

# Islamic Finance forum

Can any transaction be structured Islamically assuming the appropriate Shariah advisory board is in place?  
If so what does this mean for Islamic Finance going forward?



**PROFESSOR RODNEY WILSON**

Director

University of Durham

In my view there is a great danger in taking the approach that any financial transaction can be structured Islamically provided a Shariah board gives its approval. This may result in the Shariah board approval being regarded as a mere rubber stamp. To be acceptable all products should be able to be accommodated within an existing Islamic structure. These structures can, of course, be developed and adapted by finance specialists and conventional lawyers, but the end results should have recognizable Islamic characteristics.

Murabahah and Ijara have evolved for example, the main distinguishing financial features being that the return on the former is fixed, while that on the latter is variable. The former remains a trading contract however, whereas the latter is a lease, with the responsibilities of the lessor justifying his or her return. In summary innovation is both acceptable and desirable, invention is not.



**MAJID DAWOOD**

CEO

Yasaar Ltd

Categorically, this statement has to be flawed. Shariah is inviolable and therefore to state that any transaction can be structured Islamically based on the appointment of an appropriate Shariah Board is a non-starter.

Primarily, any transaction structure presented to an experienced Shariah Board will be reviewed to meet with the strictures of Shariah, if not, then the experience and knowledge of the Scholars will come into play to see if the structure can be modified or amended in discussion with the authors of the structure and the client's legal team. It's an arduous task, there needs to be clear agreement between the Scholars and they need to be comfortable in signing a Fatwa deeming the structure as being Shariah compliant. The Shariah Board's reputation is on the line and no short cuts can be accepted. The success of an Islamic financial initiative, be it a product, fund, transaction or whatever, depends on the investors' confidence in the Shariah Board of Scholars, or scholar, associated with it.

Going forward, it can be seen that the Scholars are conducting a lot of original research and, therefore, we are seeing many more innovative products and the development of the likes of hedge fund of funds, derivatives, capital protected products, etc. Watch this space.



**CHRIS COOK**

Principal

Partnerships

Consulting LLP, London

If the answer to the first question is "Yes", then Islam could find itself in an analogous position to the Catholic Church at the time of the Reformation when sinners were able to purchase "Indulgences" from a complacent priesthood.

What we see today are essentially "halal windows into a haram palace" - or an Islamic veneer upon an un-Islamic reality. This applies equally to monetary and capital markets.

The reality of our current "Deficit-based" monetary system is that virtually all (>97% in the UK) money in circulation comes into existence as credit created by banks as a multiple of their capital base - so-called "fractional reserve banking". As J K Galbraith said, this financial legerdemain is "so simple the mind is repelled".

In respect of capital, there is a blindness among Islamic scholars and Shariah Boards to the inequitable nature of "investment" through the customary Western vehicle - the "Joint Stock Limited Liability Company". I confess that I find it difficult to see in what respect the sharing of risk and reward in this legal structure is ethically superior to the "haram" debtcontract.

The vehicle for this is a "Corporate Partnership" of which the new UK Limited Liability Partnership is the first example, but for which many jurisdictions have close analogies, such as the US LLC.

One may then arrive at simple new "asset-based" finance vehicles for investment in productive assets through "Co-ownership" between Asset Financier and Asset User - Musharakah in other words: and in respect of a Corporate Partnership-based credit model we see bilateral interest-free credit with a multilateral guarantee - ie Takaful.