In addition to arbitration, disputes relating to banking business can be settled through one of the following two committees in accordance with the subject matter of the dispute, irrespective of whether it relates to negotiable instruments or concerns other banking activities:

- the Committee for the Settlement of Banking Disputes under the Saudi Arabian Monetary Agency (SAMA), which is competent to settle disputes arising as a result of pure banking activities only, such as the opening of current and deposit accounts, letters of credit, money exchange, foreign transfer, money lending, etc;[4]
- the Committee for the Settlement of Disputes Involving Negotiable Instruments, which functions under the auspices of the Ministry of Commerce and Industry and possesses the jurisdiction to settle disputes related to cheques and other negotiable papers only. The Committee for Negotiable Instruments is also known as the Negotiable Instruments Office.

Arbitrability of Banking Disputes

The doctrine of arbitrability generally relates to the question of whether the applicable law allows a matter to be resolved by arbitration. All legal systems exclude some matters from the scope of arbitration and the non-arbitrable matter is referred to litigation even if the parties to the dispute agree to arbitrate.[5] As in other areas of Saudi commercial law, arbitration in general has not received sufficient attention from legislators, who prefer to rely on the classical Shari′a teachings and, in some cases, oppose modernizing the legal system even if the said modernization proffers to exist within the scope of Shari′a. This attitude has resulted in a great deal of ambiguity in Saudi day-to-day affairs, especially when a prohibited or disputed element is the subject matter of a dispute. Saudi law is relatively vague when providing an answer to the question of arbitrability. Under Saudi law, whether a dispute is arbitrable is answered by reference to the Arbitration Act and its Implementing Rules. According to article 2 of the Arbitration Act, arbitration is permitted in disputes where conciliation is permitted.[6] Therefore, the Act excludes some criminal disputes, as will be seen below, and disputes concerning public policy, which themselves are encompassed under the jurisdiction of Shari′a courts and the *Diwan Almazalim*, in addition to disputes relating to national sovereignty.

With regard to banking disputes, a few opinions exist under Shari′a as to whether to allow the use of conciliation. The reason for the difference in opinions

4 See Royal Order No. 4/110 of 1409 H. (1989) and Ministry of Finance Circular No. 17/5583 dated 19/09/1409 H. (1989).

5 M. Paul, 'Arbitrability of Copyright Disputes: *Desputeaux v. Les Editions Choutte* (comments)', *Canadian Business Law Journal*, 38 (2003), pp. 125–49.

6 Article 2 of the Arbitration Act of 1983.

is owing to the legal status of banking business under Shari′a law, given that Shari′a prohibits particular banking transactions. The question here is whether conciliation should be permitted where prohibited contracts are concerned. As a general rule, none of the Shari′a courts in Saudi Arabia or the Board of Grievances would decide on a dispute concerning a prohibited subject matter or, likewise, issue a decision entitling one of the parties to perform an unlawful act under Shari′a.[7] In order to determine the issue of arbitrability of a dispute in general, one needs to examine Shari′a law on conciliation as the fundamental basis for deciding the arbitrability of a dispute, especially when the process of conciliation concerns riba.

The Law on Conciliation in Saudi Arabia

Having said that disputes should be amenable to conciliation in order to be arbitrable, there are no specific rules on conciliation in the law of Saudi Arabia and the procedure depends wholly on Shari′a teachings. In the Arabic language, there is no semantic difference between conciliation and mediation – both terms can be translated as '*sulh*'. The doctrine of conciliation, or sulh, was established by the Quran, the Sunna, the teachings of the various schools of fiqh, as well as by common practice and customs. The Quranic verses recommend conciliation as a means of settlement of disputes in general and as the main mechanism for the settlement of family disputes in particular, stating that: 'If a woman senses oppression or desertion from her husband, the couple shall try to reconcile their differences and conciliation is best for them.'[8] The Quran also recommends conciliation in inheritance matters, as in the case of an unfair will, stating that: 'If anyone fears partiality or prejudice on the part of the testator, and conciliates between the parties concerned, there is no wrong in him.'[9] Moreover, the Quran regards conciliation as the best practice in the settlement of disputes generally, as the following verse recommends: 'If a person forgives and makes conciliation, his reward is due from Allah as Allah loves conciliators.'[10]

