion) also through the instruments of prevention -i.e. of *intelligence* – held to be the most suitable.

- (1) The Libyan Society Oilinvest (Holland owned, controlled by National Oil Corporation Libyan and of the LAFICO) It is owner of a share in the Tamoil Italia Spa.
- (2) Ref: Carlo Festa, Risanamento and Aedes Sound Out the Sheiks, *Il Sole 24 Ore Plus* 24.31.5.2008
- (3) The Investment Fund of Qatar, Bawar Real Estate, in negotiations with Monte Paschi Siena, for the purchase of real estate situated in Via dei Normanni, in Rome, 36,000 square meters, overlooking the Coliseum.
- (4) Alfredo Sessa: The Sultan of Oman moors in Puglia, *Il Sole 24 Ore*, 21.5.2008. Previously 16th May, the President of the Province of Bari, Vincenzo Divella met the Ambassador in Italy for the Sultanate of Oman, Said Nasser Al-Harthy, to illustrate the socio-economic picture of the territory of Bari. Ref: Antonio Scotti Vendola, invited to dinner by the Sultan of Oman www.bari-live.it 23.5.2008.
- (5) The UAB comprises more than 300 Arab banking and financial institutions and represent the biggest financial and banking consortium in the region, as well as, the spokesman for the Arab banking community. The members of UAB are divided in active members (all the financial and banking institutions, Arab and Arab-Foreign) and observation members (Arab central banks, Arab banking associations, and Arab-Foreign financial institutions) in which the Arab present is less than 51%, but more than 25%. Ref: www.uabonline.org.
- (6) Ref: Claudio Tucci in 2008 in Italy the first Islamic bank. *Sole 24 Ore*, 25.9.2007.
- (7) Islam is based on three elements: Aqidah (faith and creed); Akhlaq (morality and ethics); Shariah (practices and activities). This last is the divine law as revealed by the Koran and the Sunnah. The Shariah is composed of two sets of rules: Ibadah (regards the obligatory practice of prayer) and Muamalat: (regards further aspects of everyday life with respect to the obligations of Ibadah). Part of the Muamalat is relative to the required behaviour in economy and finance. If the Shariah is the Law of Islam, then Fiqh is its interpretation. The hierarchy of the sources in Islamic law provides:
- The Koran (the text of Allah) primary source of the comprehension of the Laws of God;
 - The Sunnah (words and actions of the Prophet); second source based on what has been transmitted by the Prophet Mohammed, through his words. Their function is to transmit the law as principle, as well as to assure a moral guide, Acts (which have a legal content) and tacit approvals (equivalent to silent-assent of the Prophet of actions carried out in His presence or of which the Prophet knows of);
 - Ijma' (Consensus) consists in the agreement on a rule of the Islamic law by independent jurists (Mujtahids) belong to the Ummah of the Prophet Mohammed in a determinate period after his death;
 - Qiyas (Analogy) attributions of legal validity to a fact of daily life, revealed in the texts of the Koran and the Sunnah o ijma' on a case whose legal validity does not derive from these sources, but from Allah, that is from a rationality underlying the legal rule;
 - Ijtihad (interpretation) an exercise of study and research which leads to a common agreement, when there is an innovative solution to a problem proposed by one or more researchers, and subsequently, this is shared by all.
- (8) The retail banking refers to a banking activity carried out for private clients (current account, mortgage loans, personal loans, and credit and debit cards).
- (9) The wholesale banking refers to services furnished by the banking industry to medium and large companies, investors and real-estate developers, State and Institutional clients, and important commercial clients at an international level, pension funds and State bodies. The activities carried out regard the underwriting, the market making, the consultancy, fusion and purchase, and fund management.
- (10) The memorandum of collaboration between ABI and UAB provides for the creation of certain restricted technical committees for the study of the differences in the functioning of two banking systems (conventional and Islamic) and in the opportunities in the development of joint business.
- (11) Ref. Tucci (2007) The new financial vehicle (constituted as a society for Italian shares) has the Al-Baraka Group (ABG) as majority share-holder (60% of the capital, while for the remaining 40%, are looking for an Italian partner. If the availability is lacking, ABG will enter with the entire holding. Ref: *The Islamic bank disembarks at Rome*, *Il Sole 24 Ore*, 16.4.2008
- (12) In this article, the terms "Islamic bank" and "Islamic financial institutions" are used in an interchangeable manner to make reference to financial institutions operating in Countries where all the financial transactions are set up in accordance with the Islamic religious precepts as well as to specialized institutions and "Islamic windows" of conventional banks that offer Islamic financial products in Countries where conventional and Shariah-compliant systems co-exist.
- (13) For Shariah-compliant financial activity (assets) is intended that which is in adherence with the dictates of the Shariah and certified by a Council of religious authority (Shariah Board), in its correctness with respect to the dictates of the Koran.
- (14) Ref. Standard & Poor's (2008).
- (15) For a view of national security of the strategies of the sovereign funds of investment, ref. *Sovereign Funds and National Sovereignty*, Gnosis, Information Agency and Internal Security, No. 1. 2008.
- (16) This expansion concerns also the African Continent. Of particular importance, the partnership between South African Investec Asset Management and the Saudi Jadwa Investment in the launching the first Shariah-compliant fund directed to the African share markets. The Shariah advisor of the fund is the Saudi investment society, while to Investec are attributed the strategies of stock selection relative to the portfolio.
- (17) All the 27 Member States of the European Union will be members of the UPM. To them will be added the Countries which overlook the Mediterranean in addition to Jordan and Mauritania.
- (18) Of the approximately twelve sectors of intervention proposed by France as ground of action for the future Union for the Mediterranean, the Commission has invited concentration in only three large areas: infrastructures, in particular, sea freeway, and freeway connection through all Maghreb, from Mauritania to Libya; the depollution of the Mediterranean; the Mediterranean solar plan (in application of a decision by the Ministries of Energy).
- (19) "This government's objective is to make France more competitive and one aspect of that is Islamic finance". Ref. Shyamantha Asokan: French aiming for France to be the Islamic finance centre, *Financial Times*, 14.5.2008.
- (20) Of particular importance of the partnership in Lebanon (for which the procedure of approval by the Banque du Liban is underway) between BNP Paribas and Emirates Lebanon Bank (ELB, Lebanese subsidiary, entirely controlled by Bank of Sharjah). The agreements provide for the incorporation by Emirates Lebanon Bank (former Banque de la Bekaa) of the activities of the Lebanese branch of BNP Intercontinental (BNPI) subsidiary completely controlled by BNP Paribas. The new composition of ELB sees a participation of 81% by the Bank of Sharjah, while BNPI maintain 19%. In prospective, the Bank of Sharjah intends to offer up to 30% of the ELB capital to a private group of selected Lebanese investors and to the Gulf Countries, with which it intends to realize "exceptionally strong synergies". Ref. BNP Paribas and Bank of Sharjah in Lebanese joint venture, www.cpi-financial.net . 23.6.2008.
- (21) Recently Société Générale has followed the refinancing of the Taweelah of Abu Dhabi desalination installation through its Islamic unit of Dubai, assuring the provision of 150 million dollars from Shariah-compliant sources and 390 million dollars of conventional bonds and corporate loans. Credit

