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Parte I

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Giurisprudenza e legislazione civile

*Giurisprudenza e legislazione costituzionale
e comunitaria*

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SETTORI

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Religion and Finance from the Muslim Perspective

ROSA GERACI

SUMMARY: 1. Islamic presence in Europe – 2. Financial inclusion of Muslims through Islamic banking – 3. Major Islamic contracts and the role of financial intermediation for banking system – 4. Islamic finance in Europe – 5. Conclusions

1. Islamic presence in Europe

During the last few decades Islamic presence in Europe has constantly increased, also because of globalisation¹. However, Muslims are not homo-

¹ About relations between law, religion and cultural globalization, see MARIA D'ARIENZO, *Zucherberg e i nuovi rapporti tra diritto e religioni. A proposito di libertà di coscienza nell'era digitale*, in *Diritto e Religioni*, 1, 2019, p. 384 ss.; EAD., *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, Luigi Pellegrini Editore, Cosenza, 2018, p. 47 ss.; EAD., *La contrattualistica islamica in un'economia globalizzata. Prospettive di diritto interculturale*, in ANTONINO MANTINEO, STEFANO MONTESANO (a cura di), *L'Islam. Dal pregiudizio ai diritti. Atti del Campus di Studio IUS/11 (Stilo, 18-21 maggio 2016)*, Luigi Pellegrini editore, Cosenza, 2018, pp. 123-152; EAD., *L'economia islamica nella globalizzazione dei mercati*, in *Diritto e Religioni*, 2, 2017, p. 517 ss.; GIULIANO AMATO, CARLO CARDIA (a cura di), *Libertà religiosa, diritti umani, globalizzazione, L'unità del diritto*, Collana del Dipartimento di Giurisprudenza, Tre-Press, Roma, 2017, p. 23 ss.; ANTONIO INGOGLIA, MARIO FERRANTE (a cura di), *Fenomeni migratori, diritti umani e libertà religiosa*, Libreria universitaria edizioni, Padova, 2017, p. 5 ss.; ROBERTA RICUCCI, *Religione e politica nell'Islam territoriale. Differenze tra le prime e le seconde generazioni*, in *Quaderni di sociologia*, 66, 2014, p. 76; ANNA SVEVA MANCUSO, *La presenza islamica in Italia: forme di organizzazione, profili problematici e rapporti con le Istituzioni*, in *Stato, Chiese e pluralismo confessionale*. Rivista telematica (www.statoechiese.it), ottobre 2012, p. 1 ss.; NICOLA COLAIANNI, *La laicità al tempo della globalizzazione*, in *Stato, Chiese e pluralismo confessionale*. Rivista telematica (www.statoechiese.it), giugno 2009, p. 2 ss.; PAOLO PICCOZZA, GIUSEPPE RIVETTI (a cura di), *Religione cultura e diritto tra globale e locale*, Giuffrè, Milano, 2007, p. 46 ss.; FRANCESCO CASTRO, *Il modello islamico*, Giappichelli, Torino, 2007, p. 24; MARIO TEDESCHI, *Confessioni religiose/ VIII Islam*, in *Enciclopedia giuridica*, Aggiornamento XI, Istituto della Enciclopedia Italiana, Roma, 2003, p. 6; GIORGIO VERCELLIN, *Istituzioni del mondo musulmano*, Einaudi, Torino, 2002, p. 10 ss.; LOUIS MILLIOT, FRANCOIS PAUL BLANC, *Introduction à l'étude du droit musulman*, Dalloz, Paris, 2001, p. 23. See also: MARIA D'ARIENZO, *Appartenenza religiosa e reti sociali dei migranti*, in *Diritto e Religioni*, 2, 2016, pp. 270-289; ANTONIO FUCCHILLO, *Il cibo degli dei. Diritto, religioni e mercati*, Giappichelli, Torino, 2016, p. 15 ss.; PAOLO BRANCA, *A proposito di «dialogo»*, nel vol. ANTONIO ANGELUCCI, MARIA BOMBARDIERI, PAOLO TACCHINI (a cura di), *Islam e integrazione in Italia*, Marsilio, Venezia, 2014, pp. 165-179; ANTONIO FUCCHILLO (a cura di), *I mercanti del tempo. Economia, diritto e religione*, Giappichelli, Torino, 2011, p. 5 ss.; SELENIA MARABELLO, BRUNO RICCIO, *Migration and Development: Reflections on an Ambivalent Relationship*, in

generously distributed, the highest concentration of Islamic communities is in Germany, Belgium, and France. Smaller communities can be found in the Mediterranean countries.

The present study has to take into account that Islam, which is definitively not a monolithic entity, is a complex world, and it becomes even more complicated if we consider the small percentage of Italian converts.

The complexity of Islamic sensibilities turns out to be more important today when we try to analyse the discriminations that Muslims have to face, mainly due to 'western' distortion that ties Islam to terrorism.

Indeed, the different connotations, characterizing Islamic traditions, have always been distorted by the commonplace depicting Islam as a violent religion. This proves how Islam is still misleadingly perceived by a significant part of European population. As a consequence, efforts to improve inclusion of Muslim communities are hampered.

Within the current framework, a key role in the integration process of minorities in each country is played by schools, which have the function of providing citizens with the skills and competences necessary to enter the European job market.

Essential discriminations emerge from data referring to Muslims work placement and to their professional qualifications².

Another field where we can find discrimination concerns remunerations, in fact, salaries for Muslims workers highlight a dramatic gap between them and European counterparts³.

A survey of possible discriminations to the detriment of Muslims is not an easy operation because the limited public data on the issue are available only in few countries, such as Finland, France, Poland, and Sweden. The problem becomes more complicated because it is difficult to thoroughly compare data among the different EU legislations, and also because of the lack of a legal

MARA BENADUSI, CHIARA BRAMBRILLA, BRUNO RICCIO (eds.), *Disasters, Development and Humanitarian Aid: New Challenges for Anthropology*, Guaraldi, Rimini, 2011, p. 183 ss.; HEIN DE HAAS, *Migration and Development: a Theoretical Perspective*, Working Paper n. 9, Oxford, International Migration Institute, 2008, p. 1 ss.

² MICHELE GRADOLI, MARIA DEL CARMEN DE LA CRUZ, PILAR SANCHEZ GONZALES, *Vie d'inclusione dei musulmani in Europa: marketing halal e banca islamica*, in *Stato, Chiese e pluralismo confessionale*. Rivista Telematica (www.statoechiese.it), luglio 2016, p. 7 ss.

³ ENAR's report about racial discrimination (particularly ENAR "*Racism and discrimination in employment in Europe 2012-2013*") in fact, shows that frequently migrants and members of the religious minority are destined to do similar or identical jobs. For example, it must be born in mind that the *Greek Labour Force Survey* showed that migrants coming from countries not belonging to the Ue earn 25.3 percent less than the Greek counterparts and in Austria migrants who have turkish origins earn about 20 percent less than the average with equal qualification.

definition of Islamophobia, which often leads to confuse racial hatred with religious intolerance.

The difficulty of data collection on crimes against Muslims emerges in the 8th *Report on Islamophobia* prepared by the OIC Observatory in 2015, where the authors write that it is true that national systems do not have homogeneous instruments to fight against Islamophobia and to map religious intolerance phenomena. But, there exists a common European regulation aimed at prohibiting all kind of discriminations, included those based on religion. These measures are mainly directives and decisions designed to counter discriminatory behaviours. We mention here the European Directive 2000/43/CE approved on 20th June 2000, and Directive 2000/78/CE of 27th November 2000, that represented the first European interventions to cancel inequality. So much so that currently the European Council is debating the proposal of a directive ruling a universal ban for discriminations based on age, disability, sexual orientation, religion or belief, also beyond working environment.

There is a need of such a regulation because the above-mentioned directives only partially implement the principle of equality because they are applied to discriminations based on race or in a working environment. However, while an organic national and European intervention takes place, an important role to counter social exclusion of Muslims can be played both by the market and by some specific financial instruments.

2. *Financial inclusion of Muslims through the Islamic Banking*

The term Financial Exclusion, that was first coined in 1993 to describe a limited physical access to bank branches, acquired later a broader range of definitions. One of the most complete definition was given by Anderloni, Bayot, Bledowski, Iwanicz-Drozdowska, and Kempson, according to whom “*Financial exclusion refers to a process whereby people encounter difficulties accessing and/or using financial services and products in the mainstream market that are appropriate to their needs and enable them to lead a normal social life in the society in which they belong*”⁴.