With regard to the Sunna, it was reported that the Prophet Muhammad conciliated between disputants or deferred deciding on a dispute in order to give the parties some time to reach an amiable settlement outside the court. In support of his practice, Prophet Muhammad also said that conciliation is permitted

7 This information was given by a senior judge in the Shari′a Supreme Court of Makkah, Saudi Arabia, who preferred his name to be confidential. He added that, as a general rule, Shari′a courts assume jurisdiction over all claims brought before them. They do not decide on cases that entitle a violation of Shari′a law.

8 The Quran 4: 128.

9 The Quran 2: 182.

10 The Quran 42: 40.

except if it legalizes a prohibited matter or prohibits a lawful matter.[11] After that, conciliation became a customary practice under Islamic law and an essential part of procedure before any Shari′a judge.

Under Hanbali law, the conciliation agreement is a valid contract, similar to the arbitration agreement, and all the rules applicable to the arbitration agreement should apply to the conciliation agreement *mutatis mutandis* in accordance with the general principles of contract under Shari′a.[12] Despite the latter similarities, there are some fundamental differences between conciliation and arbitration under Saudi law and Shari′a law in general. In arbitration, the arbitrators are chosen on the basis of the mutual agreement of the parties to the dispute, whereas in conciliation the entire process depends on the parties to the dispute or their representatives and the conciliators have no authority to impose their view on the parties. Unlike arbitration, there are no rules to regulate the conciliation procedure, as conciliation may be initiated by the parties to the dispute or by the judge as part of the common procedure. The issue of the predictability of the arbitral award makes conciliation less harmful to the parties, especially if one of them intends to waive some of his claims in order to end the dispute. This is because in conciliation both parties know the acceptable limits for their waiver, which are not known in arbitration. In addition, the conciliation results can be enforced in a way similar to enforcing arbitration awards provided that they take the form of an award after concluding a valid conciliation agreement or if done before the court. As with arbitration awards, a conciliation award is not enforceable without an enforcement order from the authority having original jurisdiction over the dispute, which will review the award to ensure its conformity with public policy. Judicial review is not required for the enforcement of conciliation awards concluded before the court and they carry the same strength as court decisions.[13]

Classical scholars emphasized the legality and importance of sulh as the primary basis for settling most kinds of dispute, but some scholars did not consider sulh, or the conciliation agreement, as an independent contract, as is the case with the arbitration agreement.[14] It has been argued that under Hanbali law, a conciliation agreement is not an independent agreement and cannot stand on its own. Scholars who support this view assume that there is nothing that can be called a conciliation agreement and that such agreements are to be attached to another type of contract such that the conciliation award possesses most of its features. For instance, the conciliation agreement in commercial disputes may be considered as sales contract, lease contract, gift agreement, termination of a contract agreement,

11 A. ben Gasim, *Hashiyat Alraoud Almourbi' Sharh Zad Almostaqna* (1st edn., Almatba′a Alahliyah Liloffset, 1976), Vol. 5, p. 128.

12 I. Alhamoud, *Conciliation in Commercial Disputes and its Applications*. A paper presented at the Conference on Arbitration and Conciliation, Taif, Saudi Arabia, 15-16/05/1424 H. (2004).

13 Ibid.

14 M. Ibn Qodamah, *Almoghni* (1st edn., Hajar Publications, 1992), Vol. 4, p. 322.

settlement agreement, loan agreement, etc.[15] In other words, Hanbali scholars claim that there is no conciliation in commercial disputes and what is thought to be conciliation is merely negotiation of a new contract or amendment of an existing contract. However, such an opinion seems to add even more ambiguity to the legal status of conciliation and also contradicts the contractual nature of the conciliation agreement, which is actually independent and should not be influenced by other contracts.

