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**HOW ISLAMIC COMMERCIAL CONTRACTS BRING ISLAM INTO
THE INTERNATIONAL INVESTMENT LAW?**

Abstract. Today, international investments have increased using Islamic commercial contracts. These contracts can be divided into five areas, including 1. Contracts based on purchase and sale, 2. Contracts based on partnership, 3. Contracts based on lease, 4. Contracts based on payment, and 5. Other contracts. The thing is that these contracts have brought Islam into the field of international investment law. Purpose: the main purpose of the article is to answer this question, how have Islamic commercial contracts brought Islam into international investment law? Research Methods: In this study, quantitative and qualitative methods have been used to examine how Islamic commercial contracts play role in investment process. Conclusion: In response to the main question, the current article has concluded that Islamic commercial contracts, given their nature, bring Islam into international investment law in three steps: first, in the direction of concluding a contract, second, in line with the using the opinions of international Islamic councils, and third, in connection with the arising international investment disputes.

Keywords: Islamic contracts, Islam, international, investment law

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Научная статья

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КАК ИСЛАМСКИЕ КОММЕРЧЕСКИЕ КОНТРАКТЫ ПРИВНОСЯТ ИСЛАМ В МЕЖДУНАРОДНОЕ ИНВЕСТИЦИОННОЕ ПРАВО?

Аннотация. Сегодня международные инвестиции увеличиваются за счет исламских коммерческих контрактов. Эти контракты можно разделить на пять видов: договоры, основанные на купле–продаже; договоры, основанные на партнерстве; договоры, основанные на аренде; договоры, основанные на платежах и прочие договоры. Следует отметить, что все эти договоры привнесли ислам в сферу международного инвестиционного права. Цель: ответить на вопрос, каким образом исламские коммерческие контракты привносят ислам в международное инвестиционное право. Метод исследования: в статье были использованы количественные и качественные методы для изучения роли исламских коммерческих контрактов в инвестиционном процессе. Выводы: исламские коммерческие контракты, учитывая их природу, привносят ислам в международное инвестиционное право на трех этапах: во-первых, в направлении заключения контракта, во-вторых, в соответствии с использованием мнений международных исламских советов, и, в-третьих, в связи с возникающими международными инвестиционными спорами.

Ключевые слова: исламские контракты, ислам, международное право, инвестиционное право

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Introduction. According to the Organization of Islamic Cooperation, there are about 57 Islamic countries in the world today¹. The relations of these states in the international community have shown that today, investors or economic operators of them are paying more attention to Islamic commercial contracts than ever before [1]. This has caused international investment law to connect with Islam today through Islamic commercial contracts [2], including financial and banking contracts. Islamic commercial contracts can be divided into five groups: 1. Contracts based on

¹ Members of Islamic cooperation organization in March 2025 [Electronic resource]. URL: <https://www.oic-oci.org/> (accessed: March 3, 2025).

purchase and sale; 2. Contracts based on partnership; 3. Contracts based on lease; 4. Contracts based on payment; 5. Other contracts.

Muslim and non-Muslim investors use these contracts in an international investment process in an Islamic country due to the usefulness of Islamic commercial contracts in two ways: First, an Islamic commercial contract such as an *Istisna* contract is concluded as the main investment contract between the investor and the host country. Second, Islamic commercial contracts such as *Tawarruq* or *Mudaraba* are concluded in line with a main investment contract². The main point is that Islamic commercial contracts, whether concluded as a main contract or as a secondary contract in line with the main contract, ensure the presence of Sharia rules in the international investment process [3]. In this article, in order to answer the main question of how Islamic contracts introduce Sharia rules into international investment law, there are three hypotheses: 1. When international investors, both Muslim and non-Muslim, refer to Islamic commercial contracts for an international investment, they should conclude these contracts taking into account Sharia principles. 2. If international investors do not pay attention to the rules and principles of Sharia when concluding international commercial contracts, this can undoubtedly lead to international investment disputes. 3. Today, the Islamic world has established Islamic or Sharia councils to reduce future disputes in international economic relations, which can guide investors in concluding accurate commercial contracts based on Sharia principles.

In line with the questions and hypotheses raised, present article consists of five parts: The first part describes the types of Islamic commercial contracts that investors can use in the international investment process. The second part describes the principles of Sharia in two axes: prohibited and permitted ones, which international investors must apply to new Islamic contracts. The third part focuses on the role of Islamic councils in international investment. The fourth part states that if Sharia principles are not taken into account under Islamic contracts, international investment disputes can be raised in international arbitration centers. Finally, the fifth part concludes.