⁴ LUISA ANDERLONI, BERNARD BAYOT, PIOTR BLEDEWSKI, MARGORZATA IWANICZ-DROZDOWSKA, ELAINE KEMPSON, *Financial services provision and prevention of financial exclusion*, European Commission, Bruxelles, 2008, p. 4 ss. See also MARIA D’ARIENZO, *Pluralismo religioso e dialogo interculturale. L’inclusione giuridica delle diversità*, cit., p. 53 ss.; EAD., *L’economia islamica nella globalizzazione dei mercati*, cit., p. 524 ss.; FRANCESCO ALICINO (a cura di), *I diritti umani bel mondo globale. Tradizioni religiose, tradizioni costituzionali e Mare nostrum*, Editoriale Scientifica, Napoli, 2016, pp. 82 -83; MARIA LUISA MANISCALCO, *Islam europeo. Sociologia di un incontro*, Franco Angeli, Milano, 2012, p.

On one hand the term refers to the difficult access, which means usage, of services and products, and on the other it makes an important distinction between access and usage of financial services. In fact, access implies an automatic use of products and services, whilst usage means an aware and rational use⁵.

Financial exclusion represents one of the main obstacles to the growth of financial sector globally. For this reason, in recent years, research and solution processing to deal with this issue have increased. Both governments of many countries and international organisations are committed in this project, and organizations such as G20 or World Bank established a plan to attain universal financial access by 2020.

A fundamental role in the process of social integration of Muslims is in fact played by Islamic banks, which demonstrate how Islam can influence traditional *marketing* by adding new concepts to conventional finance and processing new strategies⁶.

101 ss.; ROMANO BETTINI, *L'Islam come religione a potere temporale*, Franco Angeli, Milano, 2011, p. 133 ss.; MASSIMO CAMPANINI, KARIN MEZRAN, *Arcipelago Islam Tradizione, riforma e militanza in età contemporanea*, Laterza, Roma-Bari, 2007, p. 38 ss.

⁵ See PAOLO LOBIATI, ANNA SAMMASSINO (a cura di), *Itinerari di diritto islamico. Tra pluralità e alterità*, Educatt, Milano, 2018, pp. 1 ss.; ABIDEEN ADEYEMI ADEWALE, *Financial Exclusion and Livelihood Assets Acquisition among Muslim Households in Ilorin, Nigeria: A Structural Invariance Analysis*, in *International Journal of Economics, Management and Accounting*, 2, 2014, p. 69 ss.

⁶ PAOLO PIETRO BIANCONE, MOHAMMAD ZIAD SHAKHATRED, *Asset Life Sukuk to Fund Utility Companies*, in *EJFI-European Journal of Islamic finance*, 6, 2017, p. 1 ss.; MARIA D'ARIENZO, *Appartenenza religiosa e reti sociali dei migranti*, in *Diritto e Religioni*, 2, 2016, pp. 288-289; ASLI DEMIRGUC-KUNT, LEORA KLAPPER, VAN OUDHEUSEN, *The global Findex database 2014. Measuring Financial Inclusion around the World*, World Bank Group, Development Research Group, Finance and Private Sector Development Team, April 2015, p. 34 ss.; MARIASSUNTA COZZOLINO, *Profili d'inclusione e integrazione finanziaria dei migranti musulmani tra migrant banking e finanza islamica. Iniziative governative e prassi bancarie in Italia e in Europa*, nel vol. CARLO CARDIA, GIUSEPPE DALLA TORRE (a cura di), *Comunità islamiche in Italia. Identità e forme giuridiche*, Giappichelli, Torino, 2015, pp. 269-298; SAMI BEN NACEUR, ADOLFO BARAJAS, ALEXANDER MASSARA, *Can Islamic Banking Increase Financial Inclusion?*, IMF Working Paper, WP/15/31, February 2015, p. 5 ss.; ASLI DEMIRGUC-KUNT, LEORA KLAPPER, DOUGLAS RANDALL, *Islamic Finance and Financial Inclusion: Measuring the Use of and Demand for Formal Financial Services among Muslim Adults*, Policy Research Working Paper 6642, World Bank, Washington, DC, 2013, p. 1 ss.; ZAMIR IQBAL, ASLI DEMIRGUC-KUNT, LEORA KLAPPER, *Measuring financial Inclusion: The Global Findex*, Policy Research Working Paper No. 6025, World Bank, Washington DC, 2012, p. 4 ss.; ABBAS MORAKHOR, *Financial Inclusion: Islamic Finance Perspective*, in *Journal of Islamic Business and Management*, vol. 2, n. 1, 2012, pp. 35-64; MAHMOUD MOHIEDIN, ZAMIR IQBAL, AHMED ROSTOM, FU XIAOCHEN, *The role of Islamic finance in Enhancing financial inclusion, in Organization of Islamic Cooperation (OIC) countries. Islamic Economic Studies*, 2, 2012, pp. 55-120; RENE SMITS (ed.), *Islamic finance and the influence of religion on the law*, Eleven International Publishing, The Hague, 2012, p. 24 ss.; FEDERICA MIGLIETTA, *Bond islamici alla conquista dei mercati. Opportunità, rischi e sfide dei sukuk*, EGEA, Milano, 2012, p. 57 ss.; ANDREA NUVOLI, *Negozi onerosi in ambito religioso come contributo per la moderna economia etica. Profili sistematici e proposte dottrinali*, Edizioni Nuova cultura, Roma, 2012, p. 64 ss.; GIAN MARIA

Taking into due consideration Muslim consumers through the offer of financial products and services complying with Islamic law represents one of the fundamental steps in the process of inclusion of Muslims in Europe. In this sense, Islamic finance is an instrument for social as well as for financial inclusion of Muslims that, as we have already seen, are among the five most vulnerable ethnic groups subject to discrimination in the European job market, and represent the first religious minority being discriminated because of their belief.

Intense debate over the potentiality of Islamic banking system as an instrument of social inclusion for Muslims sees divergent opinions. Indeed, on one hand the World Bank in its 2014 report on financial inclusion advises that development of Islamic financial products and services could increase the rate of banking penetration in some brackets of world population⁷. On the other hand, most of the doctrine agrees that data currently available do not make it possible to define with certainty the impact of *Islamic banking* on financial inclusion of Muslims⁸.

Moreover, there are further criticisms whether the Islamic bank is too concentrated on developing new products and services to the point of risking becoming too similar to a traditional bank. It has also emerged that the Islamic banking system did not achieve its social goals and that no grounded form of *corporate governance* was developed, but only policies of *corporate social responsibility*⁹.

It is therefore necessary to continue to develop new strategies so that Islamic finance could satisfy economical, social, and ideological expectations. In this perspective, it is crucial that Islamic teaching should be dedicated at the entire activities of human beings so that it could instill ethical and good practices starting from home to the workplace and embed in the heart until it is

PICCINELLI, *Servizi finanziari innovativi per i migranti nel contesto euro-mediterraneo. Un confronto tra modelli*, in ROBERTA ALUFFI BECK-PECCOZ, *Identità religiosa e integrazione dei musulmani in Italia e in Europa. Omaggio alla memoria di Francesco Castro*, Giappichelli, Torino, 2008, pp. 119-135.

⁷ WORLD BANK, *Global Financial Development Report 2014: Financial Inclusion*, Washington DC, p. 3 ss.

⁸ SAMI BEN NACEUR, ADOLFO BARAJAS, ALEXANDER MASSARA, *Can Islamic Banking Increase Financial Inclusion?*, IMF Working Paper, WP/15/31, February 2015, p. 1 ss.; ASLI DEMIRGUC-KUNT, LEORA KLAPPER, DOUGLAS RANDALL, *Islamic Finance and Financial Inclusion: Measuring the Use of and Demand for Formal Financial Services among Muslim Adults*, cit., p. 12 ss.; ERIK FEYEN, KATIE KIBUUKA, DIEGO SORROUILLE, *FinStats 2014: A ready-to-use tool to benchmark financial sectors accross countries and time*, World Bank, Washington DC, 2013, p. 13 ss.

⁹ MEHMET ATUSAY, *Conceptualising and locating the social failure of Islamic Finance aspirations of Islamic moral economy vs. the realities of Islamic finance*, in *Asian and African Area Studies*, 11, 2, 2012, pp. 93-113.

put into actual practice. As a consequence, Islamic ethics in the person would grow as a powerful shield that is continuously adaptable to technology, the rapid growth of the economy and humans endless desires.

From a legal point of view, the government should contribute by assisting stakeholder in terms of legislation and litigation. While conducting cross-border business activities, however, it is important for any Islamic organization to be in compliance with all related law: local, international, as well as *Shari'a*. There might be added complexities when a country implements a dual financial system, but on the other side, the perpetrator lives in a jurisdiction that adopts a single system. For this reason is very important introduce for Islamic banking and finance institutions globally a globalized *Shari'a* standard in line with the spirit of Islam to enhance public as well as customer confidence in the industry.

