CHAPTER 11

Islamic Finance in Spain

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11.1 Introduction

Islamic finance, as a modern viable industry, is barely 50 years old with some of its components, such as *Takāful*, not even reaching 40. This industry is even younger in Europe, and its development is uneven. Luxembourg and the United Kingdom have constituted themselves as the hubs outside the Islamic world. Other countries have followed, including France, Germany, and, more recently, Ireland. Spain, however, is not yet among them.

Iberia (Spain and Portugal) is the only region in Western Europe with a rich Islamic heritage encompassing 800 years. Madrid is the only capital city in Europe founded by Muslims.[1] Today, almost 2 million Muslims (four per cent of the Spanish population) live in Spain,[2] and Islam, after Catholicism, is the largest religion in the country. And yet Islamic finance

[1] La Fundación de Madrid in De Mayrit a Madrid (2015), pp. 24–39.

[2] Estudio Demográfico de la Población Musulmana, UCIDE (2018). All figures in this section come from this timely study.

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remains an esoteric niche not only among the Spanish population at large but also among the Muslim population itself.

As discussed in Sect. 11.2, Spain was once a majority Muslim country where Islamic institutions such as *waqf* flourished and developed, becoming vital for financing the social, economic, and cultural infrastructure of Al-Andalus. *Waqf* survived the rise and fall of the Umayyads of Cordova, three Taifa periods, the Almoravids and the Almohad, and, indeed, the beginning of Catholic Spain, only ceasing when a final expulsion happened of the several thousand Muslims, which endured a century of forced conversion. The reason to make this history *detour* in this section is twofold: (1) Sheer justice as 800 years of history and rich cultural legacy cannot possibly be ignored and (2) to compare and put in context present-day Spain and the Muslim population within it. It is estimated that Muslims accounted for four per cent of the population at the time of their final expulsion, and by coincidence, the Muslim community today represents four per cent of the Spanish population. I will just add at this stage that they have issues of their own with which to contend.

Section 11.3 deals with the current situation of the Islamic banking and finance sector in Spain today. The short answer is that it does not exist. Nevertheless, the reasons for this are discussed putting it in a wider context, looking at several potential players (the sponsor, the facilitator, the provider, and, finally, the consumer), concluding that there is neither offer nor demand at present or in the foreseeable future.

All analyses of opportunities open for the development of Islamic finance in Spain to date have concentrated almost exclusively on the banking sector (and, to a lesser extent, *ṣukūk*), coming to similar conclusions: Spanish legislation is not Islamic-finance friendly. However, I seriously believe that *Takāful* offers a more fertile ground. Section 11.4 deals with this discussion, looking in some depth at the mutual insurance structure as the most likely vehicle for its implementation and also looking at *Takāful* in crisis as an opportunity precisely to implement a mutual model as being both commercially viable and *Sharīʿa*-compliant.

Finally, Sect. 11.5 deals with the one Islamic finance development indicator which has seen the greatest growth in Spain in the last few years: Education. Just one proviso: Its growth is still fragile and remains heavily dependent on external finance.

11.2 Interaction Between Islam and Society

Of the 1.94 million Muslims living in Spain, 43 per cent are Spanish and 57 per cent are immigrants. Of the 834,058 Spanish Muslims, almost 63 per cent are Spanish-born. The remaining 37 per cent (309,708) became Spanish by naturalisation between 1968 and 2016. On the other hand, non-Spanish Muslims are made up largely of nine different nationalities.[3] Unsurprisingly, perhaps, Moroccans are the largest group (almost 750,000 or 38 out of 57 per cent). More surprisingly, however, Pakistanis are the second largest group, representing over seven per cent (80,003) of the total immigrant Muslim population.

Forty-one per cent (808,106) of the Muslim population live in Madrid and Catalonia, Barcelona being the city with the largest concentration of Muslims in Spain (328,840). If we add Andalusia (314,980) and Valencia (206,315), we can see that these four regions are home to over 68 per cent of Muslims in Spain.

What is today Spain was once a majority-Muslim territory. Thomas F. Glick argues that Muslims represented the majority of the population in Spain in the tenth century, when it is estimated that the Hispano-Muslim population was 6–7 million.[4] The Arab and Berber Muslims were numerically[5] always a minority; Arabs were a minority within that minority. However, by the time of their eventual expulsion (1614), it is estimated that the size of the Muslim population was but four per cent of the Spanish population.[6] Given that this followed a century of forced conversion from

[3] Algeria, Bangladesh, Gambia, Guinea, Mali, Morocco, Nigeria, Pakistan, and Senegal. Each one of these nationalities is at least 10,000 strong. There are a further 20 nationalities represented in the Islamic community, none of which, however, reach the 10,000 mark.

