



Legal Groundwork for the Practice of Islamic Finance in Central Europe

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Reasons behind growing Islamic Finance in Europe



- Growing Shariah compliant assets in western countries, two reasons
- An opportunity for entrepreneur, investment
- Growing muslim population living in the West
- Considerable need for Islamic Finance awareness in the West



Islamic Finance outside of Islamic world

- USA, Canada
- European countries
- Central Europe: Austria, Germany, Lichtenstein, Slovenia, Switzerland („Alpen“ countries) and Czech republic, Hungaria, Poland, Slovakia (Visegrad group)
- Term Central European countries from history: 1814 Vienna congress



Visegrad 4 countries

- History: 1335 Karel I. Robert (Hungary), Jan Lucembursky (Czech) and Kazimir III (Poland)
- 1991: Hungary, Czechoslovakia and Poland
- 1993: Czech Republic, Slovakia
- Political and economical partnership
- Similarity in the legal system in V4
- Similarity in the legal system in Central European countries

Legal system in „Islamic“ countries



- The term „Islamic“ countries
- Legislation based on Shariah
- Islamic Finance practice within the Shariah legislation



Legal system in non Islamic countries

- Common law countries
- Continental law countries
- Central Europe
- Visegrad 4
- Similarity and difference with Shariah based legal system
- Conflict of law?

Choice of Law in Islamic Finance contracts



- Choice of law as one of the elements for the practice of Islamic Finance in Central Europe
- Principle of choice of law in international contracts
- EU Regulation of choice of law (Rome, Rome I.)
- National regulation of choice of law (EU)



Choice of Law in the Regulation Rome I.

- Article 3(1)
- 1. *A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.*



Public Policy in the Regulation Rome I.

- Art. 21:
- *The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (order public) of the forum.*

Choice of law –the Czech republic example



- Civil and commercial law contracts
- EU Regulation Rome I.
- National legislation
- International private law Code, Art. 9
Commercial Code, Art. 261, Art. 714 (Bank contract)
- Civil Code, Art. 51
- Public Policy-International private law Code,
Rome I. Regulation



Czech Republic example

- Amended contract legislation (Commercial Code, Civil Code, International private law Code) in force since 1st January 2014
- Changes in the contract law
- New regulation of usury
- Term „disproportionate shortening“ relating to the interest and usury



Choice of Law in Islamic Finance

- Shariah as a choice of law?
- Shariah clauses in contracts
- Lex mercatoria
- Law of an „Islamic“ country as a choice of law?
- Public policy



Choice of law in Islamic Finance

- Jurisprudence of European courts in Islamic finance contracts
- Specificity of EU Central, V4) market and legal framework
- Non-state law in European jurisdiction



Choice of law in Islamic Finance

- Shamil Bank of Bahrain x Beximco Pharmaceutical Ltd. (UK) as a precedent of the UK court, delivered in 2004
- Choice of law according Roma I. In this contract:
„Subject to the principles of the Glorious Sharia’a, this agreement shall be governed by and construed in accordance with the laws of England”
- Beximco: The contract is invalid as contains a hidden riba
- British court: ***IF*** the choice of law is valid, than Beximxo may succeed



Execution of Islamic Finance Contracts

- Execution of Islamic law contracts: Courts, ADR
- Disputes of Islamic finance contracts under European legislation
- Civil law process
- Public policy in courts decisions



ADR in Islamic Finance

- ADR in Islamic Finance
- ADR in Europe, EU
- Central Europe and V4
- Public policy in ADR
- Execution of ADR
- Court dissolution



Islamic Finance in Europe

- Compatibility of legislation
- Differences
- Tax law
- Real estate regulation
- Contract law

Future of Islamic Finance in Central Europe



- Islamic Finance principle – compatible with the central European legislation?
- Legislation changes
- Inspiration
- Choice of Law
- Public awareness
- Understanding of Islamic Law principles

Islamic Finance – an alternative?



- Thank you very much for your attention.
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