3. Major Islamic contracts and the role of financial intermediation for banking system

The peculiar functioning of Islamic banks, involved in processes of sale and purchase of goods in compliance with *Shari'a*, hence with the prohibition of resorting to traditional credit with a subsequent collection of interests, made it necessary the identification of many types of contracts in order to face ever changing needs linked to financial innovation¹⁰. Some of these contracts are participatory ones, such *Mudarabah* and *Musharakah*, and others are non-participatory contracts. Within the latter typology, we can distinguish contracts that are used in case of working capital contribution (*Murabahah* and

¹⁰ On contract in Islamic Law, cf.: MARIA D'ARIENZO, *La contrattualistica islamica in un'economia globalizzata. Prospettive di diritto interculturale*, cit., pp. 123-152; VALENTINA M. DONINI, *Cenni sul diritto islamico dei contratti*, in *Iura Orientalia*, VI, 2010, pp. 260-282; FEDERICA MIGLIETTA, MARIA GRAZIA STARITA, *Una tassonomia dei contratti*, in CLAUDIO PORZIO (a cura di), *Banca e finanza Islamica. Contratti, peculiarità gestionali, prospettive di crescita in Italia*, Edibank-Bancaria Editrice, Milano, 2009, pp. 13-76; MASSIMO PAPA, *La definizione di contratto e l'autonomia contrattuale in diritto musulmano: dai principi della shari'a alle legislazioni contemporanee*, in *Roma e America Latina*, 7, 1999, p. 285; MUHAMMAD CHAPRA, *Islam and the Economic Challenge*, Ryadh, The International Institute of Islamic Thought, 1992, pp. 206-208. See also, FEDERICA MIGLIETTA, *L'importanza dell'etnia e della religione nel rapporto banca-cliente: l'Islamic finance*, in ANNA EUGENIA OMARINI (a cura di), *Il migrant banking. Esigenze della clientela immigrata e modelli di servizio per l'offerta*, Bancaria Editrice, Roma, 2006, p. 5 ss.; GIAN MARIA PICCINELLI, *La dimensione etica del diritto musulmano dei contratti classico e contemporaneo*, in MASSIMO PAPA (a cura di), *Questioni attuali del diritto musulmano*, Università degli Studi di Bologna, Bologna, 2001, p. 187 ss.; ABDUL HÂDI GAFOURI, *Islam et économie. Réflexion sur les principes fondamentaux de l'économie islamiques*, Edition al Bouraq, Beirut, 2000, p. 158 ss.; CHAFIK CHEHADA, s.v. *'akd*, in *Encyclopédie de l'Islam*, vol. I, A-B, 1975, p. 328; EMILIO BUSSI, *Principi di diritto musulmano*, Ispi, Milano, 1943, p. 135.

Salam), and others such *Ijarah* and *Istisna* used for fixed capital investments¹¹.

Mudarabah and *Musharakah* contracts are agreements in which profits and losses are shared. However, in *Mudarabah* one party (*Rab-al-maal*) provides capital to the other party (*mudarib*), which has the duty of the management in order to invest capital into businesses. Profit share in this case depends on the mutual agreement, whilst losses are charged to the owner of the capital, and the manager earns nothing for his work¹².

Unlike *Mudarabah*, in *Musharakah* two or more partners share their capital and manage the company. The sponsor, usually a bank, acquires part of the assets, thus becoming coproprietor and obtaining the right to intervene in the management of the company. Possible losses are charged to the parties proportionally to the capital contribution. Profits are divided according to the percentage agreed to in the contract, regardless of the share of invested capital.

As a consequence of Islamic prohibition of *Ribà*' further contracts have been created: *Murabahah* and *Salam*. The former consists in the acquisition of a good against a deferred payment.

Three parties are involved in this contract, namely the client of the bank (final buyer of the good), the seller (provider of the good), and a broker (the bank) that is both the buyer for the good's provider, and the seller for its client. Two different operations take place, the first between the bank and the good's provider, at a previously agreed price, and the second between the bank and its client at the cost price, plus a margin for the bank, which covers the services and the risks of the operation. This amount is agreed before the contract is signed¹³.

¹¹ GAETANO DAMMACCO, CARMELA VENTRELLA, *Religioni, diritto e regole dell'economia*, Cacucci, Bari, 2018, p. 105 ss.; FLAVIO DEZZANI, PAOLO PIETRO BIANCONE, DONATELLA BUSSO, *IAS/IFRS*, Ipsoa, Milano, 2012, pp. 3 ss.; GIORGIO GOMEL, *Questioni di economia e finanza: Finanza islamica e sistemi finanziari convenzionali. Tendenze di mercato, profili di supervisione e implicazioni per le attività di banca centrale*, Banca d'Italia, Occasional Papers, n. 73, 2010, p. 1 ss.; FRANÇOIS GUÉRANGER, *Finance Islamique*, Dunod, Paris, 2009, p. 16 ss.; ANTONIO DELL'ATTI, FEDERICA MIGLIETTA, *Fondi sovrani arabi e finanza islamica*, Egea, Milano, 2009, p. 7 ss.; RONY HAMAUI, MARCO MAURI, *Economia e Finanza Islamica. Quando i mercati incontrano il mondo del profeta*, Il Mulino, Bologna, 2009, p. 12 ss.; HARON SUDIN, WAN NURSOEZA, *Islamic Finance and Banking System. Philosophies, principles and practices*, McGraw-Hill, Kuala Lumpur, 2009, p. 18 ss.; SHAMSHAD AKHTAR, *Financial Globalization and the Islamic Financial Services Industry*, IFSB (Islamic Financial Service Board), 2008, p. 13 ss.

¹² GIORGIO GOMEL, *Questioni di economia e finanza: Finanza islamica e sistemi finanziari convenzionali*, cit., p. 42 ss.; FRANÇOIS GUÉRANGER, *Finance Islamique*, cit., p. 58 ss.; RONY HAMAUI, MARCO MAURI, *La banca islamica: prospettive di crescita e questioni aperte*, in *Contributi bancaria*, n. 6, 2008, pp. 20-34; RONY HAMAUI, MARCO MAURI, *Economia e Finanza Islamica*, cit., p. 21 ss.; GABRIELLA GIMIGLIANO, GENNARO ROTONDO (a cura di), *La banca islamica e la disciplina bancaria europea*, Giuffrè, Milano, 2006, p. 34 ss.

¹³ GIAN MARIA PICCINELLI, s.v. *Mudāraba*, in *Digesto delle Discipline Privatistiche*, Sezione Civile XI, LI-M, Utet, Torino, 1994, pp. 485-488.

Salam contract is characterized by an immediate purchase/sale of goods or services with a separate payment/delivery. It concerns the purchase or the sale of interchangeable goods with a deferred delivery, but against an immediate payment of its price¹⁴.

Other important contracts used in intermediation in Islamic finance are *Ijarah* and *Istisna*.

Ijarah is a leasing that permits a company (lessee) to use an asset or a property for an agreed-upon price, with periodic payments, over a fixed period of time¹⁵. Its structure reminds of widely used leasing of conventional finance¹⁶.

According to this kind of contract, it is possible the exclusive use of the good or, when the contract expires, the transfer of ownership to the lessee.

Another non-participatory contract to finance fixed capital, mainly used to manufacture or construct an asset is *Istisna*. By this contract, a company or business undertakes to purchase a non-existent asset against advance payment, for a future delivery of the goods. According to *Istisna* structure the bank enters into two parallel contracts: one with the obligor or contractor, and the other with the purchaser. In the former, a contractor, upon request of the bank, undertakes to manufacture an asset with a specific timeframe; in the latter, the bank undertakes to deliver, at a future fixed date, to the purchaser (its client) a certain asset whose specifications, price, and method of payment have been previously established¹⁷.

The current Islamic financial system does not accomplish its role only by the means of banks, but also by the so-called *Sukuk*, Quran-compliant substitute of bonds, which can be compared to asset-backed bonds, against which there is a capital made of real activities¹⁸.

¹⁴ GIORGIO GOMEL, *Questioni di economia e finanza: Finanza islamica e sistemi finanziari convenzionali*, cit. p. 32 ss.; FRANÇOIS GUÉRANGER, *Finance Islamique*, cit., p. 61 ss.; RONY HAMAUI, MARCO MAURI, *La banca islamica: prospettive di crescita e questioni aperte*, cit., pp. 20-34; RONY HAMAUI, MARCO MAURI, *Economia e Finanza Islamica*, cit., p. 27 ss.; GABRIELLA GIMIGLIANO, GENNARO ROTONDO (a cura di), *La banca islamica e la disciplina bancaria europea*, cit., p. 45 ss.; GIAN MARIA PICCINELLI, s.v. *Murabah*, in *Digesto delle Discipline Privatistiche*, Sezione civile XI, LI-M, Utet, Torino, 1994, pp. 525-528.

¹⁵ GIAN MARIA PICCINELLI, s.v. *Iğāra wa iqtinā*, in *Digesto delle Discipline Privatistiche*, Sezione civile IX, GI-interessi, Utet, Torino, 1998, pp. 303-305.