Conciliation Practice in Saudi Arabia

Conciliation in Criminal Disputes

Besides family disputes, conciliation is one of the primary methods for settling many kinds of criminal dispute in Saudi Arabia, especially those concerned with private injury, such as murder and personal criminal injury. Under Shari′a, any offence committed against a person is amenable to conciliation, i.e., arbitration. This issue requires a distinction between so-called 'hodoud' offences, which are those committed against society as a whole, such as terrorism, assassination and adultery; and crimes committed against individuals, such as murder and personal injury, which can be subject to conciliation proceedings. Moreover, there are some crimes that are of a mixed nature, but which are nonetheless classified under the category of hodoud, particularly theft and rape, which cannot be subject to any kind of settlement, even though they involve a private entitlement, because of their relation to state power and society and whose punishment has already been determined by the Quran. Consequently, hodoud crimes cannot be subject to any kind of extrajudicial settlement.[16]

It is obvious from case law that criminal disputes can be subject to conciliation as long as they do not concern a hodoud crime. In a case before the Shari′a Supreme Court of Riyadh, the Court ordered the execution of a murderer by beheading him in a public place; however, following a process of conciliation, a settlement was reached between the defendant and the plaintiffs, i.e., the family of the victim, which entitled the defendant to pay the amount of 1.7 million riyals in exchange for a direct waiver of the claim of execution of the defendant.[17] In order to encourage conciliation and other types of alternative dispute resolution

15 Muhammad ben Moflih, *Kitab Alforou'* (1st edn., Dar Alkotoub Alilmiyah, 2003), Vol. 4, p. 268.

16 M. Ibn Taymiyyah, *Majmou' Alfatawa* (2nd edn., The Ministry of Islamic Affairs of Saudi Arabia, 1995), Vol. 3, p. 139. If an offence is not reported to an authority, i.e., the court or the police, the persons who are concerned with the offence have the right not to report it; nonetheless, the settlement is of no value if the claim reaches the authority.

17 See A. Aloraini, 'Conciliation in Criminal Matters', *Al-Adl Journal*, 8 (2001), pp. 1–23.

in general, Saudi courts prefer to delay the execution of particular sentences in order to give third parties the chance to intervene between disputants and thus save the guilty party from the death penalty. This tendency has its roots in the practice of the companions of the Prophet, as Omar ben Alkhattab, the second Caliph after the Prophet, said: 'Defer the issuance of your judgments; let the disputants conciliate.'[18] In another case where conciliation was involved, the parties reached a settlement requiring the defendant to pay double the amount of the actual compensation in exchange for a prompt waiver of the plaintiff's right. In this case, the plaintiff was shot by the defendant and, as a result, the plaintiff was rendered paralysed, which, according to the law, entitled him to receive damages of 500,000 riyals. The defendant preferred to pay the amount of one million riyals and get released from prison promptly.[19] No statistics exist concerning the exact number of criminal cases in which conciliation has been involved, but it may be said that conciliation has been a great influence on the finality of decisions in criminal matters in Saudi Arabia.

Conciliation in Commercial Disputes

Conciliation in commercial disputes has been divided into two main types according to the characteristics of the conciliation award: the first is '*sulh moua'wadah*' and the other is '*sulh isqat*'.[20] The second type of sulh, i.e. sulh isqat, is the one that is most related to banking disputes nowadays because such disputes mainly involve financial claims – settlement may be reached through reducing the amount of the claim or rescheduling the remainder of the claim.[21] In a claim brought before the Shari′a Supreme Court in Taif, Saudi Arabia, a conciliation award was approved by the Court in order to reduce the amount claimed by the plaintiff from 840,000 riyals to 700,000 riyals, subject to immediate payment.[22] The conciliation award can also assist in rescheduling a claim, as was achieved in another case brought before the Board of Grievances, where the plaintiff agreed to reschedule his claim against the defendant if the defendant paid the instalments on time; otherwise, the payment of the full amount was due on demand at any time.[23] The same kind of sulh may also result in rescheduling the payment of outstanding claims, which is accepted by Shari′a as long as the deferral of the payment itself does not bring

18 T. Alonaizan, 'Conciliation Before and After the Death of the Victim', *Al-Adl Journal*, 7 (2000), pp. 1–29.

19 Ibid.

20 Sulh moua′wadah results usually in a barter deal between the parties to the dispute, whereas in sulh isqat, one of the parties waivers or discounts part of the claim.