Types of Islamic commercial contracts. International investors can use Islamic commercial contracts within the international investment process in two ways: first, investors conclude Islamic contracts as the main investment contracts and second, sometimes they turn to Islamic investment contracts to advance the main investment contract, such as concluding an Islamic insurance contract (*Takaful*) with an Islamic insurer to guarantee international investment process [4]. The noteworthy point about Islamic contracts is that although Islamic contracts are based on a religious system, non-Muslim investors can also use this Islamic financial and commer-

² Nicholas HD Foster. Islamic Commercial Law: An Overview [Electronic resource]. URL: https://indret.com/wp-content/themes/indret/pdf/384_en.pdf (accessed: March 3, 2025).

cial system [5]. In this section, I will divide these contracts in the following table (see, table 1).

Table 1

**Types of Islamic commercial contracts in Investment process
(Source: author's investigation)**

Types of Islamic commercial contracts	1. Islamic contracts based on sell and purchase	Murabaha (cost plus) Istisna (construction) Salam (deferral of delivery) Tawarruq (monetization) Urbun (earnest money) Inah (reverse purchase and sale) Sarf (currency exchange)
	2. Islamic contracts based on the partnership	Mudarabah (Profit Sharing) Musharaka (Profit and Loss Sharing)
	3. Islamic contracts based on the lease	Ijara (leasing) Ijara bi shart Tamlik (rent with subsequent sale)
	4. Islamic contracts based on the payment	Wadiya (storage) Wakala (agency)
	5. Other Islamic contracts	Qard (interest-free loan) Kafala (guarantee) Hiba (gift) Ibra' (discount) Mukasa (offset) Rakhnu (pawn shop)

Principles of Shariah under international investment law. International investors should pay attention to the principles of Shariah when concluding Islamic commercial contracts, because Islamic contracts are based on the principles of Shariah [6]. Although these contracts have their own specificities and characteristics, in general, two basic principles are considered by Shariah for all these contracts: first, negative principles and second, positive principles [7]. Negative principles mean principles that international investors should not follow them in concluding Islamic contracts. If an Islamic contract is concluded without paying attention to the negative principles, it will undoubtedly create challenges for the investment process. Positive principles also mean principles that investors should follow in concluding an Islamic contract. I divide these principles in the following table (see, table 2).

Common principles within Islamic commercial contracts
(Source: author's investigation)

Common principles in Islamic commercial contracts	Negative principles	Prohibition of Riba (Interest): This is the cornerstone. Instead of receiving fixed interest on loans, Islamic finance uses structures based on profit sharing, rent or other permitted arrangements [8].
		Prohibition of Gharar (undue uncertainty): Contracts must be clear, transparent and free from ambiguity. Excessive uncertainty regarding price, quantity or delivery time is not allowed [9].
		Prohibition of Maysir (speculative activities): Islamic finance prohibits gambling and excessive speculation, focusing on real economic activities and asset-related transactions [10].
	Positive principles	Compliance with Shariah Principles: All financial transactions must be reviewed by the Shariah Supervisory Board to ensure compliance [11].
		Risk Sharing: Islamic finance promotes the sharing of both profits and losses. This contrasts with conventional finance, where the lender generally bears no risk other than the risk of default by the borrower. This leads to a more equitable distribution of wealth and discourages reckless behavior.

Role of Islamic councils in international investment process. Today, Islamic councils play an important role in international economic relations. As I have stated, international investors must conclude Islamic contracts in accordance with the principles of Islamic law, but the point is that in many cases these investors have little or no information about the principles of Sharia. Therefore, to prevent future international disputes, Islamic councils have been established in the international community to guide economic operators or investors in concluding Islamic contracts in corrects framework. Currently, Islamic councils are present in the international community at three levels. The following table shows the different levels of these councils (see, table 3).

Table 3

The levels of International Islamic councils (Source: author's investigation)

International Islamic councils	International level, such as the Islamic Fiqh Academy of the Organization of Islamic Cooperation ³ and the Accounting Organization for Islamic Financial Institutions Shariah Board ⁴ .
	National level, such as the Shariah Advisory Council of the Securities Commission of Malaysia, established in 1993 ⁵ .
	Banking Level – The Shariah Advisory Council of Bank Negara Malaysia was established in May 1997 as the highest Shariah body for Islamic financial institutions in Malaysia ⁶ .