¹⁶ HARON SUDIN, WAN NURSOFIZA, *Islamic Finance and Banking System. Philosophies, principles and practices*, cit., p. 51 ss.; KABIR HASSAN, MARVYN LEWIS, *Handbook of Islamic Banking*, Edward Elgar Publishing, Ltd, UK, 2009, p. 18 ss.; ANOUAR HASSOUNE, *Islamic Banks profitability in an interest rate cycle*, in *International Journal of Islamic Financial Services*, 4, 2, 2002, pp. 1-13; AHMAD 'ABD AL-WALIYY VINCENZO, *Islam. L'altra civiltà*, Mondadori, Milano, 2001, p. 129.

¹⁷ GIORGIO GOMEL, *Questioni di economia e finanza*, cit. p. 26 ss.; GABRIELLA GIMIGLIANO, GENNARO ROTONDO (a cura di), *La banca islamica e la disciplina bancaria europea*, cit., p. 84 ss.

¹⁸ An official definition of *Sukuk* has been given ten years ago by AAOIFI. See AAOIFI, *Shariah*

More specifically, they are certificates of participation representing share of undivided ownership of an overall company's capital composed by assets; their issuance is similar to a securitisation transaction. When the *Sukuk* are transferred, there is not only a purchase or sale of the paper document representing the assets, but also the assets they represent: this is the difference between *Sukuk* and financial instruments of conventional banking¹⁹.

Islamic finance has the social impact *Sukuk* developed to provide financing solutions for some of the social issues in the community. Though the strong potential of the social impact *Sukuk* but it is still a new tool that needs to be expanded and well structured in the future to get its full power.

In recent years, several Islamic jurisdictions (Bahrain, Saudi Arabia, UAE, Oman, Malaysia, Indonesia, Turkey, Pakistan, Brunei Darussalam, African region) have been regularly issuing benchmark *Sukuk* in domestic as well as international markets. Moreover, some jurisdictions, including African countries, have adopted Bahrain's strategy of regularly issuing short-term *Sukuk* to support the liquidity and investment requirements of Islamic financial institutions based in its jurisdiction. Bahrain, Brunei Darussalam, Indonesia, Malaysia, Turkey and few African were the most frequent issuers of short-term *Sukuk* in 2018 and the trend is expected to continue in 2019²⁰.

Sukuk can leverage private finance for investment in infrastructure in areas where social impact enterprises development is taking place thereby providing a local economic environment where they are more likely to thrive.

Important for Islamic banks as for other types of financial institution is the financial intermediation. It is essential in investment process to eliminate

Standards for Financial Institutions, 2, 2008, p. 307, where is written that *Sukuk* are «certificates of equal value representing undivided shares in the ownership of tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or special investment activity».

¹⁹ SAMI ALDEEB ABU-SAHLIEH, *Il Diritto islamico*, Carocci, Roma, 2008, p. 1 ss.; SILVIO FERRARI (a cura di), *Introduzione al diritto comparato delle religioni*, Il Mulino, Bologna, 2008, p. 4 ss.; TARIQ SAQID RAMADAN, *Maometto*, Einaudi, Torino, 2007, p. 13 ss.; ONORATO BUCCI (a cura di), *L'Islam tra dimensione giuridica e realtà sociale*, ESI, Napoli, 2006, p. 24 ss.; FRANCESCO CASTRO, *Diritto Musulmano*, Utet, Torino, 2006, p. 32 ss.; GIOVANNI FILORAMO (a cura di), *Islam*, Laterza, Roma-Bari, 2006, p. 45 ss.; ALBERTO PREDIERI, *Shari'a e Costituzione*, Laterza, Roma-Bari, 2006, p. 38 ss.; MASSIMO CAMPANINI, *Il Corano e la sua interpretazione*, Laterza, Roma-Bari, 2004, p. 25 ss.; PAOLO BRANCA, *Il Corano*, Il Mulino, Bologna, 2001, p. 56 ss.; WILLIAM MONTGOMERY WATT, *Breve storia dell'Islam*, Il Mulino, Bologna, 2001, p. 21 ss.; ABDELLAH REDOUANE, *L'etica economica dell'Islam*, in www.arabismo.it.

²⁰ See IIFM, *Sukuk Report. A Comprehensive Study of the Global Sukuk Market*, DDCAP Group, London, Dubai (DIFC), Kuala Lumpur, July 2019, p. 67 ss.; KHAIRUL MUHAMMIN, *Profit Maximization in Islamic Banking. An Assemblage of Maqasid Shariah Conception*, in *EJIF-European Journal of Islamic Finance*, 12, April 2019, pp. 1-10; PAOLO PIETRO BIANCONE, MAHA RAWDAN, *Social Finance and Financing Social Enterprises: An Islamic Finance Prospective*, in *EJIF-European Journal of Islamic Finance*, 12, April 2019, pp. 1-6.

incompatibilities, between savers and investors in terms of maturity, funds and risk, and isn't prohibited by *Shari'a* when respect the Islamic precepts.

The foundation of Islamic financial intermediation is based on two theories: the theory of trust and the theory of the agency.

According to the theory of trust one or more constituents transfer rights and security interests, or a set of property, rights and security interests, present or future, to one or more trustees, who keep them separate their own assets, act for a specific purpose for the benefit of one or more beneficiaries.

As claimed by the theory of the agency, instead, the owner holds three forms of rights: the *usus* which is the right to use a thing to discretion the property, the *abusus*, the right to make a change or an alteration to the property and the *fructus* which is the usufruct of the property. In this contractual relationship, the *usus* is leased to a third party with whom we contract: the agent.

The agency relationship is illustrated in Islamic banks in two forms: the first is the private agency, according to which the bank will collect the savings of customers in the form of deposits to intervene in a project or activity determined and proposed by the bank. The second form is the relationship of the general agency, according to which the bank collects the client's deposits in order to invest them in a project which it sees fit in return for a commission. Depositors do not have any insurance against their deposits and they have no direct control over the investment choices made by the bank²¹.

Islamic finance implies a specific risk taking that is completely different from the instruments used by conventional banks²². In addition, Islamic financial intermediation is characterized by entanglement of risks given the tripartite transactions linking the three following actors: the depositor, the bank and

²¹ SALMA DRISSE, KHADIJA ANGADE, *Islamic Financial Intermediation: The Emergence of a New Model*, in *EJIF-European Journal of Islamic Finance*, 12, 2019, p. 3 ss. See also: SEPIDEH KHAVARINEZHAD, PAOLO PIETRO BIANCONI, *Future Trends and Finance Approaches in Islamic Banking*, in *EJIF-European Journal of Islamic Finance*, 12, 2019, pp. 1-7; FRANCESCO SORVILLO, *Economie e religioni. L'agire per fede alla prova dei mercati*, Luigi Pellegrini Editore, Cosenza, 2017, p. 54 ss.; ID., *Lo spazio religioso dell'azione economica. L'offerta bancaria e il metaprofit incontrano la professionalità*, in *Calumet – intercultural law and humanities review*, 12 dicembre 2016, p. 1 ss.; GIANCARLO ANELLO, *Deontologie religiose, cultura economica e rapporti contrattuali. Riflessioni a proposito dei processi di negoziazione*, in *Calumet – intercultural law and humanities review*, 16 novembre 2016, p. 3 ss.; MARIA CHIARA GIORDA, STEFANIA PALMISANO, MARIA GRAZIA TURRI (a cura di), *Religioni & Economie. Idee ed esperienze*, Mimesis, Milano, 2014, p. 16 ss.; TOMMASO VITO RUSSO, *I contratti Shari'a Compliant. Valori religiosi e meritevolezza degli interessi. Contributo allo studio*, Edizioni Scientifiche Italiane, Napoli, 2014, p. 47 ss.; ERSILIA FRANCESCA, *Economia, religione e morale nell'islam*, Carocci, Roma, 2013, p. 13 ss.; TOMMASO VITO RUSSO, *Finanza islamica* (voce), in *Digesto delle Discipline Privatistiche*, sez. comm., Agg. 6, Torino, 2012, p. 377 ss.

²² FEDERICA MIGLIETTA, GIANFRANCO FORTE, *A Comparison of Socially Responsible and Islamic Equity Investments*, in *Journal of Money, Investment and Banking*, 21, 2011, pp. 116-132.

the company. However, Islamic bank accounting does not allow easy identification and separation of risk classes. It thus turns out that the efficient management of the aforementioned risks is of crucial importance for the Islamic banks as it allows them to enjoy a strategic positioning and the efficient use of their capital. As a result, the challenge facing Islamic banks is to know how to manage and control these risks in a legal and regulatory context often unsuitable for Islamic banks.

4. Islamic finance in Europe

Islamic banking and financial system, initially representing a niche market, has become today an interesting operating entity, especially in the light of the current crisis of global financial markets, and has drawn attention towards alternative systems of financial brokerage. The Islamic Bank, for instance, is undergoing a developing phase with high average annual growth rates²³.