[4] Islamic and Christian Spain in the Early Middle-Ages (1979). Thomas F. Glick refers to the Hispano-Muslims quite correctly as Neo-Muslims since the Arab and Berber population was Muslim prior to their arrival in the Iberian peninsula.

[5] Numerically, but certainly not militarily, where Berbers gained a stronghold; or culturally, where Arabs, "a ruling, bureaucratic and landholding elite," became hegemonic.

[6] Muslims in Spain 1500 to 1614 (2005), see pp. 12–21. Harvey uses the "prudent approximation" of Sir John Elliot, who calculated that the population of Spain in the sixteenth century increased from 7.5 to 8.5 million. Elliot himself calculated the figure of 275,000 for the Muslim population at that time. This, Harvey warns us, apart from being "guesswork" (prudent, but guesswork nevertheless) may represent an underestimate. However, the Muslim population might not have exceeded five per cent by the end of the sixteenth century.

Islam into Christianity, the remarkable thing is, perhaps, that a few hundred thousand were prepared to stand their ground openly[7] until the end.

11.2.1 Islamic Finance in Medieval Spain

It may be difficult to establish when a dominant[8] *Sharīʿa*-compliant[9] economy developed in Spain. However, what we do know is that *awqaf*[10] were very much part of Islamic Spain. In her book on charitable endowments (*waqf khayrī*) and family trusts (*waqf ahlī*) in Al-Andalus (IV/X–VI/XII centuries), Ana María Carballeira[11] states that throughout this period: (1) The legal system was in permanent evolution on these matters; (2) *waqf* heavily impacted on several aspects of daily life; (3) the history of *waqf* (particularly *waqf ahlī)* was linked to the transfer of property; (4) there was a great deal of social prestige to be gained in the establishment of *waqf*, particularly *waqf khayrī*; (5) *waqf khayrī* was of utmost importance in the development of cities in Al-Andalus, financing the social, economic, and cultural infrastructure; (6) charitable endowment and public well-being were intimately associated; (7) *waqf* was a factor for change; and (8) the depth of the economic impact of *waqf* on society was considerable.

The document known as the Capitulaciones, signed on February 26, 1501, included a clause that made it clear that *habices*[12] were to continue to be available for local use and not for private benefit.[13] Said clause called to devote the income of charitable foundations for the relief of the poor, ransoming of captives, highway repairs, and any other charitable purpose in perpetuity.[14] In the Capitulaciones, the Spanish crown respected the

[7] I deliberately use the word "openly" as those numbers did not include what Harvey has denominated "crypto-Muslims." See Harvey (2005).

[8] We can speak of "dominance" but not of "exclusivity" as the Christian and Jewish communities remained autonomous. That said, Harvey (1990) remarks that Islamic Granada largely evolved "towards being a purely Islamic state with only small *dhimmi* elements, and in particular, scarcely any Christians." p. 14.

[9] At least to the extent that it was free of *riba* (usury) and commercial transactions were done on the basis of Islamic instruments and/or custom.

[10] I largely agree with Çizakça (1998) that *Waqf* "stands as one of the major achievements of Islamic civilization."

[11] Carballeira Debasa, A.M. (2002). See in particular her general conclusions (pp. 347–355).

[12] In Arabic of al-Andalus, waqf is referred to as *habis*; and awqaf as *habices.*

[13] Harvey (2005), pp. 46–47.

[14] "*y les dexaran y mandaran dexar en sus casas, haçiendas y bienes muebles y rayses, agora e en todo tiempo para siempre jamas.*" Cited in Espinar Moreno (2009), p. 62.

right of the alfaquíes (*mutawalli*) to manage and deal with *habises* freely without the intervention of outsiders, including the Crown or any other authority. However, throughout the sixteenth century *waqf* property was progressively confiscated as Muslims converted to Catholicism so that by the time of their final expulsion said property had ceased to exist.

11.2.2 Starting from Scratch

What is clear is that there is no connection between the Muslim population that lived in Spain for many centuries until the beginning of the seventeenth century and today's Muslim population. There is no denying that the Muslim legacy in Spain is unique in Western Europe and yet it is as if we have to start from scratch. Over 900 years elapsed between Alphonse VI of Castille taking over Madrid in 1085 and the establishment of the first *aljama* mosque (the Abu Bakr mosque) in 1988. It was followed, four years later, by the opening of the Omar Mosque, which is today the *aljama* mosque in Madrid.