21 Supra n. 11, ben Gasim, Vol. 5, p. 141.

22 See sulh document No. 51 dated 26/06/1421 H. (2001) from the Supreme Shari′a Court of Taif (Saudi Arabia).

23 The Board of Grievances decision No. 369/2/Q of 1421 H. (2001).

any benefit to the claimant; otherwise, such deferral would be considered as riba or usury.[24]

Sulh can also result in a total waiver of a part of the claim, while also simultaneously discounting another part of the same claim, as occurred in the following case. A company claimed a payment of 192,084 riyals as damages for some defective goods, in addition to an amount of 300,000 riyals as compensation for certain direct and indirect losses as a result of faulty goods. The Board of Grievances approved a conciliation award entitling the defendant to pay only the amount of SR 120,000 out of the SR 492,084 initially claimed by the plaintiff. In this case, the parties agreed to reduce the amount of the claim from SR 492,084 to SR 120,000 and omit the payment of the compensation.[25]

The above-quoted cases constitute examples for claims arising out of normal commerce and not from banking activities. If the claim relates to banking business, Shari′a courts and the Board of Grievances will not approve the conciliation award unless the conciliation award discards the interest and requires payment of the capital initially received from the bank without any additional cost. Nonetheless, the voluntary payment of interest can still be an effective extrajudicial method for the settlement of banking interest disputes, although the enforcement of the conciliation award is totally dependent on the good faith of the parties to the dispute, as well as on the business relationship established between them.[26]

Despite the argument that conciliation is inapplicable in prohibited subject matters, common practice nowadays clearly suggests that banking disputes can be subject to conciliation in accordance with the main principles of Shari′a and the general Quranic verses, as well as the tradition of the Prophet, which did not specify the scope of conciliation. Moreover, the following Quranic verse encourages people to give more flexibility in terms of rescheduling repayment of a debt if the borrower is facing hardship and is unable to pay the sum owed on time: 'If the debtor is in hardship, let him have respite until it is easier, but if you forego out of charity, it is better for you if you realize.'[27] Although, the latter Quranic verse does not include the word conciliation, the conciliatory spirit can be felt within its teachings.

Theoretically, banking disputes are arbitrable in Saudi Arabia because they can be subject to conciliation, whereas, in reality, banks are faced with a great deal of discrimination when it comes to the ratification of arbitration agreements and the execution of arbitral awards. This discriminatory treatment may have negative effects on many aspects of Saudi Arabia's commercial and social life. Banks may restrict the provision of conventional banking facilities, on the basis that the settlement of disputes arising out of related transactions may not be fair for

24 The Board of Grievances decisions 'Makkah branch' No. 992/2/Q of 1421 H. (2001).

25 The Board of Grievances decision No. 651/1/Q of 1423 H. (2003).

26 This piece of information was given by Mr. Ahmad Mazhar, in an informal visit to his law firm in Jeddah Saudi Arabia on 20 December 2007.

27 The Quran 1: 280.

the bank. For the same reason, the restriction in the provision of banking facilities might slow economic growth, especially when the alternative is more costly for customers.[28] Another direct effect of the unfair treatment of banking disputes can be seen in attempts to avoid choosing Saudi Arabia as the applicable forum, where it would otherwise be the most convenient forum for the particular conventional banking dispute. For the sake of public interest, banking disputes should receive more attention both in arbitration and in litigation, because any discrimination against the banks has the potential to undermine the credibility of Saudi Arabia as a potential financial centre and may slow the flow of foreign investment to the kingdom.