The Islamic finance is based on the commandments of the *Qur'ân* (Quran), *Sunna* (tradition), *ijmà* (consensus of scholars), and *qiyàs* (deduction of legal prescription) and it is formed by theological-moral precepts, such as the prohibition to collect interests (*ribà'*) which represents the pillar of Islamic

²³ See LUCIA MIGLIETTI, *Principi ispiratori e strumenti di funzionamento della finanza islamica*, in *Diritto e Religioni*, 2, 2014, p. 439; V. SAMI ALDEEB ABU-SAHLIEH, *Interessi e sistema bancario dagli ebrei, cristiani e musulmani*, consultabile all'indirizzo: <http://samialdeeb.com/medias/2015/11/italian-interessi-e-sistema-bancario-dagli-ebrei-cristiani-e-musulmani.pdf>, p. 19; ID., *Religion et droits dans les pays Arabes*, Presses Universitaires Bordeaux, Bordeaux, 2009, p. 486; ID., *Il Diritto islamico*, cit., p. 1 ss.; SILVIO FERRARI (a cura di), *Introduzione al diritto comparato delle religioni*, cit., p. 14 ss.; TÀRIQ SAÛD RAMADAN, *Maometto*, cit., p. 21 ss.; ONORATO BUCCI (a cura di), *L'Islam tra dimensione giuridica e realtà sociale*, cit., p. 62 ss.; FRANCESCO CASTRO, *Diritto Musulmano*, cit., p. 78 ss.; GIOVANNI FILORAMO (a cura di), *Islam*, cit., p. 45 ss.; ALBERTO PREDIERI, *Shari'a e Costituzione*, cit., p. 41 ss.; MASSIMO CAMPANINI, *Il Corano e la sua interpretazione*, cit., p. 55 ss.; PAOLO BRANCA, *Il Corano*, cit., p. 73 ss.; WILLIAM MONTGOMERY WATT, *Breve storia dell'Islam*, cit., p. 47 ss.; MALISE RUTHVEN, *Islàm*, Einaudi, Torino, 1999, p. 17 ss.; GIORGIO VERCELLIN, *Istituzioni di diritto musulmano*, Utet, Torino, 1998, p. 56 ss.; JOSEPH SCHACHT, *Introduzione al diritto musulmano*, Fondazione G. Agnelli, Torino, 1996, p. 34 ss.; GIUSEPPE CAPUTO, *Introduzione al diritto islamico*, Giappichelli, Torino, 1990, p. 15 ss.; MUHAMMAD TAHA MAHMOUD, *The second message of Islam*, Syracuse University Press, New York, 1987, p. 27 ss.; MAXIME RODINSON, *Islam e capitalismo. Saggio sui rapporti tra economia e religione*, Einaudi, Torino, 1968, p. 34 ss. See also, LACHEMI SIAGH, *L'Islam e il mondo degli affari. Denaro, etica e gestione del business*, Etas, Milano, 2008, p. XXX; SAÛD RAMADAN, *La Sharf'a. Le droit islamique, son envergure et son équitè*, Al Qalam, Paris, 2008, p. 63 ss.; MASSIMO CAMPANINI, *Dizionario dell'Islam*, Rizzoli, Milano, 2005, p. 320; ID., *Introduzione alla filosofia islamica*, Laterza, Roma-Bari, 2004, pp. 73-89; HASAN HANAFI, *Islam in the Modern World*, vol. I, *Religion, Ideology and Development*, Heliopolis, Dar Kebaa, 2000, pp. 275-276; GIAN MARIA PICCINELLI, *Banche islamiche in contesto non islamico. Materiali e strumenti giuridici*, Istituto per l'Oriente "Carlo Alfonso Nallino", Roma, 1996, p. 64.

About relation between islamic religion and law, see: SALVATORE TARANTO, *Diritto e religioni nelle democrazie contemporanee. Una prospettiva normativa*, ESI, Napoli, 2010, p. 17 ss., footnotes n. 6.

financial system and originates from the idea that usury and interests are the manifestation of an unjustified accumulation of wealth deriving from unbalanced services; prohibition of *ghârar*, when one of the parties takes advantage from the changed value of the purchased goods; prohibition of *maysîr* which refers to the risk-taking procedure linked to gambling and insurance; prohibition of *harâm* which defines some illicit behaviours as selling and consumption of alcohol and drugs, gambling, selling or using pornographic materials; trade and consumption of pork²⁴.

Along with the above-mentioned prohibitions, there is the obligation of *zakât* (from the Arab 'growth' and 'purification') that is a payment due on the surplus of money of a believer, called *nisâb*²⁵.

²⁴ For search into religious rules that constitute the foundations of Islamic finance, consult, MARIA D'ARIENZO, *I fondamenti religiosi della finanza islamica*, in *Stato, Chiese e pluralismo confessionale*. Rivista telematica (www.statoe_chiese.it), gennaio 2012, p. 1 ss.; EAD., *I fondamenti religiosi dell'economia nell'Islam*, in ANTONIO FUCCELLO (a cura di), *I mercanti del tempio. Economia, diritto e religione*, Giappichelli, Torino, 2011, p. 26; DAVIDE ATZORI, *Fede e mercato: verso una via islamica al capitalismo?*, Il Mulino, Bologna, 2010, p. 46 ss.; ALESSANDRO FERRARI (a cura di), *Islam in Europa/ Islam in Italia tra diritto e società*, Il Mulino, Bologna, 2008, p. 12 ss.; LIVIO PAULETTO, *Lo sviluppo della pratica finanziaria islamica nel contesto delle istituzioni occidentali*, in *Banca, impresa, società*, 2005, p. 1 ss.; GIORGIO VERCELLIN, *Istituzioni del mondo musulmano*, Einaudi, Torino, 2002, p. 34 ss.; SILVIO FERRARI (a cura di), *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, Il Mulino, Bologna, 2000, p. 26 ss.

²⁵ IMANE KARICH, *Le Système Financier Islamique. De la Religion à la Banque*, Larcier, Bruxelles, 2002, p. 32 ss.; MARVYN LEWIS, LATIFA ALGOUD, *Islamic Banking*, Cheltenham-Northampton, 2001, p. 34 ss.; YASIN DUTTON, *The Origins of Islamic Law*, Richmond, 1999, p. 149 ss.; FRANK E. VOGEL, *The Islamic Law of Finance*, in FRANK E. VOGEL, SAMUEL E. HAYES III, *Islamic Law and Finance. Religion, Risk, and Return*, The Hague – London-Boston, 1998, p. 19 ss.; GIAN MARIA PICCINELLI, *Riba* (voce), in *Digesto delle Discipline Privatistiche, sez. civ.*, vol. XVII, Resp-Rin, Utet, Torino, 1998, p. 494 ss.; ID., *Il diritto agli interessi nei paesi arabi*, in *Diritto del commercio internazionale*, 1996, p. 35 ss.; ID., *Banche islamiche in contesto non islamico*, I.P.O., Roma, 1996, p. 17 ss.; ABDULLAH SAEED, *Islamic banking and Interest. A study of the Prohibition of Riba and its Contemporary Interpretation*, Leiden-New York-Köln, 1996, p. 17 ss.; NABIL A. SALEH, *Unlawful Gain and Legitimate Profit in Islamic Law – Riba, Gharar and Islamic Banking*, Cambridge University Press, Cambridge, 1986, p. 11 ss.; DAVID SANTILLANA, *Istituzioni di diritto musulmano malachita con riguardo anche al sistema sciafita*, vol. II, Istituto per l'Oriente, Roma, 1938, p. 60 ss. See also: LUIGI NONNE, *Il prestito ad interesse nel diritto islamico tra solidarietà e profitto*, in MASSIMO PAPA (a cura di), *Il Libro e la Bilancia. Studi in memoria di Francesco Castro*, II, Edizioni Scientifiche Italiane, Napoli, 2011, pp. 831-871; TARIK BENGARAI, *Comprendre la finance islamique. Principes, Pratiques et Ethique*, Les quatre source, Paris, 2010, p. 25 ss.; ALBERTO VENTURA (a cura di), ILIA ZILIO GRANDI (tradotto da), *Il Corano*, Arnoldo Mondadori Editore, Milano, 2010, p. 34 ss.; ANTONINO GATTO, *Fondamenti etici della finanza islamica*, in *Economia, Impresa e Mercati Finanziari*, 3, 2010, pp. 49-82; AHMED BELOUAFI, ABDERRAZAK BELABES, *Islamic Finance In Europe: The Regulatory Challenge*, in *Islamic Economic Studies*, 17, 2, 2010, pp. 33-53; CIRO RE, VASCO FRONZONI, *La zakat nel diritto islamico e i flussi economici nel finanziamento del terrorismo, alla luce del D. Lgs. 54/2009*, in *Intuslegere*, 2009, p. 12; ENRICO GIUSTINIANI, *Elementi di Finanza Islamica*, Marco Valerio Editore, Torino, 2006, p. 17 ss.; ALESSANDRO BAUSANI, *L'Islam. Una religione, un'etica, una prassi politica*, Garzanti, Milano, 2005, p. 27 ss.; MALIKA KETTANI, *Une banque originale. La banque islamique*, Imprimerie Najah el-Jadida, Casablanca, 2005, pp. 68-72; HANS KUNG, *Islam: passato, presente e futuro*, Rizzoli, Milano, 2005, p.