11.2.3 Freedom of Religion

The Spanish Constitution, approved in 1978, guarantees religious freedom. Article 16 provides:

> 1. Liberty of ideology, of religion, and of worship, are guaranteed to all individuals and communities…
> 3. No religious denomination will be designated as the religion of the state…

Under Article 27.3, the Spanish Constitution further guarantees "the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions."

However, in its report the Union of Islamic Communities (UCIDE) states that only 8[15] out of the 17 autonomous regions that make up Spain meet the legally minimum requirements regarding Islamic religious education. Neither Catalonia nor Murcia meets the said requirements despite

[15] Andalusia, Aragon, Canary Islands, Ceuta, Melilla, Castille and Leon, Basque Country (Euskadi), and Madrid. In Spain the provision of education is the responsibility of the autonomous regions.

the fact that Barcelona and Murcia city have, together with Madrid city, the highest concentration of Muslim students. Two conclusions in the report are worth highlighting in this context: 95 per cent of Muslim students do not have access to Islamic religious education, and, by coincidence, 95 per cent of Islamic religion teachers are unemployed. Finally, 13 per cent of the Islamic community does not have access to a mosque,[16] whilst 95 per cent of the different Muslim communities does not have access to an *almacbara* (Muslim cemetery).

11.2.4 Religious Freedom at the Workplace

The interaction between religious freedom and the world of work is the arena that best reflects the daily reality of Muslims in Spain. This interaction is dealt with under Art. 16 of the Constitution and regulated under Organic Law 7/1980 (Religious Freedom Act, known as LOLR) which provides that "no religious reasons will be alleged to impede a person from performing a job"[17]; and "a person has a right to commemorate religious festivities."[18] Under a Cooperation Agreement entered into between the Spanish State and the Islamic Commission of Spain in 1992 (Law 26/1992), Muslim workers are granted certain religious rights,[19] all of them, however, subject to reaching prior agreement with the employer. This is the key as it potentially gives the employer a very effective right of veto. On the one hand, the employer is not permitted to ask (direct) questions on religious affiliation at the time of the job interview; on the other hand, however, the employer may be entitled not to grant certain rights to the employee if the employee failed to mention her religious affiliation prior to entering into an employment contract.[20] Regarding the use of the *hijab*,[21] the issue is whether or not the employer requires the use of a

[16] And the report remarks that different Islamic communities have not always been able to open a mosque and/or a cemetery.

[17] Art. 1.2.

[18] Art. 2.1 b.

[19] Including, for example, leaving work an hour before sunset during the month of *ramadán* (Art. 12.1 of the Cooperation Agreement).

[20] See Serrano Falcón, C. *Musulmanes y libertad religiosa en el trabajo asalariado en España* in Carballeira y González (2016), p. 88.

[21] The reference to the hijab should be understood as referring generally to the use of any garment or object with a religious connotation; however, the hijab has, perhaps, become the most symbolic garment.

uniform.[22] In the case that wearing a uniform is not required, the employer may not stop an employee from wearing the *hijāb* without incurring in discrimination. It would be disingenuous not to admit, in the light of the above, that the *hijab* may not survive the interview process. As Carolina Serrano Falcón[23] states: "expressions of religious freedom become heavily eroded in the labour market, confirming the irrelevance of religious believes."[24] She adds that "we cannot yet state that the presence of cultural and religious diversity has been implemented in the Spanish workplace."[25]

Last but not least is the invisibility of Muslim women not only in Spanish society at large, but also within the Muslim community itself. We do not appear to know even the basics: (1) The number of women in the Muslim community (both Spanish and immigrant); (2) levels of education; and (3) levels of integration in the workplace. This lack of data may just be symptomatic of what Pilar Rivas Vallejo[26] has referred to as "the common invisibility of the female in the work and social worlds…historically mutating between absence and irrelevance."[27]

Undoubtedly, there is a great deal of work to be done to ensure that: (1) The Constitutional guarantees become a tangible reality and (2) a multicultural society becomes an intercultural one. As Pedro Martínez Montávez states:

> The difficult search for an intercultural society does not just mean an obligation to interact with the other, it means too an obligation to interact among ourselves; it is not just an issue regarding the outside, but also an issue regarding the inside, as necessary and inevitable one and the other.[28]

For this, stereotypes, ethnicity, religion, cultural identity, immigrant condition, and, indeed, gender have to cease to be social segregation and workplace discrimination factors.

