

**The Use of Arbitration and ADR in International Banking  
and Trade Sectors**

**ICC-UAB Joint Conference – Paris, 26 May 2023**

# Arbitration of Islamic finance disputes

**Dr Amel Makhlouf**

Attorney at Law (Paris); Research Associate, Centre of  
Islamic and Middle Eastern Law, SOAS University of London





# An introduction to Islamic finance



# Conventional vs sharī'ah-compliant transactions

---

Emergence of Islamic finance: a new industry?

---

Principles governing sharī'ah-compliant transactions:

- Prohibition of *ribā* (usury)
- Prohibition of *gharar* (excessive risk)
- Prohibition of *maysir* (speculation)
- Sharī'ah-compliance of the subject-matter
- Issuance of a fatwa (Islamic legal opinion)



# Conventional vs sharī'ah-compliant transactions

Theoretical model: profit- and loss-sharing transactions

Practical model: trade-based instruments backed by assets and leasing products

Dominant modes of financing used by Islamic banks in the MENA region



# Dominant modes of financing

---

**Murābahah:** cost-plus sale contract whereby the seller sells specified assets or commodities to a customer, generally involving an immediate delivery with a deferred payment.

---

**Bay' al-īnah:** double sale used to circumvent the prohibition of lending with interest.

---

**Tawarruq:** an alternative to bay' al-īnah which involves a same-item sale-repurchase with a third-party intermediary.

---

**Ijārah:** leasing.



# The suitability of arbitration to resolve Islamic finance disputes



# The use of sharī'ah-compliant arbitration

The use of ADR in Islamic law: *ṣulḥ* (mediation) and *taḥkīm* (arbitration)

Definition and need for sharī'ah-compliant arbitration

Sharī'ah as the choice of law governing arbitration agreements



# Practical challenges in Islamic finance arbitration

---

The need for sharī'ah-compliant arbitration rules

---

The prohibition of *ribā* vs the use of *ta'widh* (compensation for late payment) and *gharamah* (penalty)

---

The use of third-party funding

---

The rise of Islamic FinTech and cryptocurrency disputes in the MENA region





thank you for your attention

شكرا على حسن استماعكم

**Amel Makhlouf**  
Avocate à la Cour  
Docteur en Droit

M +33 (0)7 67 46 23 08  
amakhlouf@amakhlouf-avocat.com  
www.amakhlouf-avocat.com

131 boulevard Pereire  
75017 Paris | France

**ICC**  
International  
Court of Arbitration®  
100 years



**SOAS**  
University of London

**M**  
avocat