Islamic finance has significantly developed especially after the establishment in 1975 of the *Islamic Development Bank* and of *Dubai Islamic Bank*²⁶.

Nevertheless, the evolution of Islamic banking and financial system varied from one country to another. United Kingdom has experienced the most important extent of experience on the subject and represents today a model to be followed.

In the UK, Government support for the Islamic finance sector has been instrumental in helping the industry to flourish. In 2013, the UK became the first non-Muslim country to host the *World Islamic Economic Forum*, with British Prime Minister, David Cameron announcing his ambitions for London to become the “*one of the great capitals of Islamic finance*”. He also revealed plans for a new Islamic index on the London Stock Exchange (LSE). Consequently, in 2014, the UK became the first western country to issue a *Sukuk*, or *Islamic bond*, which raised £200 million.

Over the years, British implemented Islamic finance avoiding any kind of discussion about religion and culture, but they regarded the Islamic banking as a mere financial innovation²⁷. For this reason, no legal directives were

685; ARON ZYSOW, s.v. “*Zakat*”, in *The Encyclopaedia of Islam*, Brill, Leiden, XI, 2002, p. 406 ss.; AL SHAIKH ABDU-R-RAHMAN PASQUINI, *Islam: Rito d'adorazione e imposta coranica, Quaderni islamici*, Edizioni del Calamo, Milano, 2002, p. 75 ss.; ANDREA PACINI (a cura di), *Tasse religiose e filantropia nell'islam del Sud est asiatico*, Edizioni della Fondazione Giovanni Agnelli, Torino, 1997, p. 23; HACÈNE BENMANSOUR, *Politique économique en Islam*, Al-Qalam, Paris, 1994, p. 231 ss.

²⁶ ZAMIR IQBAL, ABBAS MIRAKHOR, *An introduction to islamic finance*, John Wiley & Sons, Singapore, 2011, p. 14 ss.; GINEVRA CERRINA FERONI (a cura di), *Fondazioni e banche, modelli ed esperienze in Europa e negli USA*, Giappichelli editore, Torino, 2011, p. 4 ss.; HOSSEIN ASKARI, ZAMIR IQBAL, ABBAS MIRAKHOR, *Globalization and islamic finance*, John Wiley & Sons, Singapore, 2010, p. 17 ss.; FAHIM KHAN, MARIO PORZIO (a cura di), *Islamic Banking and Finance in European Union. A Challenge*, Edward Elgar, UK, 2010, p. 24 ss.; ANTONIO DELL'ATTI, FEDERICA MIGLIETTA, *Fondi sovrani arabi e finanza islamica*, cit., p. 34 ss.; RONY HAMAUI, MARCO MAURI, *Economia e finanza islamica*, cit., p. 52 ss.; ALESSANDRO FERRARI (a cura di), *Islam in Europa/Islam in Italia tra diritto e società*, cit., p. 66 ss.; ANTONIO D'EMILIA, *Scritti di Diritto islamico*, I.P.O., Roma, 1976, p. 237 ss.

²⁷ PAOLO PIETRO BIANCONE, *La banca islamica*, Giappichelli, Torino, 2017, p. 113 ss.; MICHELE SABATINO, *La finanza islamica in Italia e in Europa*, in *Rivista elettronica del Centro di Documentazione Europea dell'Università Kore di Enna*, 2017, p. 3 ss.; ANTONIO SALVI, NICOLA MIGLIETTI, *Principi di finanza islamica*, Cacucci, Bari, 2013, p. 15 ss.; MICHELE MIRAGLIA, *Banche islamiche: criticità del sistema e profili di regolamentazione. Prospettive di armonizzazione*, in *Rivista trimestrale di Diritto dell'Economia*, 4, 2011, pp. 337-358; RINO LOMBARDI, *L'Islamic Banking in Europa e in Italia*, in *Finanza Bancaria*, 2, 2010, p. 80 ss.; GABRIELLA GIMIGLIANO, GENNARO ROTONDO (a cura di), *La banca islamica e la disciplina bancaria europea*, cit., p. 41 ss. See also JULIO C. COLÒN, *Choice of law and islamic finance*, in *Texas International Law Journal*, 2, 2011, p. 411 ss.; SHAH M. NIZAMI, *Islamic Finance*, in *Suffolk Transnational Law Review*, 1, 2011, p. 219 ss.; CLAUS LUTTERMANN, *Islamic Finance*, in *Juristenzeitung*, 2009, p. 706 ss.; SCHEHERAZADE REHMAN, *Globalization of islamic finance law*, in *Wisconsin International Law Journal*, 4, 2008, p. 625 ss.; NICHOLAS FOSTER, *Islamic Finance Law as an Emergent Legal System*, in *Arab Law Quarterly*, 2, 2007, p. 170 ss.; WALID HEGACY, *Contemporary Islamic Finance: From Socioeconomic Idealism to Pure Legalism*, in *Chicago Journal of International*

created, in relation to a specific religious belief, and it was requested only a bank licence. The importance of London in the sector of Islamic banking has been confirmed by the establishment, in a few years, of 22 banks offering Islamic financial products and services, more than any other Western country (the *Islamic Bank of Britain* (IBB), the *European Islamic Investment Bank*, the *London & Middle East Bank*, the *Global Securities House*, the *European Finance House*, and the *Gatehouse Bank* etc.). Of these, *Al Rayan Bank*, formerly known as *Islamic Bank of Britain*, is the oldest and largest wholly *Shari'a* compliant retail bank.

Al Rayan Bank's savings accounts are based on Islamic finance principles and pay profits. For example, an *Al Rayan Bank Fixed Term Deposit (FTD) Account* is based on the Islamic financial principle of *Wakala* (agency agreement). Under the *Wakala* agreement, a customer deposits their savings with *Al Rayan Bank* and the Bank becomes their agent. *Al Rayan Bank* uses the cash deposit to invest in *Shari'a* compliant and ethical trading activities, such as property and relatively low risk metal trading, which generate a target profit for the customer over a fixed term. The Bank manages and monitors the performance of the investments on a daily basis to minimise the risk and ensure that the customer receives the projected target ('expected') profit rate.

Within some English banking institutions, among which *Lloyds TSB*, a *Shari'a* compliant sector was created.

Also France, albeit with some delay, began to be interested to the phenomenon of Islamic banking. Indeed, despite London's leadership, it is the first European country in terms of Muslim residents.

In April 2008 French government asked *Paris Europlace* (a regulatory body for the organization of financial markets in France) an analysis about the necessary measures to make French financial market one of the most competitive market by the introduction of services of Islamic finance. The following year the University of *Paris-Dauphine* trained the first team specialized in Islamic finance, thus showing the interest of academic world to this financial system. Finally, in 2010 an agreement was signed between *Paris Europlace* and the *Accounting and Auditing Organization for Islamic Financial Institutions* (AAOIFI) to overcome possible obstacles to the development of Islamic finance.

Anyhow, only few French banks, such as *Société Générale* or *BNP Paribas* offer today Islamic products²⁸.

Law, 2007, p. 581 ss.; JUAN SOLÉ, *Introducing Islamic Banks into Conventional Banking Systems*, in *IMF Working Paper*, 2007, p. 175; JAMAL KRAFFESS, *L'influence de la religion musulmane dans l'aide humanitaire*, in *Revue Internationale de la Croix Rouge*, 87, 2005, p. 336.

²⁸ ANTONIO SALVI, NICOLA MIGLIETTI, *Principi di finanza islamica*, cit., p. 45 ss.; PAOLO PIETRO

On the contrary, German government did not start any strategy of adjustment of financial and tax system to the rules of Islamic finance.

Nonetheless, there are some initiatives to create *Islamic windows*²⁹. In fact, some banks coming from Islamic countries, such as *Iran Bank Sepah* and *Kyveyt Turk Bank* (Turkish branch of the *Kwait Finance House group*) have settled in Germany and have conquered a considerable share of the market. Among conventional banks, *Deutsche Bank* and *Dresdner Bank* began to offer Islamic products and services, thus reinforcing their relationship with Arab countries³⁰.

Let us examine now the state of Islamic finance in Spain. First of all it is necessary to note that even if there are no active Islamic institutions issuing financial products, there is, within Spanish financial bodies, the idea of opening *Islamic windows*, so to enlarge their share of clients.