Agricole through Calyon, subsidiary dedicated to banking investment is specialized in Shariah-compliant syndicate financing. The most important transaction carried out by Calyon, through its Saudi branch, Banque Saudi Fransi, concerns a Shariah-compliant financing agreement of 2.9 billion dollars to the benefit of Mobily, Saudi subsidiary of the telephonic small emirate Etisalat, dedicated to the mobile telephone. Calyon does not have its own Shariah Board; therefore the religious certification of the operation is furnished by the Abu Dhabi Islamic Bank. Ref: Wilson, 2007.

(22) Ref: Wilson, 2007

(23) Ref: Guy Dinmore: Italy-France form "trade axis" to counter emerging nations, Financial Times, 12.6.2008.

(24) The agreement provides for a series of joint-ventures, the calendar of which will be fixed within October, 2008. Two technical seminars focusing on geographic areas are underway; one relative to the Gulf Countries and the other on Countries of North Africa, and the production of a cycle of publications on different banking systems. Ref: "ABI: agreement with the Unione Bache Arabe" on <http://www.tuttosullafinanza.com/abi-accordo-banche-arabe.htm>

(25) The Moslem Community in Italy is composed of 1.2 legally resident citizens, circa 32% of the 3.7 million foreign residents in our Country. To this must be added 100-150 thousand irregular immigrants, 50 thousand foreign citizens awaiting Italian citizenship. Furthermore, 10 thousand are the Italians converted to Islam. Therefore, the total number of Moslems resident in Italy is equal to 1.4 million. This figure represents circa 2.3% of the Italian population (distributed in a heterogeneous way, 55% in North Italy, 25% Centre Italy and 20% in South Italy) a percentage inferior to that of other large Countries of the European Union. The relatively reduced dimensions and the young age of the national Moslem Community means that the impact of Islam on the public life is not yet significant, but there are indications that the trend is in modification(26) More than 500 are the structures distributed on all of the national territory, with a major concentration in the Lombardy-Emilian.-Veneto pole.

(27) The commercial activities are exercised either in an "accessory" manner in some places of worship (Islamic butcheries, food shops) or within the same (through the sale of food stuffs, books and Islamic audio/video tapes) or through participant interest of those in charge in entrepreneurial and commercial activities.

(28) In 2000, the Monte dei Paschi di Siena stipulated an agreement with the Italian Islamic Centre, which provided for facilitated current accounts for the immigrants of Moslem religion and the devolution of the interests at the Islamic Centre. In July, 2004, the Cassa di Risparmio of Fabriano and Cupramontana launched the first deposit without interest, but productive in bonuses in kind and related to the balance of the account, and more recently, the "Extragentile Mutuo" structured as a real-estate leasing with a duration of 20-35 years at the end of which the client can decide whether to redeem the goods.