[22] This assumes that the Muslim candidate has already been successful at the job interview stage and is now fully employed.

[23] Ibidem. pp. 85–105.

[24] Ibid. pp. 101–102.

[25] Idem.

[26] Sesgos de género en el trabajo de las mujeres musulmanas en España in Carballeira and González (2016), pp. 107–128.

[27] Ibid. p. 107.

[28] Prologue to Carballeira and González (2016), p. 13.

11.3 The Current Situation of the Islamic Banking and Finance Sector

Spain, despite its history, has not so far been a fertile ground for the growth of Islamic finance. According to the Islamic Corporation for the Development of the Private Sector (ICD)—Thomson Reuters Islamic Finance Development Report 2016, Spain is ranked 103 out of 124 countries. Spain scores 0.22 in the Islamic Finance Development Indicators (IFDI),[29] whereas Malaysia, which is ranked first, scores 123 points, and the United Kingdom, which is the highest European country in the ranking, scores 15 points. The Quantitative Development Indicator reflects the Islamic finance activity in a country: Islamic Banking, *Takāful*, Other Islamic Finance Institutions (OIFI), *Ṣukūk*, and Islamic funds. Spain does not score here. The only activity is limited to Coophalal, a small financial services cooperative established in Barcelona in 2015.

Spain has remained peripheral to the development of Islamic finance until recently. Nevertheless, an important change has occurred since 2015. The Islamic Financial Services Board (IFSB), with the support of the Bank of Spain, and the collaboration of the IE Business School organised a major conference in Madrid in May 2016. The then-Governor of the Bank of Spain pointed to the need to bring Islamic finance into the fold of the Spanish financial services. In the same manner, the Spanish Observatory of Islamic Finance in conjunction with Casa Árabe and the presence of members of the National Securities Commission (CNMV) welcomed Dr. Omar Ansary of the AAOIFI in February 2018. Further interaction at high level between the mentioned entities needs to be encouraged and efforts need to be made to establish said interaction at structural level on a regular basis. This is a necessary part of any strategy to put Islamic finance on the map; however, it is by no means sufficient.

The Islamic community in Spain has so far not been active in lobbying relevant institutions such as the Bank of Spain, the CNMV, and/or political parties as their counterparts in the UK so effectively did, nor has there been any tangible interest to accommodate Islamic finance in Spain on the part of any of these entities. Islamic finance is on nobody's radar at present or, indeed, in the foreseeable future.

[29] There are four individual indicators: Qualitative Development, Knowledge, Governance, Corporate Social Responsibility, and Awareness. The sum of these individual indicators gives the final indicator: IFDI Global Indicator.

11.3.1 Offer or Demand-Led?

In light of the above, one may be entitled to reach a partial conclusion at this stage: There is no tangible demand for Islamic finance products in Spain. This somewhat pessimistic statement needs to be put into a proper context.

According to a report on Improving Saving Culture,[30] Spain "suffers from a widespread lack of understanding regarding both basic financial concepts and financial products and investment." Fifty-three per cent of individuals "do not have a basic level of financial literacy." "More alarmingly," says the report, "45% of investors" (i.e., people who do actively invest) "lack the minimum financial knowledge to invest."

Therefore, the lack of a saving and investing culture in Spain may be an inhibitor for the development not only of Islamic finance but also of conventional finance. Paradoxically, however, it may also afford an opportunity. The Report identifies certain inhibitors for investment: "financial corruption scandals, severe economic crisis, and a general sense of distrust in financial entities and products…."[31] It has been said more than once that Islamic finance products need to find a niche to enter the European market and that said niche may well be the social impact, ethical solution in the financial investment/product sector.[32] Many large European financial services providers (such as Allianz, Zurich, FWU, Swiss Re, and others) are heavily engaged in the Islamic financial services sector in Asia. These providers have, therefore, the necessary experience and know-how. The fact that they have so far chosen not to introduce these or similar products into the European market may suggest that they do not see a sufficiently large market for them.

The European Islamic (retail) banking sector has so far not made use of the opportunity afforded by the "European passport." Unfortunately, with Brexit happening,[33] said opportunity may be lost for UK-based Islamic banks. To be fair, the retail Islamic finance sector in Europe as a whole is not working. The reasons for this may be many, but one possible explanation is that the potential market is, wrongly in my view, identified solely (or at least primarily) with the Muslim community. The cry that

[30] Nuñez Letamendia, et al. (2017). The report is worth reading altogether but the key findings (p. 94) give a very good insight into the problem.