To this aim and in order to examine Islamic finance, in 2010 *Madrid Stock Exchange* organised a conference, and in 2011 the *Instituto de Empresa Business School* and the University King Abdulaziz of Saudi Arabia established a centre of Islamic Economics and Finance (CIEF). Currently, cooperation between *Dubai International Financial Center* (DIFC) and *Madrid Financial Center* (MCF) for the promotion of investments is underway.

Moreover, it must be considered that the National Islamic Authority, the *Junta Islamica* started a process for the creation of 'Islamic' counters at the Spanish bank *Bancorreos* to sell Islamic financial products, such as bank accounts and mortgages.

Neither in Italy there are significant initiatives in the field of Islamic finance³¹.

BIANCONE, *La banca islamica*, cit., p. 51 ss.; MICHELE SABATINO, *La finanza islamica in Italia e in Europa*, cit., p. 37 ss.; PAOLO PIETRO BIANCONI, *Il bilancio della banca islamica e la rappresentazione dei principali contratti finanziari*, FrancoAngeli, Milano, 2012, p. 50; RINO LOMBARDI, *L'Islamic Banking in Europa e in Italia*, cit., p. 91 ss.; FRANÇOIS GUÉRANGER, *Fonancé Islamique – Una illustration de la finance éthique*, cit., p. 32 ss.; GABRIELLA GIMIGLIANO, GENNARO ROTONDO (a cura di), *La banca islamica e la disciplina bancaria europea*, cit., p. 64 ss.

²⁹ LAURENT WEILL, *Do Islamic Banks Have Greater Market Power?*, in *Comparative Economic Studies*, 53, 2011, pp. 291-306; SAJJAD ZAHEER, MAZZAM FAROOQ, *Comparing the Conventional and Islamic Banking Institutions: Evidence from an Emerging Economy*, presented at the 2nd International Conference on Islamic Business, Islamabad, December, 2011, p. 11 ss.; RODNEY WILSON, *Islamic Finance in Europe*, Robert Shuman Centre for Advanced Studies Policy Paper, 2, 2007, p. 5 ss.; TAREK ZAHER, KABIR M. HASSAN, *A Comparative Literature Survey of Islamic Finance and Banking, in Financial Markets, Institutions and Instruments*, 10, 2001, pp. 155-199; ARSHAD ZAMAN, *Interest and the Modern Economy*, in *The Lahore Journal of Economics*, 6, 1, 2000, pp. 113-127.

³⁰ HAMIM S. AHMAD MOKTAR, NAZIRUDDIN ABDULLAH, SYED M. AL-HABSHI, *Efficiency of islamic banking in Malaysia*, in *Journal of Economy cooperation*, 27, 2006, pp. 37-70.

³¹ PAOLO PIETRO BIANCONI, MOHAMMAD ZIAD SHAKHATRED, *Using Islamic Finance for Infrastructure Projects in Non-Muslim Countries*, in *EJIF – European Journal of Islamic Finance*, 2, 2015, p. 1 ss.; PAOLO PIETRO BIANCONI, MAHA RADWAN, *Sharia Compliant “Possibility for Italian SMEs”*, in *EJIF –*

Islamic banking experience was launched in Italy by the Cassa di Risparmio di Fabriano e Cupramontana in 2004, which, similarly to the Bank of Islam in London, dedicated a bank account, interest-free but according high bonuses and rewards, to Muslim clients. Two years later the Association for the development of alternative instruments and financial innovation (ASSAIF) was established with the aim of advising on alternative projects of financing for investors coming from the Middle-East and for immigrants coming from the south Mediterranean shores and living in Italy³².

In 2007, Italian Banking Association (ABI) and Union of Arab Banks (UAB) signed a *Memorandum of Understanding* aiming at reinforcing economical, political, and social cooperation between Italy and Arab countries.

Currently, though, Islamic banks experience persistent difficulty to develop, mainly because they are credit intermediation institutions based on religious precepts. Indeed, this is demonstrated by the fact that the only Islamic bank in Italy is the Iranian *Bank Sepah*, in Rome.

However, there is growing market share and rising domestic systemic importance of Islamic finance which underscores the importance of developing strong regulatory frameworks for prudential regulation and supervision in Islamic finance jurisdictions, supported by proactive stress testing and an enhanced set of capabilities for macroprudential surveillance. In this context the IFSB recently has published a guiding principles that align global regulatory frameworks with the specificities of Islamic finance.

European Journal of Islamic Finance, 1, 2014, p. 1 ss.; MARIA GRAZIA STARITA, *Le prospettive della banca e della finanza islamica in Italia*, in CLAUDIO PORZIO (a cura di), *Banca e finanza islamica. Contratti, peculiarità gestionali, prospettive di crescita in Italia*, Bancaria editrice, Roma, 2009, p. 29 ss.

³² ANTONIO SALVI, NICOLA MIGLIETTI, *Principi di finanza islamica*, cit., p. 7 ss.; PAOLO PIETRO BIANCONE, *La banca islamica*, cit., p. 78 ss.; MICHELE SABATINO, *La finanza islamica in Italia e in Europa*, cit., p. 52 ss.; MASSIMO MARIANI, *Impresa e finanza islamica*, Egea, Milano, 2012, p. 45 ss.; MARIA GRAZIA STARITA, *La finanza islamica nel mondo*, in *Dirigenza bancaria*, 35, 147, 2011, pp. 38-41; RINO LOMBARDI, *L'Islamic Banking in Europa e in Italia*, cit., p. 80 ss.; AA.VV., *Finanza islamica in Italia: potenzialità e limiti alla luce dell'esperienza nel Regno Unito*, in *MK Marketing e Comunicazione in Banca*, 27, 1, 2009, pp. 2-7; CLAUDIO PORZIO (a cura di), *Banca e finanza islamica. Contratti, peculiarità gestionali, prospettive di crescita in Italia*, Bancaria Editrice, Roma, 2009, p. 11 ss.; *Il boom della finanza islamica. Spunti di riflessione da alcune operazioni di cartolarizzazione*, in *Bancaria*, 64, 12, 2008, pp. 77-94; NICCOLÒ BORRACCHINI, *Banche e immigrati: credito, rimesse e finanza islamica*, Pacini, Pisa, 2007, p. 32 ss.; GIOVANNI LIPPA, *La realtà operativa delle banche islamiche tra tradizione e innovazione*, in *Iura Orientalia*, II, 2006, pp. 110-127; GIAN MARIA PICCINELLI, *Economia e banche tra Islam e Occidente: competizione e dialogo*, in *Iura Orientalia*, II, 2006, pp. 128-134. See also: SIMONE ALVARO, *La finanza islamica nel contesto giuridico ed economico italiano*, in *Quaderni giuridici*, 4, 2014, p. 15 ss.; GIANFRANCO FORTE, MARCO MAURI, FEDERICA MIGLIETTA, *La gestione del risparmio nella finanza islamica*, in *Banca Impresa Società*, 2, 2011, pp. 263-297; SORAYA FARHI, *La Banca islamica e i suoi fondamenti teorici*, Rubbettino, Soveria Mannelli, 2010, p. 41 ss.; ELISABETTA MONTANARO, *La banca islamica: una sfida per le regole di Basilea*, in *Studi e note di economia*, 3, 2004, p. 11 ss.

5. Conclusions

The potentiality of Islamic banking system as an instrument to reduce financial exclusion of Muslims has prompted a heated debate, especially after the tragic events that struck the heart of Europe. It is true, indeed, that the Jihadist terror attack in Paris and Brussels brought in a new era in which the dialogue with Islam has become strongly controversial, to the extent of confusing the dividing line between Islamic terrorism and the development of policies and actions leading to the integration of Muslim communities in EU.

The equation immigrants-threat explains how difficult it is to endorse the binomial religious freedom-security that was the core of European integration processes. Europe has had the ability to help inclusion of all different peoples who arrived and lived together in its territory, and Italy is no exception. Nevertheless, Europe is continuing to cope with immigration flows coming from the Middle East and to accept the influences of different cultural heritages within its borders. Its inclusive role has effects also on EU market, as it is necessary to keep into account the target of Muslim consumers in view of inclusive economy, through the development of strategies of *halâl* marketing and the offer of financial products and services compliant with Islamic Law.

According to recent studies, the number of Muslims is expected to increase, together with their specific needs and demands that EU market cannot ignore if it wants to further progress and evolve.

Although, today it is difficult to forecast how and how much Islamic finance will expand within western financial system.

At the moment Islamic monetary markets are not integrated with the conventional ones in most jurisdictions and the Islamic finance industry is not an integrated global market yet, but a conglomerate of national markets with different legal and regulatory environments and *Sharī'a* governance systems. Over time, this diversity has grown even further. Market players and regulators recognise the need for more standardisation, but progress in this regard is at best limited. The current status regarding legal and *Sharī'a* governance frameworks is documented in this IFSI Stability Report, and the results of the IFSB implementation survey do not indicate any breakthrough.