(29) Informal system of monetary transfer based on trust placed in a network of money brokers, principally in the Middle East. Africa and Asia.

(30) Also in this sense, the limitations to the use of cash and bearer bonds/securities are considered (introduced by the Legislative Decree 231, of the 21st November, 2007) with extremely restrictive effects on the activity of money transfer, defined by the report of the Parliamentary Commission of Enquiry on the phenomenon of organized crime, mafia or similar, of February, 2008, as an "alternative banking system which risks putting into crisis also the legal one, since circa 25 thousand money collection points have been identified in Italy, of which it is estimated that 30% (8 thousand) are illegal"

(31) The "district or religious dice" (according to the typology of integration) is a system of relations which characterizes an Islamic under-economy (composed of subjects who follow the Islamic precepts) within the largest national economic system It concerns an aggregate of businesses which favour each other with strong price reductions in the costs of transactions, implicit in the existence of interrelations based on reciprocal trust.

(32) With reference to the UNO Resolution 1737, 2006, the 16th March, 2007, the Banca d'Italia established the application to the Italian branch of the Bank Sepah (pursuant Article 53, para 3, letter d, of the Sole Text of the laws of banking and credit system) of the prohibition of entertaining relations with subjects on the list of names, agencies and societies involved in programmes of nuclear proliferation, issued by the Security Council of the United Nations, or with subjects in any way connected to same. With measures of 26.3.2007, the Banca d'Italia arranged the provisory management of the Italian branch of the Sepah bank, according to the combined measures of Articles 76 and 77 of the Sole Text of the laws of the banking and credit system, nominating as administrators, Dott. Luciano di Paolo and Prof. Raffaele Lener. Ref: Banca d'Italia Bulletin of Vigilanza 03/2007. With the Decree of 26.5.2007, of the Ministry of Economy & Finance, on the proposal of the Banca d'Italia, the Italian branch of Bank Sepah was placed in emergency administration, under the Articles 77 and 70, para 1, letter a.) of the Sole Text of the laws of the banking and credit system. Ref: Banca d'Italia, Bollettino di Vigilanza 05/2007. With the Decree 20.7.2007, of the Ministry of Economy and Finance, on the proposal of the Banca d'Italia, it was established the continuation of the emergency administration of the Italian branch of the Bank Sepah for the routine duration of a year, from the issue of the Ministerial Decree of 26.5.2007, which disposed the start of the procedure for a period of sixty days under the Article 70, para 5. of the Sole Text of the laws of the banking and credit system. Ref: Banca d'Italia, Bollettino di Vigilanza 07/2007.

(33) In 2004, the German Federal State of Sassonia-Anhalt was among the first issuers, in Europe, of the sukûk (that is, the Islamic bonds) for 100 million dollars... The Ministry of Finance of the German region poses a double motive at the base of the choice of an instrument compatible with the Shariah: "On the one side for economic reasons. There are investors out there and it is reasonable to offer them a product. On the other side, for a question of international courtesy. We want to launch a message of respect to other cultures that have different regulations on investments".

(34) The 16th July, 2007, the Dutch Minister of Finance, Wouter Bos announced in Parliament the wish to encourage the expansion of Islamic finance in Holland: "In the first place, because Islamic banking satisfies a demand by the Dutch Moslem Community, in the second place, because it represents an opportunity for the Dutch financial sectors, in the third place, because to place barriers to the Islamic banking in the prospective of contrasting terrorism would have a counter-productive effect". Ref: http://www.nisnews.nl/public/170707_1.htm.

(35) Since 2006, the Faisal Private Bank has been operative in Geneva. The first Shariah-compliant bank in Switzerland. At the present time, the National Bank of Kuwait is close to starting (with a Saudi partner) a second bank.

(36) In December, 2007, Fortis Bank, the first bank of Belgium, launched the Shariah-compliant Investment Fund, Fortis B Fix, 2008, Islamic Index 1, tied to the Dow Jones indexes, Islamic Market Titans 100, under the supervision of DJIM Sharia Supervisory Board and composed of actions selected by Dow Jones indexes that do not deal with alcohol, arms, tobacco, gambling or pork meat.

(37) The idea of arbitrage is connected to the situation in which a financial market, at a certain moment, without assuming any risk, has the possibility of realizing a sure profit (different from speculation). All factors being equal, on the basis of the different offers of "ethics", opportune portfolios are set out, function of a profit in terms of morality and respect for religious precepts.

(38) The neo-classic economic analysis teaches that the free functioning of the market leads to an optimal allocation, in the Paretian sense, of the resources. The choice between different Paret-optimal balances depends on the type of "function of social utility" selected by the policy maker and, therefore, remains an indeterminate choice. In an Islamic

Economy, this indefiniteness does not exist because the function of social utility must be in character with principles of the Islamic laws.