[31] Ibidem.

[32] See Rodríguez-Moreno (2017).

[33] At the time of writing, the prospect of a "no deal" Brexit is by no means remote.

"these are products for all" may become a reality only if said products are identified as a social impact solution sufficiently differentiated to whatever else there is in the market.

It would not be a matter of re-inventing the wheel, if the will was there. Right now, however, there is neither offer nor demand in Spain.

11.4 The Legal Framework of the Islamic Banking and Finance Sector

The few analyses on the prospects and opportunities of Islamic finance in Spain to date have almost exclusively concentrated on the banking sector; to a lesser extent, mention is made of opportunities for the issuance of *ṣukūk*, whilst no mention (or just a passing mention) is made of *Takāful*.[34] The conclusions have almost invariably emphasised that, while there are clear opportunities in Spain,[35] Spanish legislation does not allow financial entities to offer Islamic products.[36] In the same manner, and without fail, every analysis mentions the fiscal challenges which, with the exception of Luxembourg, have been faced by every European jurisdiction in trying to create a level-playing field for Islamic finance.

Islamic finance is not on the radar of Spanish political parties at present; to date, there has not appeared a powerful sponsor championing Spain as a hub for Islamic finance as was the case in the UK and France. Therefore, this section will deliberately shy away from yet another analysis about the banking sector. I will only add that little or no mention, never mind analysis, has been made of the opportunities afforded by the European passport to Islamic banks in other European jurisdictions to enter the Spanish market and of the possible reasons why no advantage has been taken of it to date.[37]

This almost exclusive focus on the banking sector has meant that the one pillar of Islamic finance that may be established in Spain with relative legal ease has been ignored. The establishment of an Islamic insurance sector, prima facie, would not offer a material challenge to Spanish legislation.

[34] See Garrido, I. et al. which is one of the very few that mentions *Takāful*, however briefly.

[35] See García-Herrero, A. et al. (2009), p. 128.

[36] See Garrido, C. and Rodríguez-Monroy, C. An Approach to Islamic Finance in Spain (2015), p. 7.

[37] See Canalejo. G and Alfredo Cabellos (2009), who are amongst the very few (1) to remark on the possible use of the European passport by UK-based Islamic banks and (2) to ask themselves: "when will we see Islamic windows in Spanish banks"?

In its definition of *Takāful* Undertaking,[38] the Islamic Financial Services Board (IFSB) states:

> The underwriting in a *Takāful* is…undertaken on a **mutual basis, similar in some respects to conventional mutual insurance**. A typical *Takāful* undertaking consists of a two-tier structure that is a hybrid of a mutual and a commercial form of company – which is the *Takāful* operator (TO) – **although in principle it could be of a pure mutual structure.**

It then adds in a seldom-cited footnote[39]:

> There are two reasons why pure mutual structures are not normally used for *Takāful* undertakings. First, cooperative o mutual forms of companies are not recognised in a number of countries' legal systems. Second, and more fundamentally, a newly formed mutual insurance company would hardly be able to meet the capital adequacy requirements that are now standard….

In light of the above, the IFSB crucially (for our analysis) accepts that a *Takāful* undertaking may be structured as a conventional mutual insurance company (or indeed, as a cooperative society). As for the two reasons adduced as to why pure mutual structures are not normally used, we can readily dismiss them: (1) Mutual insurance companies are very much a part of the insurance landscape in Spain, and (2) the "real life" experience of mutual insurance companies in Spain is contrary to the second reason.

11.4.1 Mutual Insurance Companies[40]

A mutual structure is one of the legal forms foreseen in Spanish legislation for an entity dedicated to the insurance activity.[41] Mutual insurance companies may be either fixed premium or variable premium.

11.4.1.1 Fixed-Premium Mutual Insurance Companies

Fixed-premium mutual insurance companies[42] (**"FPMs"**) are not-for-profit private entities dedicated to insure the risks of their members (mutualistas)

[38] See Guiding Principles on Governance for *Takāful* (Islamic Insurance) Undertakings (2009), p. 2.

[39] Idem. p. 2. footnote 4.

[40] To a very large extent, any reference here to mutual entities could easily apply to cooperative societies.

[41] Art. 7 Ley de Ordenación y Supervisión de los Seguros Privados.