International investors can seek advice from Islamic councils at any stage of the international investment process. The most well-known of these councils are currently the Islamic Fiqh Academy of the Organization of Islamic Cooperation and the Shariah advisory council of Bank Negara Malaysia, which actively advise economic operators, businessmen and international investors.

Islamic commercial contracts and international investment disputes. As I have stated, the strict implementation of Sharia principles in Islamic contracts is very important, and for this reason, Sharia councils play an active role in international investment relations today [12]. However, the lack of attention to Sharia principles can lead to international disputes. As in recent years, with the increasing use of Islamic commercial contracts by international investors and the lack of careful attention to the framework of Sharia principles in these contracts, international investment disputes have been referred to international arbitration centers. I will present four prominent examples that have been raised in recent years in line with Islamic contracts in the table below (see, table 4).

³ The International Islamic Fiqh Academy, 2025 [Electronic resource]. URL: <https://iifa-aifi.org/en> (accessed: March 3, 2025).

⁴ For more information about this organization refer to, URL: <https://www.iasplus.com/en/resources/topics/islamic-accounting> (accessed: March 3, 2025).

⁵ For more information about the council see, URL: <https://www.sc.com.my/development/icm/shariah/members-of-the-shariah-advisory-council> (accessed: March 3, 2025).

⁶ Bank Negara. Summary of The Shariah Advisory Council of Bank Negara Malaysia (SAC) Ruling on Implementation of New Features of Sell and Buy Back Agreement (SBBA), 16 July 2024 [Electronic resource]. URL: <https://www.bnm.gov.my/-/sacbnm-239-mtg-ruling> (accessed: March 3, 2025).

**International investment disputes based on Islamic commercial contracts
(Source: author's investigation)**

International investment disputes	Islamic contract	Parties to dispute	Arbitration centers	Year
	Murabaha Financing Dispute	Middle East Bank v Asian Conglomerate	Dubai International Arbitration Centre (DIAC)	2020
	Sukuk Default Case	Persian Gulf co-operation council Sovereign Wealth Fund v. European Investors	London Court of International Arbitration (LCIA)	2021
	Istiasna Construction Contract	Saudi Arabian developer vs Turkish contractor Arbitration Centre	Saudi Centre for Commercial Arbitration (SCCA)	2022
	Takaful Insurance Dispute	UAE Insured vs. Omani Corporate Client	Abu Dhabi Global Market Arbitration Centre	2023

The common point among these international investment disputes is that they are all based on a lack of attention to Islamic principles. In effect, one party to the investment process has claimed that the other party has not adhered to the principles of Sharia under the relevant commercial contract [13]. In other words, one of the parties has violated the Islamic principles incorporated in the Islamic commercial contract.

Conclusion. Today, the use of Islamic commercial contracts in the international investment process has increased. International investors, especially in Islamic states such as the Arab countries of the Persian Gulf (Saudi Arabia, the United Arab Emirates, Qatar, Kuwait, Oman and Bahrain) or Southeast Asian states such as Malaysia and Indonesia, use Islamic contracts as the main investment contract or a secondary one. In economic and investment relations between the host state and international investors, Islamic contracts bring Islam into international investment law in three common ways. First, when international investors and the host state conclude an Islamic commercial contract. In this regard, the parties to international investment must pay attention to Islamic principles, including negative principles,

namely the prohibition of Riba, the prohibition of Gharar and the prohibition of Maysir, as well as positive principles, namely the compliance of the contract with the dimensions of Sharia and the principle of risk sharing in the investment process. Second, when international investors refer to international Islamic councils to conclude international commercial contracts in correct framework. In fact, international investors want to know how to consider a logical framework based on the Sharia principles for Islamic commercial contracts. In this direction, Islamic councils play a very important role in the international investment process. The third is when the parties to an international investment process have not paid attention to the Islamic dimensions or Sharia principles in the Islamic commercial contract and an investment dispute has arisen. The parties refer this dispute to the dispute resolution centers. In this regard, to resolve the dispute, the arbitrator refers to the Islamic principles to see on what basis a valid Islamic contract is concluded or may also use the opinions of international Islamic councils such as the Academy of Fiqh of the Organization of Islamic Cooperation. Therefore, given the situation, the arbitrator in an international investment dispute also refers to Islamic principles.