(39) The literal meaning of riba is "excess". The Islamic jurisprudence has divided the riba into two typologies:

- Riba Al-Naseeyah (also Riba Al -Quran or Riba Al -Jahiliyyah). It is the primary form of riba. It is defined as the product of a predetermined interest,

applied on a certain capital taken (or obtained) on loan for a given period;

- Riba Al Fadl (also Riba Al-Hadith or Riba Al-Byuoo) its prohibition derives from the Sunnah. It is defined as a payment in excess (with respect to the nominal value of the transaction) deriving from an exchange or sale of goods. The concept is applicable to many contracts concerning raw material (commodities) where a specific risk is associated to the yield.

(40) "God has permitted trade but prohibited riba" Surat Al-Baqara, Verse 275). The traditional banking inter-mediation between the savers and the business company is based on the banking deposit of the saver and on the bank loan to the business company. The inter-temporal profit obtained by the depositors and by the banks is considered riba.

(41) The Keynesian theories and even the IS-LM model no longer function in a Moslem economic system. There does not exist an interest tax which explains the choices of investment and the money demand, which in the Keynesian model is a function of, besides the income also of the interest taxes, and is not affected by the trend of the credit markets and interest taxes. According to the Shariah, money is only a means of exchange and has no value in itself.

(42) Ref: Iqbal, Mirakhor, 2006.

(43) Examples of gharar can be to advise the purchase of shares of a particular society, prone to a hostile raid, based on the expectations of price growth of the shares themselves; advise the purchase of a painting by an unknown painter, based on expectations of the future fame of same; propose the purchase of a house, without specifying, at the moment of the proposal, the price;

(44) "They ask you about what they should spend (in charity), say, 'whatever you spend on good' (let it be first) on your parents, and (then) on your close relatives, the orphans, the poor and the children of the path.' And whatever good you do, surely God knows." Surat Al-Baqara, Verse 215).

(45) The zakat is one of the five pillars of Islam. The other four are the Shahada (Testimony of the Faith); the salat (pray five times a day with your gaze towards the Mecca); the sawm (abstinence and fasting during Ramadan); and the hajj; (a pilgrimage to the Mecca, at least once in a lifetime).

(46) Ref: Piccinelli (2006).

(47) Taken from Akkizidis and Khandelwal (2008)

(48) The lack of an express obligation of reimbursement of funds collected from the public could represent one of the principal elements of "incompatibility" with the European banking system. Ref: Piccinelli (2006).

(49) Ref: Jobst (2007).

(50) All the concrete applications included in the boxes make reference to Akkizidis and Khandelwal (2008).

(51) Dalla Pellegrina (2004)

(52) Taken from Akkizidis and Khandelwal (2008).

(53) The salam contract is useful in the financing to Agricultural sectors (commercial activities, operative costs and capital goods)

(54) The lessor is called mu 'jir, while the utilizer is called musta 'jir.

(55) Ref: Freshfields, Bruckhaus, Deringer (2006).

(56) The industry of civil aviation is Shariah-compliant in its fundamental principles and the financing is asset-based... Like Emirates, also other carriers have usufruct of forms of Islamic leases of aircrafts of their interest.

(57) This last solution has been the object of debate between scholars of the Islamic finance. To the many criticisms of the use of a benchmark rate (above all, if placed in function of the banking interest tax or inter-banking, type LIBOR) the moderators have proposed a solution of compromise based on the definition of a limited maximum and a limited minimum to the variability of the rents, such as to remove the uncertainty (gharar) and assure the parties transparency in the contractual liabilities.

(58) Plural of sakk.

(59) The definition of sukūk furnished by the AAOIFI is "certificates of equal value representing, after closing subscription, receipt of the value of the certificates and putting it to use as planned, common title to shares and rights in tangible assets, usufructs and services, or equity of a given project, or equity of a special investment activity".

(60) Ref: Box and Avaria (2005). In the modern Islamic jurisprudence, the investors can receive periodic payments, thanks to an issue of zukūk, the price of which is established on the basis of the LIBOR. For this the price of the sukūk is frequently fixed using the same techniques of determination of the price of the conventional bonds...

(61) The first sukūk was issued in 1990, and the second 10 years later in 2000. That year, according to IFIS, only three issues were realized, for a total of 336 million dollars. Three years later they increased to 37, for a sum of 5.7 billion. Instead, in 2006, 199 sukūk were issued for a value of 27.17 billion.

(62) Ref. Moody's (2008).