[42] Art. 9 idem.

for which the latter pay a fixed premium at the commencement of the relevant period. In addition to the not-for-profit motive, they must have at least 50 members. The condition of member is inseparable from the condition of insured and vice versa. The liability of the member is limited to the premium paid in any given period. Any losses or gains will be dealt with by way of payment of an extra premium or the return of part of a premium, as the case may be. In the event of the latter, said return will not be regarded as profit and hence it will not be subject to capital gains tax.

FPMs will have to credit permanent mutual funds from member contributions and/or out of surpluses retained from previous fiscal years.[43] The minimum capital will depend on the risks covered, as follows:

(a) €9,015,181 for life, public liability lines, and reinsurance;
(b) €2,103,542 for accident, health, legal assistance, and death

In addition, FPMs will have a guarantee fund[44] which will be equal to at least a third of the minimum amount of the solvency margin which will not be less than three quarters of €3.2 million for an entity covering life or any public liability risk. Otherwise, the minimum capital will be three quarters of €2 million. If an FPM does not cover public liability or reinsurance, and its annual premium income does not exceed €5 million in three consecutive years, the guarantee fund will be at least €800,000 if it covers life; €200,000 if it covers damage to goods, death, and legal assistance; and €300,000 if it covers any other risk. An FPM will be exempted from the above minimum levels provided that its annual premium income does not reach €750,000 and it does not operate in life, public liability, or is engaged exclusively in reinsurance.

11.4.1.2 Variable-Premium Mutual Insurance Companies

Variable-premium mutual insurance companies[45] (**"VPMs"**) are not-for-profit entities established on the principle of mutual help to protect, on a common basis, their members through the payment of extra premia following the occurrence of an insured event, for which liability is several. A VPM will charge an initial membership fee and must constitute a fund which will allow the VPM to cover claims and costs as they arise without

[43] Art. 13 idem.
[44] Art. 18 idem.
[45] Art. 10 idem.

waiting for the members to pay the extra premia. Managers will not receive any remuneration for their services and the production of insurance products will be direct, without mediation, and without retribution. A VPM will operate in only one other commercial line different from life save for public liability.

A VPM will have a permanent mutual fund, the minimum capital of which will be €30,050.[46]

Finally, the benefits or surpluses generated in the first three whole years of operation as well as in the initial year of operation will not be distributed and will be applied in full to the legal reserve. Any insurance entity that does not have fully covered its technical provisions or its margin of solvency or guarantee fund does not reach the legal minimum will not distribute any benefits or surpluses, otherwise, nor will it extend its activities to cover other risks.[47]

*11.4.2 "***Takāful*** Is Not Working"*[48]

Contrary to Islamic banking, which is working, *Takāful*, on the other hand, is not. A simple glance at any statistic confirms this. While the Islamic banking sector represents 73 per cent of the Islamic finance industry, *Takāful* accounts for only two per cent of it.[49] The projected growth of the industry up to 2021 makes this story even more stark: *Takāful* is expected to represent a poultry 1.5 per cent of the Islamic finance industry.

11.4.2.1 Tabarruᶜ *Is Not Fit for Purpose*

This quantitative analysis, however, reflects a deeper qualitative problem. *Tabarruᶜ*, arguably the cornerstone[50] upon which *Takāful* is based, is not fit for purpose. The system is built on a fiction which predicates that, unlike conventional insurance, in *Takāful* the participants make their contribution by way of donation.[51] This is not the place to make a review of

[46] Art. 13 idem.

[47] Art. 19 idem.

[48] So stated Omar Ansary, AAOIFI Vice-Secretary, at a meeting organized by Casa Árabe, Madrid, on January 24, 2018.

[49] Thomson-Reuters-ICD, Islamic Finance Development Report 2016, p. 29.

[50] The IFSB describes *Tabarruᶜ* as **fundamental** to *Takāful* schemes (Guiding Principles on Governance for *Takāful* (Islamic Insurance) Undertakings, p. 5).

