

3rd Annual ISRA/IIBI Thematic Workshop

Monday, 12th December 2011
London, United Kingdom

Invitation
Only

Form and Substance in Islamic Finance - Challenges, Problems and The Way Forward

Despite the phenomenal growth of the Islamic finance industry in the last four decades, there are genuine concerns about its uniqueness and the direction it has taken. Many of the transaction structures were approved by Shari'ah boards to kick start the industry, but became a 'norm' over time. There are arguments that there has been too much focus on the 'form' (which focuses on whether individual documents are Shari'ah-compliant) instead of the 'substance' (where the focus is on the documentation as a whole and the intention of the parties) raising concerns about the authenticity of some Islamic finance transactions. This is an issue that may also need to be addressed in conventional lending and investment practices.

The 3rd Annual ISRA/IIBI Thematic Workshop sponsored by SNR Denton will critically analyse this issue of 'form' versus the 'substance' in Islamic financial transactions that need to be resolved to bring greater credibility to and mainstream acceptance of the Islamic finance industry.

Venue:

SNR Denton
One Fleet Place
London
EC4M 7RA
United Kingdom

Sponsored by:

 SNR DENTON

International Legal Practice

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3rd ANNUAL IIBI/ISRA THEMATIC WORKSHOP

Form and Substance in Islamic Finance – Challenges, Problems and The Way Forward

Monday 12 December, 2011 Venue: SNR Denton, One Fleet Place, London EC4M 7RA, United Kingdom

Programme

- 08:30 – 09:00 Registration
- 09.00 – 09.10 Welcome Address:
SNR Denton, UK
Dr. Mohammad Akram Laldin, Executive Director, ISRA, Malaysia
- 09.10 – 09.40 Keynote Address:
Alderman Michael Bear, the Lord Mayor of the City of London, UK [TO BE CONFIRMED]
- 09.40 – 11.00 Session 1: The form over substance debate
- What is the issue in Islamic finance and investment?
 - How has it arisen?
 - Is the emphasis on form over substance as understood in Islamic finance the major cause of financial instability seen in the current global financial crisis?
 - What are the consequences for the realisation of the objectives of Islamic finance (maqasid al-Shari'ah), and for the sustainability of the Islamic finance industry in general?
 - Is there any valid reason for this predicament of form over substance to be present?
- Discussion Panel Speakers:
1. Dr. Mohammad Akram Laldin, Executive Director, ISRA, Malaysia
 2. Dr. Bashir Aliyu, Special Advisory to the Governor on Non-Interest Banking, Central Bank of Nigeria, Nigeria
 3. Dr. Mehmet Asutay, Director, Durham Centre for Islamic Economics and Finance, Durham University, UK
 4. Nick Foster, Senior Lecturer in Commercial Law, School of Oriental and African Studies, University of London, UK
- Moderator: Richard T de Belder, Partner, SNR Denton, UK
- 11.00 – 11.30 Break for Tea / Coffee
- 11.30 – 13.00 Session 2: How disputes can highlight the 'form over substance' issue
- Implications of judgments in the national courts:
 - i. Malaysia, ii. UAE, iii. United Kingdom, iv. Saudi Arabia
 - Debate over the structuring of Sukuk in the context of form over substance
 - Effect/Application of the governing law clause in Islamic Finance contracts where there is a reference both to Shari'ah and national law
 - Would outcomes be any different if contracts provide for arbitration under Shari'ah principles?
 - Would the secular courts force the issue?
- Discussion Panel Speakers:
1. Richard T de Belder, Partner, SNR Denton, UK
 2. Sheikh Muddassir Siddiqui, Partner, SNR Denton, UAE
 3. Madzlan Mohamad Hussain, Partner, Zaid Ibrahim & Co., Malaysia
- Moderator: Dr. Mohammad Akram Laldin, Executive Director, ISRA, Malaysia
- 13.00 – 14.00 Break for Lunch / Prayer

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14.00 – 15.15 Session 3: Shari'ah Risk management and Shari'ah Governance mechanisms: The Journey so far

- Is Shari'ah governance simply about faith or good governance?
- Shari'ah risk management: The question of authenticity and credibility
- The evolution of Shari'ah governance mechanisms and contemporary practices
- Requirement for 'Fit and Proper' criteria for Shari'ah scholars

Discussion Panel Speakers:

1. Sheikh Haytham Tamim, Shari'ah Scholar, Europe Arab Bank, UK
2. Mufti Abdul Qadir Barkatulla, Shari'ah Scholar, Islamic Bank of Britain, UK
3. Muhammad Shikder, Head of Shari'ah Advisory and Compliance, Gatehouse Bank, UK

Moderator: Dr. Asyraf Wajdi Dusuki, Head of Research Affairs, ISRA, Malaysia

15.15 – 15.45 Tea/Coffee Break

15.45 – 16.45 Session 4: The Way Forward

- Setting up an international body that can regulate and supervise the performance, services and independence of Shari'ah Scholars / Shari'ah Boards
- Developing standards on an international level about the qualifications needed to join a Shari'ah Board – critically evaluating AAOIFI and IFSB work so far
- Practical Steps for Strengthening Shari'ah Governance mechanisms
- What can be done to resolve the 'form over substance debate?'
 - i. Addressing issues of the time value of money (charging interest) in Islamic finance
 - ii. Addressing issues of additional charges (penalty) in the context of the deferment of payments and early payment discounts
 - iii. Addressing issues of fixed return and capital guarantees in Islamic financial transactions

Discussion Panel Speakers:

1. Dr Mohammad Akram Laldin, Executive Director, ISRA, Malaysia
2. Sheikh Muddassir Siddiqui, Partner, SNR Denton, UAE
3. Abdullah Haron, Assistant Secretary General, Islamic Financial Services Board (IFSB), Malaysia
4. Trevor Norman, Director - Islamic Finance & Funds group, Volaw Trust Company, UK

Moderator: Professor Dr. Habib Ahmed, Sharjah Chair in Islamic Law and Finance, Durham University, UK

16.45 – 17.00 Wrap-up / Resolutions

17.00 Closing Remarks – IIBI / SNR Denton



IIBI is dedicated to develop, organise and promote for the public benefit, programmes of education, training and research in Islamic finance, banking and insurance.



ISRA is dedicated to promoting applied research in the area of Shariah and Islamic finance.



SNR Denton is a top 25 international legal practice, serving clients in key business and financial centres from more than 60 locations in 43 countries. The firm has leading Islamic finance lawyers in London, Middle East and New York, with a strength and depth of expertise across all areas including Sukuk, derivatives, investment funds, trade, asset, real-estate and project finance, and syndicated lending.