(63) In the expansion strategy of its business in Malaysia. Toyota also planned the issue of sukūk. In this regard the Malaysian Financial Authorities had already furnished to UMW Toyota Capital (controlled to 70% by the Japanese Toyota Financial Services (Financial Branch of Toyota Motors) with headquarters in Petaling Jaya (Malaysia), the authorization to issue certificates up to 1 billion of ringgit (about 312 million dollars). Toyota has already operated in the industry of the Malaysian Islamic Finance, since 2005, when it began to offer Shariah-compliant loans, starting from ijarah in August, 2007. An issue of zukūk would represent for Toyota the first form of provisions according to the Shariah. CIMB Group, Malaysian society of financial services, would act as lead manager in the issue. Ref: Martin Foster. Toyota considers Shariah bond to help Malaysian business. International Herald Tribune, 12.5.2008.

The special purpose vehicle (SPV) is a society purposely created to realize one or more operations of securitization in which is required the double task of acquiring from the originator (or conceder) the credits to securitize and to subsequently issue financial instruments representative of the ceded portfolio. In fact, through an SPV, the originator transforms non-negotiable financing contracts into movable asset values to collocate with private or institutional investors. The service of the debit is assured by the cash flow deriving from the reimbursement of capital and the interests of the original credits. The placement of the securities is taken care of by the arranger, (who can be a financial intermediary or an investment bank) that selects, together with the originator, the block of credits to be securitized. The arranger takes care of the constitution of the SPV and, often, carries out the function of lead manager in the placement of the securities.

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function of lead manager in the placement of the securities.

(65) Ref: Gassner (2006).

(66) The solution of instituting a foundation corresponds to the waqf concept, the Islamic equivalent of trust typical in common law. The difference is that a waqf religious endowment is for undetermined time. The foundation was registered in Holland, since the German law is not yet completely developed in matters of securitization, above all, from a fiscal point of view.

(67) Ref: Gassner (2006)

(68) An *istisnā sukūk* is not a negotiable security according to the Shariah (inasmuch as the underlying asset does not yet exist. Its negotiability can be reached with a securitization in pool considering that the contemporary Islamic jurisprudence accepts a security as negotiable on condition that the tangible underlying asset represents 51% of the market value of the security itself. The proceedings of the issue are utilized by the issuer for project financing agreements (reclamation of the land, development of infrastructures). When the works, realized according to each *istisnā* are completed by the contractors and delivered to the subject issuer, the issuer notifies it to the society responsible for the project, and the infrastructure is made available on the basis of a transaction for purchase in leasing. If the *sukūk* are quoted during the period of the *istisnā*, the collectable *istisnā* (sum held as liquidity) they will be negotiated only at an equal value. Whatever appreciation or depreciation in the value of the *sukūk* will represent a relative change in the value of the infrastructures.

(69) The structure of the Malaysian *sukūk* is disputed in the Islamic financial industry. It, in fact, corresponds to a debit and, therefore, cannot be negotiated, unless at the nominal value.

(70) Taken from www.lmcbahrein.com .

(71) The Value-at-risk approach measures the risk of decline of a position of portfolio as the maximum loss that can be determined at a given predetermined future with a given probability, due to negative changes in the significant assets and in the prices of the liabilities. The application of this methodology to the bonds requires a break-down of the securities and an assessment of variance and covariance of the yields of these securities. Conventionally, the VaR approach measures the worse expected loss of a portfolio evaluated over the arc of a certain period of possession to a given level of statistical confidence in the ambit of normal conditions of the market. VaR is an expression of the market risk of the portfolio, representing the maximum amount that can be lost during a period of possession, in 1% of the cases. For example, the VaR method can define 1% of the probability or 99% of the level of statistical confidence that a certain amount of dollars will be lost in a given day, month, or year.

(72) Ref: Cakir, Raei (2007)

(73) Ref: Islamic conversion boosted DFM IPO, archive.gulfnews.com (2006). The existence of a tax of "purification" helps in the expansion of the quotations, but creates a further problem. According to Brad Bourland, Chief Economist of the Saudi Jadwa Investments, the principle problem of the Gulf Countries is not the evaluation of the payments of the *sakat* (2.5%) or of the "purification" tax by the Company (20% on non-Saudi and non-GCC residents), but their collection. Only Saudi Arabia and United Arab Emirates have introduced a systematic mechanism for the collection. Riyadh has entrusted the task to the Zakat and Income Tax Department of the Saudi Government. Ref: Talal Malik, GCC can rake billion in zakat, income tax, [Arabian Business.com](http://ArabianBusiness.com). 12.9.2007. Similarly, Abu Dhabi, from 2003, has instituted an independent federal agency for the collection of the zakat and of the assessable income tax of Petroleum societies and foreign banks quoted on the Dubai financial market and the Abu Dhabi Securities Market.

(74) This means that, de facto, the Shariah Council of the AAOIFI represents the highest resort in the matter.

(75) Ref: HSBC and DIFX team up for *zūkūk* index. www.newhorizon-islamicbanking.com (2008).