[51] Article 2 of the Malaysia *Takāful* Act 1984.

the debate surrounding this fiction, that is, when a donation is not a donation? Suffice it to say that said fiction has been heavily questioned by leading Islamic scholars and Islamic standard-setting entities. One such leading Islamic scholar, Mufti Muhammad Taqi Usmani, has argued that the system of *tabarruʿ* fails to prevent the existence of r*iba* and g*harar*, rendering, therefore, the whole transaction void.[52]

The AAOIFI may not go as far as Mufti Taqi Usmani. Nevertheless, there is a recognition that there are certain *Takāful* models which are not *Sharīʿa* compliant, namely the *muḍāraba* and the *muḍāraba-wakālā* models. In future, the AAOIFI will propose exclusively the *Wakālā* and the *Waqf* models as being *Sharīʿa*-compliant.[53]

The cry that "*Takāful* is not working" may for some represent a system in crisis. And yet, it may represent an opportunity for the mutuality model to be added as a *Sharīʿa*-compliant alternative. El-Gamal has argued that mutual organisations can provide a simple juristic solution to problems of *riba* and *gharar*.[54] In addition, and once the *Sharīʿa* credentials are certified, mutual organisations offer regulatory advantages to governance issues raised by the other *Takāful* models discussed by the IFSB in its governance paper. In particular, mutual organisations overcome the uneven relationship between the *Takāful* operator and the participants that characterise all other *Takāful* models, with the important exception of the *Waqf* model.

The above discussion is relevant to help us elucidate a viable *Sharīʿa* and regulator-compliant model to develop in Spain. Just as in other European jurisdictions, the Spanish regulator would not be concerned with the *Sharīʿa*-compliant aspects of the products offered. This would require the development of the necessary human infrastructure, including the development and education of potential members of *Sharīʿa* supervisory boards and any other person involved in the design, development, and sale of *Sharīʿa*-compliant products.

In addition, the development of *Takāful* by way of mutual insurance entities would not create tax issues potentially discriminatory to *Sharīʿa*-compliant products. Neither would there be any legal/contractual dis-

[52] See the review of this debate in Nana, Abdullah (2016) particularly pp. 70–75.

[53] I refer to that said by Omar Ansary at the meeting previously referred to.

[54] El-Gamal, M., **Mutuality, reciprocity and justice within the context of a unified theory of *ribs* and *gharar***, in S. Nazim Ali (ed), *Takāful* and Islamic Cooperative Finance (2016), pp. 48–61.

criminatory practice in terms of generating a document-heavy sale process. This could be an incentive or at least not a disincentive to develop a *Takāful* industry in Spain.

11.5 The Academic Situation of Islamic Banking and Finance

This is the area of greatest growth in Spain in the last few years. Today, there are a number of universities and business schools in Spain offering courses at degree and postgraduate levels. It is no coincidence that the two criteria in which Spain does relatively well are the Knowledge and Awareness indicators.[55] The best way to appreciate this is to look back at the last 20 years.

Islamic finance was introduced as an academic course by the single-handed efforts of Professor José Collado Molina at the Universidad Nacional de Educación a Distancia (UNED)[56] in 1996. However, it is the creation of Casa Árabe, a public institution, in 2006 and the establishment of the Saudi-Spanish Center for Islamic Economics and Finance (SCIEF) in Madrid by the IE Business School and the King Abdulaziz University[57] in 2009 that marks a watershed in the growth of academic interest in Islamic finance in Spain.

Casa Árabe, dual headquartered in Madrid and Cordoba, is a public consortium formed by the Ministry of Foreign Affairs and Cooperation, the Spanish International and Cooperation Agency (AECID), the regional governments of Madrid and Andalusia, and the municipal governments of Madrid and Cordoba. Since 2009, Casa Árabe and the Spanish Diplomatic School offer a course titled "Islam and Muslims Today" which includes modules on Islamic finance.

Initially, Islamic finance was only one of the 80 elective courses at IE Business School's Master in Finance. In 2015, however, IE Business School, in collaboration with the Islamic Corporation for the Development of the Private Sector (ICD),[58] established its own Master in Islamic Finance

[55] As per the Global Islamic Finance Development Indicator developed by ICD-Thomson-Reuters. See ICD-Thomson Reuters Islamic Finance Development Report 2016.

[56] The Distance Learning National University.

[57] A Saudi university based in Jeddah.

[58] ICD is a multilateral development financial institution and is part of the Islamic Development Bank (IDB).

(MIF). The programme attracts students from around the world. The MIF is organised around three pillars: Technical financial foundations, skills workshop and Islamic finance technical skills, and legal aspects. It has a blended format, combining on-site periods in Madrid and Jeddah with interactive online-modules. In addition, IE Business School now offers a number of elective courses in Islamic finance.