The Arbitration Clause and Arbitration Agreement in Financial Transactions in Saudi Arabia

As a general principle of Shari′a contract law, parties to the contract are free to stipulate whatever they want. According to some schools of fiqh, there are restrictions on this principle and conformity with the general principles of Shari′a is required.[29] Following the principle of freedom of contract as established in Ibn Taymiyyah's treatises, arbitration clauses or agreements of this nature (*compromis*) are permissible even if the subject matter of the dispute at issue is prohibited.[30] This opinion enhances the autonomy of the arbitration agreement as an agreement separate from the underlying transaction and drives us to regard arbitration agreements related to banking transactions as lawful independent agreements of their own accord, regardless of the subject matter of the dispute. The following few paragraphs will not discuss the legality of arbitration agreements concerned with banking transactions, this being the subject of a long-contested debate in the field of contract law. It will instead discuss the use of arbitration clauses in banking transactions in Saudi Arabia.

In the light of common practice, financial transactions in Saudi Arabia can be classified as either Islamic or conventional. The classification is undertaken in accordance with the nature of the transaction as a whole and whether it is Shari′a compliant. Nonetheless, the law treats each class of disputes differently, as disputes relating to Islamic banking are settled like any other normal commercial

28 When considering Islamic banking as an alternative to the conventional banking system, the Islamic banking system has not been developed to attract large-scale businesses and the cost of Islamic facilities is almost the same as the conventional ones, if it not higher. For more details see M. El-Gamal, *Islamic Finance, Law, Economics and Practice* (1st edn., Cambridge University Press, 2006), pp. 77–78.

29 N. Hammad, 'Adhesion Contracts in the Islamic Jurisprudence', *Al-Adl Journal*, 24 (2005), pp. 51–78.

30 See, generally, F. Vogel and S. Hayes, *Islamic Law and Finance: Religion, Risk and Return* (1st edn., Kluwer Law International, 1998), Chapter 5, pp. 97–128.

dispute, given that Islamic banks theoretically function in a manner similar to normal commerce. In such transactions, the arbitration clause usually provides for the settlement of disputes by means of domestic arbitration in accordance with the Arbitration Act of 1983 of Saudi Arabia and under the supervision of the *Diwan Almazalim*.[31] In these cases, the arbitration is performed normally without any impediment and the award is enforced in a way similar to that of the enforcement of any ordinary arbitral award. This is owing to the nature of Islamic banking transactions, which repackages the underlying transaction from a loan agreement with interest to a sales transaction in order to avoid riba.[32]

Domestic conventional banking transactions are arbitrable in principle; however, when it comes to the ratification of an arbitration agreement or the enforcement of an arbitral award, arbitration might encounter some obstacles from *Diwan Almazalim*, it being the supervisory body for arbitration proceedings in Saudi Arabia.[33] The *Diwan*'s attitude does not seem to serve the main objectives behind resorting to arbitration as a fast, cheap and reliable dispute settlement mechanism; moreover, some of the decisions of the *Diwan* can be considered as a great waste of time and resources that undermines the credibility of arbitration in general. Nowadays, arbitration for the settlement of domestic conventional banking disputes has proved to be ineffective, as will be seen below.

As a general rule, if both parties to the contract are of Saudi nationality, their choices for adopting a method of dispute settlement are very limited. Saudi parties have to resort either to the Committee for the Settlement of Banking Disputes or to arbitration in Saudi Arabia, which excludes all those elements that are deemed to violate Shari′a, i.e., interest accruing from the enforcement order.[34] On the other hand, the existence of a foreign element to the arbitration agreement can offer more choices to the disputants and the resort to international arbitration anywhere in the world can become a possible option provided that, for the purpose of enforcement in Saudi Arabia, the arbitral award is in conformity with Shari′a rules.[35] It has been noted that the *Diwan* upholds the parties' right to arbitrate wherever they stipulate, as long as a foreign element exists in the dispute. In a former dispute between a Saudi bank and a foreign company, the arbitration agreement provided for the settlement of disputes arising out of the contract by means of arbitration in Zurich, subject to the rules of the International Chamber of Commerce. The foreign party insisted that Saudi Arabia be the seat of the arbitration proceeding

31 This piece of information has been provided by the Shari′a Compliance Officer at the Islamic Retail Banking Division of one of the commercial banks in Saudi Arabia (12 January 2008).