References

1. Abadikhah M. Pre-Investment Protection in Connection with Shariah Law under International Investment Law. *The Rule-of-Law State: Theory and Practice*, 2024, no. 4(78), pp. 202–211. (In English).
2. Abadikha M. Is There Any Contrast between Fair and Equitable Treatment and Public Interests under International Investment Agreements and Investor-State Arbitration? *The Rule-of-Law State: Theory and Practice*, 2021, no. 4(66), pp. 230–246. (In English).
3. Tareq Moqbel, Habib Ah. Flexibility and Shari‘ah Compliance of Islamic Financial Contracts: An Evaluative Framework. *Arab Law Quarterly*, vol. 35, no. 1–2, pp. 92–115. Available at: https://brill.com/view/journals/alq/35/1-2/article-p92_5.xml (accessed: 03.03.2025). (In English).
4. Abadikhah M. Islamic Insurance and Foreign Investment Process: a Basic Analysis Regarding Takaful Laws of the Arab states of the Persian Gulf. *Bulletin of the Institute of Law of the Bashkir State University*, 2024, vol.7, no. 4 (24), pp. 11–19. (In English).
5. Layli Nurnayaty. Why Non-Muslims Become Customers of Islamic Banking? *Journal of Studies and Applied Economics*, 2021, vol. 39–12. Available at: <https://ojs.ual.es/ojs/index.php/eea/article/view/6336/5673> (accessed 03.03.2025).

6. Abadikhah M. Mediation as an Amicable Means within the Investor–State Dispute Settlement Clause: A Basic Survey of Russian Bilateral Investment Treaties. *The Rule-of-Law State: Theory and Practice*, 2024, no.1, pp.203–213. (In English).
7. Mumtaz Hussain, Asghar Shahmoradi, Rima Turk. An Overview of Islamic Finance. IMF Working Paper, 2015, 35 p. Available at: <https://www.imf.org/external/pubs/ft/wp/2015/wp15120.pdf> (accessed: 03.03.2025). (In English).
8. Abu Umar Faruq Ahmad. Riba and Islamic Banking. *Journal of Islamic Economics, Banking and Finance*, vol.2, 2015. Available at: https://ibtra.com/pdf/journal/v3_n1_article1.pdf (accessed: 03.03.2025). (In English).
9. Abd–Arahim, A–Saati. The Permissible Gharar (Risk) in Classical Islamic Jurisprudence. *J.KAU: Islamic Economy*, vol. 16, no. 2, pp. 3–19. Available at: https://www.kau.edu.sa/Files/121/Files/68212_162-AI-Saati-5.pdf (accessed:03.03.2025). (In English).
10. Uddin, Md Akther. Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir. Munich University personal archive, 2015. Available at: https://mpr.a.ub.uni-muenchen.de/67711/1/MPRA_paper_67711.pdf (accessed: 03.03.2025). (In English).
11. Fitriani Mansur, Afrizal, Achmad Hizazi, Sri Rahayu. Sharia Principle Compliance Model between Islamic Financial Performance and Social Performance Evidence from Indonesia. *International Journal of Recent Technology and Engineering*, 2021, vol.10, no.4, pp.148–153. Available at: <https://www.ijrte.org/wp-content/uploads/papers/v10i4/D65601110421.pdf> (accessed: 03.03.2025). (In English).
12. Mohd Izzat Amsyar Mohd Arif, Ruzian Markom, Faezy Adenan, Suhaizad Saifuddin. Enhancing the Statutory Roles of the Shariah Advisory Council of Bank Negara Malaysia through Technological Advancement: A Way Forward. *The 4th International Conference on Law Reform*, 2024, pp. 928–940. DOI: 10.18502/kss.v8i21.14808. (In English).
13. Elgari M. A. Some Recurring Shariah Violations in Islamic Investment Agreements Used by International Banking Institutions. *Proceedings of the Second Harvard University Forum on Islamic Finance: Islamic Finance into the 21st Century Cambridge, Massachusetts*, 2011. Massachusetts, Center for Middle Eastern Studies, Harvard University, pp.151–154. Available at: <https://ibir-api.hbku.edu.qa/sites/default/files/2019-10/Some-Recurring-Shari%E2%80%98ah-Violations-in-Islamic-Investment-Agreements-Used-by-International-Banking-Institutions.pdf> (accessed: 03.03.2025). (In English).

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