(76) The Moslems cannot utilize the conventional insurance, insofar as it contrasts with two Islamic principles, the prohibition of uncertainty (*gharar*) and of gambling (*maysir*) in the contract. For example, to insure a house is the equivalent of transferring the risk to an insurance company, which will transform the premiums received in an income, in absence of the verifying of the event insured. The Islamic insurance (*takaful*) consists in the payment of premiums (in terms of donations or voluntary contributions by the insured, in a mutual fund, the management of which is delegated to a third party, to whom is paid a commission. According to the used contractual mechanism (*Mudarabah*), neither the insured, nor the manager assumes any risk singly, but there is a sharing of the risk by the participants in full respect of the Islamic Laws. Ref: David Oakley, Islamic insurer launch marks a first for UK. [Financial Times](http://FinancialTimes), 2.05.2008.

(77) Ref: Timewell, Di Vanna (2007).

(78) Circa 90% of the Shariah-compliant assets are concentrated in the budgets of the Islamic financial institutions, and in conventional banks that offer products and financial services through "Islamic windows" that is, separate and operating business units within the organizational structure of the conventional main branch. The solution furnished by "hybrid" institutions (that is, with "Shariah windows") is fundamental in allowing the major world financial institutions employed in the sector (such as Citigroup, HSBC and Standard Chartered), to concentrate on the Islamic finance, both in the retail area (gatherer of savers) and wholesale (financing of large investors). In fact, in many countries only the mono-sector Islamic banks have the permission to produce and sell Shariah-conformed products.

(79) Daniel Stanton First China Islamic fund launched. www.arabianbusiness.com 15.6.2008.

(80) Ref: Ainley, Hicks, Mashayekhi, Rahman, Ravalia (2007).

(81) In the offices of London of the British bank, Barclays Capital (collaborator of Dubai Islamic Bank) the two most important issues of *sukūk* have been prepared; that of 3.5 billion dollars of Ports, Customs and Free Zone Corporation (PCFC holding of Dubai Ports World), and that of 3.52 billion dollars of Nakheel, Society of real-estate development of Dubai.

(82) On the 12th June last, the Alburaq Financial Society began, in partnership with the Bank of Ireland, the first Shariah-compliant retail financial product, alternative to a guaranteed equity bond (equivalent to a savings plan at guaranteed capital, with a yield bound to a pre-arranged expiry. The minimum investment provided by Alburaq is 500 sterling, deposited with the Bank of Ireland for five years in a structured account according to the Islamic principle of *Wakalah* (agency). Upon expiry the depositor will receive the reimbursement of capital together with eventual earnings tied to a basket of 20 shares selected in Dow Jones Islamic Titans 100 Index. Ref: Gemma Westacott. First UK Shariah-compliant capital protected savings product. [FT Advisor](http://FTAdvisor), [Financial Times](http://FinancialTimes), 12.6.2008.

(83) Today, the market of the residential mortgage loans amounts to 500 million sterling (+ 50% only in 2006. The products are offered in the internal British market by four Islamic windows (Alburaq Home Finance, HSBC Amanah, Ahli United Bank, and the United National Bank, which collect their financing from partners of the conventional banking system. This aspect has generated some criticism from Moslem clients, worried about the "purity" of the financing received, insofar as it originates from non-Shariah-compliant subjects. From 2008, the Islamic Bank of Britain, the only one authorized in the retail sector, will utilize the first fully Shariah-compliant product for the purchase of real-estate property. Ref: Alice Ross: Bank to tighten Shariah-compliance, [Financial Times](http://FinancialTimes), 10.5.2008.

(84) "We are determined to issue Islamic bonds. It will bring money to London and will send out a positive strong signal to the Moslem Community".Ref:

- David Oakley: Britain to Press Ahead with Islamic Bond. Financial Times, 19.5.2008. Until now, the only western issuers of sukūk have been East Cameron Partners (Texan petroleum society that issued, in 2006, sukūk of 165.67 million dollars with the advising of Merrill Lynch and of the Lebanese Bemo Securitization, the already cited German Federal State of Sassonia-Anhalt and the World Bank.
- (85) Ref: Mike Gallagher: UK publishes sovereign Sukūk consultation paper. www.cpifinancial.net . 8.6.2008.
- (86) The benefits brought from an Ijarah contract are ascribable, in particular to:
- they do not represent a debit, but a shared property of an asset in leasing. As such the financial instrument can be freely quoted on the secondary market, therefore, negotiated and transferred;
 - a minor risk of loss, thanks to the real underlying guarantee.
- (87) The project of issuance of zukūk does not answer the need of London of the financing of the internal debt. Rather, there exists the desire of diversifying the sources of financing to contain the costs of the issuances and keep attention high on the sterling, also by Islamic institutions employed in their Shariah-compliant function.
- (88) Ref: Wilson, (2007).
- (89) The data of the Budget, 2007, published by the Islamic Bank of Britain, show a strong growth of the institute in the volume of clients (+ 38%), of deposits (+ 61%), of private financing (+ 51%), of current account (+ 27%), of home banking (+ 193%), and in the operative proceeds (+ 56%), with a reduction (-22%) in net losses.
- (90) Bank of London and the Middle East (BLME) has recently carried out a function of advisor and lead arranger in a transaction of 50 million dollars inherent a contract Ijarah syndicate financing to the benefit of Al Ghadeer Marine Shipping of Dubai to finance the acquisition in leasing in cargo transport Sara V. In the improvement of the contract, BLME has usufruct of the participation of the Jordan National Bank (as co-leader arranger). The latter has constituted the syndicate with four other institutions. An SPV created for the occasion with seat in the Cayman Islands has acted as Mudarib in the transaction and holds a right of property on the ship. Ref: Bank of London and the Middle East arranged \$50 million syndicated Ijarah shipping facility. www.cpifinancial.net , 17.6.2008.
- (91) Ref: Dalla Pellegrina (2004)
- (92) In this sense, the Islamic system, instead of trusting to the institutional safeguard of savings, seems oriented towards a subjective protection of legitimate interests.
- (93) Ref: Porzio, 2006.
- (94) Ref: Iqbal, Ahmad and Khan (1998)
- (95) The first Shariah-compliant hedge fund was created in September, 2003, by the Saudi Economic and Development Company (SEDCO), together with Permal, Saudi group of financial services. The investment firm, Foster-Leff of New York, is responsible for the management of the fund. To bypass the prohibition of gharar, the derived financial product is based on the concept of "stipulated options" (a buyer makes an advance partial payment for a deferred delivery of a product, and if, subsequently, the buyer decides not to purchase, the seller does not reimburse the advance payment). The nearest analogy is an option.
- (96) In the near future, other hedge funds, real-estate funds and private equity will be developed. Ref: Dubai Multi Commodities Centre Authority seeds Islamic hedge funds on Al Safi Trust platform, www.cpifinancial.net , 19.6.2008.
- (97) Taking, for example, the authorization process in Great Britain of the Islamic Bank of Britain (IBB), has asked 18-24 months to be completed, but the "lessons learnt" have been important. The first of these has been the concept of "deposit". In Great Britain a deposit is a sum of money paid, the reimbursement of which comes about on request, or in circumstances pre-established between the parts. There exists a set of regulations regarding the deposits and protection of the depositor. The original proposal by the IBB of "deposit" was in terms of PLS (Mudarabah), a principle on the basis of which the client shares the risks of profit and loss on the original capital. The prominence in this regard, by the Financial Services Authority (FSA) was relative to the "certainly of reimbursement of the paid in capital" – an indispensable condition for the British Authority. The compromise between the parties was reached, guaranteeing in the pre-contractual phase, the right to full reimbursement to the depositors c/o the IBB (in this way being FSA compliant) subsequently consenting the voluntary modification of the safeguard regime of the deposit, on religious grounds, opting for the reimbursement according to PLS criteria. In the Italian case, the problem of the safeguarding of savers who do not place profit as the centre of their decisions of investment has already been considered within the National Vigilance with regard to the undertakings of bank ethics and to the offers of products of ethical saving. Although recognizing the legitimacy of such preferences, the solution was that of not consenting dispensations in the application of the regulations regarding financial intermediation which can be translated into a "differentiated" safeguard of the interests to which the vigilance is proposed. Ref: Donato, Freni (2006).
- (98) From the point of view of "know your customer"
- (99) The share holders of FEB include corporations and individual subjects (all with shares below 10%) of Bahrain, Saudi Arabia, United Arab Emirates, Libya and other countries of the Middle East and North Africa. The composition of the capital is reflected on the Council of Administration, mainly composed of small emirate representatives (Abu Dhabi Water & Electricity Authority, Dubai Investments, Tasmeeem, Emirates Islamic Bank, Saudi – (Corral Group and Al Jabr Trading Company) Libyan – Libyan Investment Authority, and of Bahrain (Capital Management House/Bahrain Islamic Bank, Gulf Finance House, Khalijee Commercial Bank). Ref: First Energy Bank gets licence from Central Bank of Bahrain; www.cpifinancial.net 23.6.2008. FEB investment sectors are upstream and downstream, both of petroleum and gas, and the transport of hydrocarbon, petrochemical, electric energy and the water sector... Ref: Energy boom spurs Islamic banking interest. New Horizon, 1.4.2008.
- (100) The divisions begin within the doctrine: in fact, in the Islamic world there exist five juridical schools (four Sunnite and one Shiite) to which one makes reference. This causes, for example that in the same Gulf area, there are significant differences in the interpretation of the religious concepts when it comes to economy and finance.
- (101) Ref: Mohamad Bakker, Islamic banking in Italy: Regulatory issues. Studio Petrucci and Associates (17.3.2008).
- (102) Ref: Mohammed Amin. The taxation of Islamic finance in major western countries, pwc.blogs.com 26.4.2007.
- (103) To make an example: taken from the web site of the Association for the Development of alternative instruments and financial innovation (www.assaif.org) The most important developments for the development for the Islamic house mortgage in the western systems are the fruit of a series of changes in the fundamental regulations, which has interested the United States (interpretative letters from the Office of the Currency, No. 806 of the 17th October, 1997, and No. 867 of the 1st June, 1999, and authorizations of 1999 and 2000), and Great Britain with the work group on the Islamic mortgages, organized by the Bank of England. Instead, in Canada and Australia, the laws on the cooperative societies were used.
- (104) The Accounting and Auditing Organization for the Islamic Financial Institutions (AAOIFI) was constituted on the basis of the Agreement of Associations signed by the Islamic Financial Institutions, on 26th February, 1990, in Algeria. It was registered on the 27th March, 1991, in Bahrain as a