32 For more details on this kind of transaction, please see A. Saeed, *Islamic Banking and Interest* (2nd edn., Brill Publishers, 1999). See also T. El Diwany, *The Problem with Interest* (2nd edn., Kreatoc Ltd, 2003), pp. 135–92.

33 See *Diwan Almazalim* decision No. 50/1418 dated 24/01/1409 H. (1988).

34 See *Diwan Almazalim* decision No. 59/1419 dated 28/10/1419 H. (1999).

35 This information was provided by an official in the Saudi Arabian Monetary Agency, who prefers his name to be confidential (7 January 2008).

and that Shari′a be the substantive law applicable to the dispute. It was obvious that the foreign party was trying to escape the payment of interest as provided in the loan agreement between the parties to the dispute. However, the *Diwan* issued a decision denying the jurisdiction over the dispute on the grounds of the existence of an arbitration agreement with which the parties had an obligation to comply and resort to arbitration in Zurich and under the rules of the ICC. The Review Committee stated:

> [T]he *Diwan* has no jurisdiction over this dispute for two reasons; first, the existence of the arbitration agreement. The parties should resort to arbitration in Zurich as they stipulated. Secondly, the *Diwan* is not the authority with original jurisdiction over the dispute and the parties. We conclude that the parties to the dispute should either resort to arbitration in accordance with the arbitration agreement or refer the case to the Committee for the Settlement of Banking Disputes of the Saudi Arabian Monetary Agency.[36]

It can be said that having a foreign party involved in a dispute is the only way to enforce the full payment of interest. This method has been upheld by the *Diwan*, but on what grounds? There are two main arguments surrounding this issue and one of them suggests that the *Diwan* allows resorting to international arbitration on the grounds of the principle of Alaqd Shari′ at Almouta′qedeen, which is the Islamic equivalent for *Pacta Sunt Servanda*. It may be understood from this view that the parties to the arbitration agreement are obliged to respect the terms of the said agreement as long as they are allowed to. Another argument suggests, however, that the *Diwan* does not rely on the principles of contract law, not because it wants to enhance the freedom of contracts generally, but because it is instead forced to uphold original arbitration clauses because it lacks competence over disputes. There is then no possible defence against the insistence on the right to arbitrate outside Saudi Arabia. This issue will be elaborated in more detail below.

Duality in the Saudi Legal System: Banking Interest as an Example

In Saudi Arabia, the existence of two governing bodies of law with regard to banking business has created a great deal of uncertainty. The uncertainty has not been caused by the existence of the two bodies themselves; rather, it has been created because both bodies of law contradict each other in some very sensitive matters. Interest payment is one of the main points of conflict between Shari′a and existing banking regulations and practices because, despite the fact that it represents the main motive for the conventional banking system, it is prohibited

36 The author was given access to the archive of a Saudi commercial bank on the condition that all the relevant information about the parties and the dispute remain confidential.

under Shari′a. In Saudi Arabia, judicial review will lead to an indirect application of Shari′a law if the arbitration is governed by a law other than Shari′a or Saudi law, or is granted in a non-Muslim country. When *Diwan Almazalim* reviews an arbitral award, it searches for any contradiction of the main Shari′a principles as well as contradictions of other areas of public order. If contradictions are found, the party seeking the enforcement of the award will have two options: enforce the award after excluding the part contradicting public policy; or refer the entire dispute to the competent authority to decide the case anew.

In the second scenario, the competent authority is the *Diwan* itself, one of the Committees of the Ministry of Commerce and Industry or the Committee for the Settlement of Banking Disputes of SAMA. Disputes relating to conventional banking are a clear example of the duality in the Saudi legal system for the reason that the *Diwan*, as the competent authority for the enforcement of arbitral awards, will not enforce the parts that contradict Shari′a, whereas someone else would. Despite the willingness of the Committee for the Settlement of Banking Disputes to enforce interest payment, it is unable to impose its decisions and force the losing parties to comply fully with its judgments. The weakness in the enforceability of the Committee's decisions is owing to its nature, which does not give it the power to act as a judicial committee – if it were considered so, it would have to comply with Shari′a rules, which is not the reason for its existence.