In 2014, Universitat Oberta de Catalunya (UOC)[59] and the Hamdan Bin Mohammed Smart University (HBMSU)[60] launched a two-year long Executive MBA in Islamic Banking and Finance. There is a clear division of labour whereby UOC offers conventional finance and management courses during the first year and HBMSU offers the Islamic finance units during the second year, with each institution making use of its own virtual campus to deliver the course.

The University of Almeria and the Almeria School of Finance jointly offer an online specialist course on Islamic finance. Each school issues its own certification. In addition, the students are encouraged to study for the Islamic Finance Qualification (IFQ) offered by the Chartered Institute for Securities and Investment. This is a 250-hour course, 100 of which relate to the IFQ.

SCIEF, King Abdulaziz University, and the Islamic Research and Training Institute (IRTI)[61] offer an Executive Program in Islamic finance which takes place over four days in Jeddah. The course, in addition to lectures, includes a visit to a number of leading Saudi enterprises located in that city.

The Centro de Estudios e Investigación en Economía y Finanzas Islámicas (CEIEFI)[62] offers a three-day introductory course to Islamic finance: The Barcelona Certified in Islamic Finance (BCIF), and a more advanced five-day course: The Certified Islamic Banker Barcelona (CIBB). Both courses are offered either on-site or online in any of three languages: English, Spanish, or Arabic.

The undoubted growth in the institutional offering of Islamic finance has to be tempered by the fact that Islamic finance remains an esoteric subject. Only one provider offers Islamic finance at degree level (as

[59] UOC is located in Barcelona.

[60] HBMSU is an e-university based in Dubai.

[61] IRTI is an entity within the Islamic Development Bank (IDB) which serves as research centre of the IDB Group.

[62] CEIEFI was established in Barcelona in 2013.

opposed to 27 providers in the UK, e.g.).[63] Courses are attended by small numbers; these are overwhelmingly male and Muslim. The academic growth has been offer-led. The demand has yet to crystallise in sufficient numbers to make the offer-led growth viable and sustainable.

In terms of research and publications, around 60 papers were published in Spanish publications between 1998 and 2017.[64,65] Academic research in Islamic finance is still limited.[66] Few out of those 60 publications came out of universities or higher education institutions.

Nevertheless, special mention needs to be made of the creation of the Observatorio de Finanzas Islámicas (Islamic Finance Observatory) in June 2017. It aims to bring together the main experts in Islamic finance in Spain with the objective of joining forces to generate interest, disseminate knowledge, and create awareness of Islamic finance, as well as lobbying influential public and private entities to embrace Islamic finance and make Spain an alternative hub for ḥalāl investment. The IE Legal Clinic and SCIEF joined forces in 2018 to put together a comparative study which will be delivered by way of a series of reports over the prevailing situation of the applicable law and regulations in several European jurisdictions regarding Islamic finance. The results will be made available to the different members of the Observatorio with a view to benefit from lessons learnt in other jurisdictions which may facilitate the way forward in Spain.

11.6 Conclusions

To the extent that Islamic finance has a future in Spain, it will have to be based on an ambitious and daring agenda, one that cannot be based simply on competing in the same market with conventional finance or on emulating other European countries where Islamic finance has been a feature for some time. Islamic finance has to present a value proposition which clearly differentiates itself not only from conventional finance but also from much of what passes today for Islamic finance.

[63] ICD-Thomson Reuters Report 2016.

[64] See the rather comprehensive list of publications published by the Observatorio de Finanzas Islámicas in Las finanzas islámicas en España 2017.

[65] Compared to the 160 research papers produced in the UK in three years (2013–2015).

[66] It is important to distinguish between research and publications on Islamic Finance and Arabic Studies. Spain is rich in research and publication regarding the latter. My remarks here refer exclusively to Islamic Finance.

As Mufti Muhammad Taqi Usmani, one of the leading contemporary Islamic jurists and experts in the Islamic finance, states:

> Islamic financial institutions wish to compete with their conventional counterparts in all respects, and restrict themselves to the debt-based products. In their zeal to compete [with] conventional banks, they are trying to invent *Sharīʿa* compliant [equivalents] for each and every financial product available in [the] conventional capitalist market, regardless of whether or not they are in [accordance] with the ethos of the Islamic economy.[67]

It will not be easy as a great deal of groundwork at different levels will have to be undertaken. In the medium term, the offer-led route will have to be transformed into a demand-led movement. A great deal of "lobbying" is yet to be done to convince potential (heavy-weight) sponsors, intermediaries, and, eventually, final-consumers that Islamic finance is a social impact solution different from whatever else is there in the "market."

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