During 2017, the FSB expressed the view that the work coordinated by the Board to agree on the international post-GFC policy reform agenda is nearly complete. Nevertheless, it believes that in some cases, important policies have yet to be fully operationalised. It therefore sees monitoring and publicly reporting on member jurisdictions' implementation of agreed reforms as a priority. The FSB also published in April 2017 its Thematic Review on Corporate Governance Peer Review Report, which examines the implemen-

tation of the *G20/Organisation for Economic Cooperation and Development (OECD) Principles of Corporate Governance*. The peer review provides 12 recommendations focus on six key areas: effective corporate governance frameworks, disclosure and transparency, responsibilities of the board, rights and equitable treatment of shareholders, the role of stakeholders in corporate governance, and other recommendations.

The FSB issued two consultative documents in November and December 2017, which provides further guidance on the development of an implementable resolution funding plan and on the methodology for assessment of the implementation of Key Attributes of Effective Resolution Regimes for Financial Institutions in the insurance sector³³.

Aside from Standards and Guidance/Technical Notes, the IFSB Work Plan in recent years has also included working papers on diverse topics of emerging issues in Islamic finance including financial safety-nets, consumer protection, *Shari'a* non-compliance risk, resolution and recovery regimes, systemic links and macroprudential issues, and so on. Going forward, along with strengthening its standards implementation programme by adding impact and consistency assessment dimension, the IFSB will continue to develop new standards and guiding principles for covering all sectors of IFSI. Against this backdrop, the IFSI Stability Report 2018 examines the implications on the global Islamic financial services industry (IFSI) of recent economic developments and changes in the global regulatory and supervisory frameworks.

The IFSB's IFSI Stability Report 2018 seeks to illuminate issues that posed current and future challenges to the stability of the global Islamic finance services industry especially in IFSB's member jurisdictions for the best interest of IFSB's wide membership, as well as for all those who have a substantive interest in the stability and resilience of Islamic finance.

The market fragmentation implies that the Islamic finance industry is in many respects not self-reliant and still substantially dependent on interactions with conventional finance – from benchmarking to liquidity management and securities transactions. A standardisation, or at least an approximation, of legal environments, governance systems and transactional practices could help the

³³ The first consultive document identifies a set of key funding strategy elements that address a number of areas, including: (i) firm capabilities to support monitoring, reporting and estimating funding needs in resolution, and to facilitate execution of the funding strategy; (ii) the development of the resolution funding plan by authorities; (iii) firm assets and private sources of resolution funding; (iv) temporary public-sector backstop funding mechanisms and ordinary central bank facilities; and (v) information sharing and coordination between authorities.

The second document sets out the criteria for assessing the compliance of a jurisdiction's insurance resolution framework against the requirements set out in the Key Attributes.

industry to realise economies of scale and network effects not only in routine operations but also in consumer education, marketing, brand recognition and product development. Progress in market integration would strengthen the competitive position of Islamic finance in an increasingly tougher macro-economic environment.

The main problem is connected also with an insufficient number of *Sharī'a* compliant products, which does not help the development of monetary and interbank markets that remain too segmented.

In the light of the above, it can be reasonably expected that as long as there will not be standardization of risk management's instruments and accounting principles at a global level, Islamic finance will have only a limited share of the market, with minor consequences and implications.

In Italy, the first taken step towards financial integration of Muslims was to guarantee migrants with an access to financial and bank circuits on all national territory.

A further step could be to promote the so-called participatory account, that is a term deposit by which the bank acquires the availability of funds provided by clients with the obligation to return them at a agreed due date, according to *Mudarabah* basis: the bank returns money to the client without paying interests (in consideration of *ribà*' prohibition) but on the basis of predetermined fixed rate of profit and risk sharing (unrestricted *Mudarabah*) or of a specific investment (restricted *Mudarabah*). Such kind of initiatives would allow Muslims to give value and obtain recognition to their religious and communitarian identity.

Another possible beneficial solution would be to offer, besides traditional products, also financial products that could satisfy ethical-religious requirements. Along with the aim of channelling to Italy the huge amount of Islamic capital that otherwise would go to UK, this is one of the main objectives contained in draft law no. 4453 of 2nd May 2017 and assigned to VI finance Committee on 16th June 2017³⁴.

The draft law, in particular has identified some *Sharī'a* compliant institutions such as *Sukuk*, *Murabahah*, *Ijarah* and *Istisna* and wishes to set the rules for tax issues and align them to the Italian legal system. In this way, when a Muslim individual recurs to these institutions, he or she is subjected to pay VAT, IRES (income tax), stamp duty, registration tax, and governmental licences taxes to Italian State.

³⁴ STEFANIA PEVERARO, *In Italia in arrivo una legge sulla finanza islamica*, in <https://www.assinews.it/03/2017/italia-arrivo-legge-sulla-finanza-islamica/660037616>; RAFFAELLA MALITO, *Una legge porterà la finanza islamica a Roma*, in www.ilGiornale.it, 19 luglio 2016.

Unfortunately, for over a year the draft law has remained still at Chamber of Deputies' finance Committee and it seems it is bound to stay there. As a consequence, Islamic finance will continue to have a limited role.

RIASSUNTO

La presenza nel nostro paese di una comunità islamica consistente offre agli intermediari finanziari italiani una importante opportunità per attirare in Italia il risparmio di soggetti islamici. Inoltre, il numero dei musulmani interessati ai servizi della banca islamica non è solo legato alla religiosità e alla stretta osservanza dei dettami della *Shari'a* ma anche a motivi culturali e di appartenenza. Ad essi vanno aggiunti, poi, quei non musulmani che vedono nell'Islamic banking un'opportunità di investimento etico, in quanto evita settori come l'alcol, il tabacco e la produzione di armi, e un numero crescente di investitori che desidera includere i prodotti di finanza islamica nel proprio portafoglio al fine di diversificare gli investimenti e limitare i rischi di gestione.

Infatti, nell'Unione Europea e anche al di fuori, dopo la crisi economica che ha colpito i mercati occidentali, non mancano i paesi che, già da alcuni anni, lavorano con i concetti, di *marketing halal* e di *islamic marketing* e che hanno sostituito i quattro pilastri del marketing tradizionale (*product, price, place e promotion*) con altrettanti compatibili con la religione islamica (*faith, food, finance e fashion*).

La considerazione del target di consumatori musulmani attraverso l'offerta di prodotti e servizi finanziari rispettosi della Legge islamica rappresenta uno dei passaggi fondamentali nel processo di inclusione dei musulmani in Europa. Questo complesso processo, lungi dall'esaurirsi nel puro e semplice riconoscimento formale dei diritti e delle libertà fondamentali, comporta un impegno concreto da parte delle imprese e delle istituzioni europee al fine di "*combatte(re) l'esclusione sociale e le discriminazioni*" (art. 3.3 del TUE).

In tal senso la finanza islamica funge da strumento per l'inclusione sociale, oltre che finanziaria, dei musulmani che rientrano tra i cinque gruppi etnici più vulnerabili e soggetti a discriminazioni nel mercato del lavoro europeo e rappresentano la prima minoranza religiosa ad essere discriminata a causa della propria fede.

PAROLE CHIAVE

Religione; Finanza; Globalizzazione; Inclusione finanziaria; Banca islamica.

ABSTRACT

In Italy, a massive presence of Islamic communities offers to Italian financial intermediaries a great opportunity to attract savings of Muslim to Italy. Furthermore, the high number of Muslims willing to use services of Islamic banks is not only related to their religious belief and to the strict adherence to *Shari'a* but also to cultural and social reasons. In addition, there are many non-Muslim individuals who consider the *Islamic banking* an ethical opportunity for investment, as it is not related to sectors such as alcohol products, tobacco, and weapon production; there are also an increasing number of investors who include in their portfolio Islamic finance products with the aim of diversifying investments and limiting management risks.

As a matter of fact, in EU and beyond its borders, after the economic crisis that has affected western markets, many countries have become familiar to the concepts of *halal marketing* and *Islamic marketing*, and have substituted the four pillars of traditional marketing (product, price, place, and promotion) with other mainstays which are compatible with Islam (faith, food, finance, and fashion).

Giving importance to the target of Muslim consumers by offering products and financial services that respect Islamic Law, represents one of the fundamental steps for the process of inclusion of Muslim individuals in Europe. Such complex process, does not involve only a simple formal recognition of fundamental rights and freedom, but it entails a committed effort from businesses and European Institutions to '*combat social exclusion and discrimination*' (The Lisbon Treaty, art. 3.3).

By pursuing this aim, Islamic finance becomes an instrument for social, as well as for financial inclusion of Muslims that are among the five most vulnerable ethnic groups subject to discriminations in the European labour market, and represent the first religious minority to be discriminated because of its Faith.

KEY WORDS

Religion; Finance; Globalization; Financial inclusion; Islamic banking