Another face of this duality can be found even in the existence of the Committee for the Settlement of Banking Disputes itself. The function of the Committee contradicts article 1 of the Basic Law, which states that '[t]he Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; the Quran and the Sunnah are its constitution', and article 7, which states that 'the Government in Saudi Arabia derives power from the Holy Quran and the Prophet's tradition'.[37] Although the Committee for the Settlement of Banking Disputes works under the supervision of SAMA, the function of the Committee violates article 6 of the Charter of the Saudi Arabian Monetary Agency, which does not allow SAMA to act in any manner which contradicts the teachings of Islamic law. What the Committee does can be considered as support of a prohibited activity under Shari′a.[38] The argument for the prohibition of the function of the Committee comes from a well-known principle under Shari′a that provides for the prohibition of all activities associated with riba, as will be seen below. The legal status of interest under Shari′a and under the statute law of Saudi Arabia as a sign of contradicting duality within the legal system, as well as the methods of settling banking disputes, will be examined in the next part of this chapter.

---

37 The Basic Law of Saudi Arabia, issued by Royal Decree No. A/90 dated 27/08/1412 H. (1992). *Umm Alqura Gazette*, issue No. 3397 dated 02/09/1412 H. (1992).

38 See, generally, article 6 of the Charter of the Saudi Arabian Monetary Agency. Issued by Royal Decree No. 23 dated 23/05/1377 H. (1957). *Umm Alqura Gazette*, issue No. 1698 dated 06/06/1377 H. (1957).

Interest under Shari′a

The issue of interest has been a religious and ethical dilemma for many Muslim businessmen since the early years of Islam for many reasons. First, usury, or riba, is very similar to some kinds of sales contracts, especially futures contracts for the sale of not-yet-existing subject matters, known as 'bay′ al salam'. The argument for riba in the Quran can be seen in the following verse: 'They said "Trade is like interest" while Allah has permitted trade and forbidden interest.'[39] Second, interest is the main motive for modern banking business and can be considered as the cornerstone of any modern economy.

Islam came to abolish some of the pre-Islamic practices in order to protect the whole society from their negative effects. In the pre-Islamic era, charging interest was a standard condition for any loan agreement; however, the total prohibition went through different stages and took a long time during the life of Prophet Muhammad to become final. When looking at the religious basis of the prohibition of riba, the complete ban has gone through four stages, starting with showing that riba is not recommended for Muslims and that they should avoid it as much as they can, and ending up with a definite prohibition.

The first stage discouraged people from charging interest over loans given to other people, a discouragement that can be understood through the following verse: 'That which you give as interest to increase within other people's wealth increases not with Allah; but that which you give in charity, seeking the goodwill of Allah, multiplies manifold.'[40]

In the second stage, the prohibition took the form of reminding Muslims what previous nations had done before the Quran showed that their practices were not the right thing to do. The following verse might indicate that Muslims should stop charging interest over loans: 'And for their taking interest even though it was forbidden for them, and their wrongful appropriation of other peoples' property, we have prepared for those among them who reject faith a grievous punishment.'[41]

The third stage clearly demonstrated that riba was prohibited and therefore a sin. It can be seen in the following verse that riba had not yet quite reached the level of being one of the major sins that Muslims must not even get close to: 'O believers, take not doubled and redoubled interest, and fear Allah so that you may prosper. Fear the fire which has been prepared for those who reject faith, and obey Allah and the Prophet so that you may receive mercy.'[42]

In the fourth and final stages, the prohibition of riba became final – since then it has been considered as one of the major sins, i.e., very close to murder, worse than adultery and similar in guilt to terrorism, which can be understood through the following verses of the Quran:

39 The Quran 1: 275.
40 The Quran 30: 39.
41 The Quran 4: 161.
42 The Quran 2: 130.