private independent non-profit making body. The AAOIFI is responsible for the development of the accounting, auditing, ethics, governance and the Shariah-compliant Standards for the Islamic banking and financial industry. The AAOIFI is supported by over 160 institutional members from over 40 countries. It has seat in Bahrain.

(105) The IFSB with seat in Kuala Lumpur in Malaysia, is in operation since 2003, in the institutions of Shariah-compliant international standards, with the objective of ensuring solidity and stability of the Islamic financial services industry (banking, capital market and insurance. The activity of IFSB is complementary to that of the Basel Committee of the International Organization of the Securities Commissions (IOSCO) and of the International Association of Insurance Supervisors, in the carrying out of "regulatory" functions for the Islamic financial institutions. Ref: Donato, Freni (2006).

(106) The "Councils of the Shariah" (Shariah Board) are composed of esteemed scholars of the Islamic religion ("Ulama") also experts in economic and financial material. These councils examine in detail, the financial offers to collocate, to establish their conformity to the Islamic precepts. In the positive case, they issue a fatwa of approval to approve the transaction as "halal" (permission).

(107) This Agreement attempts a homologation of the Islamic finance to the requisites provided by the Basilea Agreement II, where the provisions are compatible with the principles of the Shariah, valid as established by the Committee of Basilea, while on all the aspects relative to the profile characteristics, valid as established by the IFSB.

(108) The document identifies 15 principles for the improvement of the procedure of risk management in the Islamic banks. The adopted approach is based on a holistic consideration of the real risks of the prevalent banking activity, and of the real risks of the vast typology of contracts offered by an Islamic bank. The principles were grouped with reference to six different categories of risk. Risks: risk of credit, equity and investment risk; operative risk; market risk; liquidity risk, and rate of return risk (potential impact of the factors of market on the rate of yield on investments compared to the expected yield for the holders of investment instruments).

(109) Ref: Roula Khalaf: Islamic bonds hit by religious concerns. Financial Times. 6.2.2008 and, www.aaofi.com/aaofi_sb_sukuk_Feb2008_Eng.pdf for the complex resolution on the subject expressed by the Shariah Board of the AAOIFI.

(110) Ref: Islam. Intercultural training for BPM staff, www.ansamed.info . 12.6.2008.

(111) The strict guide lines imposed by the Islamic precepts are imposing on the banks and the investment societies the introduction of a new executive figure, the Chief Shariah Officer, whose only work is to assure respect for the Islamic laws, permitting the attraction of the Moslem investors.

(112) The dividends can comprise amounts attributable, for Shariah objectives, to income from interests obtained or received from the underlying societies in which one invests, as well as to interest bearing debts. The amount of dividends thus attributed will be calculated in conformity with the Shariah criteria, and will constitute the subject of annual donations to charity institutes, at the absolute discretion of the administrators. From the moment that the income from dividends received from the Fund is calculated outside of the capital, the donation has no effects on the net patrimonial value of the Fund. The fiscal regime of the Fund is subject to the annual tax of subscription and to the deduction of tax at source on the proceeds of foreign origin. www.am.bnpparibas.it

(113) The Central Bank of Bahrain (CBB) is close to beginning an Islamic financial instrument finalized to facilitate the management of the Shariah-compliant liquidity. The Islamic Sukûk Liquidity Instrument (ISLI) was jointly developed between CBB and LMC (Liquid Management Centre), organization with seat in Bahrain, which furnished localization of assets, structurization and capacity of market making. The ISLI was designed to render the financial institutions, conventional and Islamic, able to have access to liquidity at short term against Ijarah Sukûk issued by the CBB. The Shariah Board of CBB and LMC has certified religious conformity. Ref: Mike Gallagher: CBB set to launch key Islamic financial instrument, www.cpifinancial.net 11.6.2008.

(114) Ref: Donato, Freni (2006) Ref: Mike Gallagher: CBB set to launch key Islamic financial instrument, www.cpifinancial.net , 11.6.2008

(115) Italy to get an Islamic bank, www.newhorizon-islamicbanking.com (2008).

(116) Ref: Wilson (2007).

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L'uso dell'emblema è di competenza esclusiva e riservata dell'AISI