
LEGAL REGULATION OF ISLAMIC BANKS IN RUSSIA

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Forty years ago in the Islamic states of banks (credit institutes in our understanding) wasn't since laws of Sharia consider issue of money under percent a grave sin. Now in the world there are more than 300 Islamic banks, their general assets exceed 500 bln. dollars of the USA with a growth from 10 to 15 percent a year (data of UBS Swiss Bank which opens at itself Islamic department). According to Sharia, the Islamic bank can't invest money in some forbidden types of activity: production and sale of alcohol, gaming houses, and other restrictions of an ethical sort. Islamic banking is fundamentally oriented to real economy, to real production and to allowing for speculation. One of the interfering factors influencing implementation and development of Islamic banking in Russia is the low awareness of professional participants of the financial market, and also the population in general, about structure and the principles, functioning of the specified banking. The potential base of clients in Russia is, and the first experiences confirm it. However, the problem can be solved adjustment of the Russian legislation, creating thereby favorable conditions, both for local, and for foreign investors for implementation and promotion of an Islamic bank system. Creation of the relevant coordinating structure and mutual tolerance is required.

Key words: Islamic banking, Sharia law, the structure and features, interest, dynamic growth, the legal regulation of Islamic banks, banking.

Forty years ago in the Islamic states of banks (credit institutes in our understanding) wasn't since laws of Sharia consider issue of money under percent a grave sin. Recognizing progress of Arabs in development of the cash relations in the Middle Ages, we will notice that only rapid growth of oil prices and cash flows, since 1973, forced Muslim theologians and business people to look at activities of the financial institutions in a new way. The first Islamic bank which activities completely corresponded to laws of Sharia [1] was established more than thirty years ago.

Then at first in the Muslim countries, and subsequently and around the world rapid growth of Islamic banks and their departments in conventional banks began to be observed. Now in the world there are more than 300 Islamic banks, their general assets exceed 500 bln. dollars of the USA with a growth from 10 to 15 percent a year (data of UBS Swiss Bank which opens at itself Islamic department).

Islamic banks show steady and fast growth rates, and also the probability in the closest years of their emergence in Russia which already was once is considerable, high, in 1991 «Badr-Forte Bank», but so to say was unsuccessful. Therefore an important problem is that the Russian banks, the non-financial entities and public authorities shall consider tendencies of development of Islamic banking in the world and consequences for national economy.

During world financial crisis the minimum losses were suffered by banks which activities were organized on the principles of Islamic bank. Crisis generated one of factors which increased interest to Islamic finance as a form of mediation, the financial stability helping maintenance. Islamic banks are a crucial element of an Islamic financial system. In Islamic model banks are practically the same functions, as in the traditional: provide smooth functioning of a national payment system and in the market carry out a role of financial intermediaries.

«The principle of an Islamic bank system is that any Muslim irrespective of, whether goes the speech about a loan or a debt, can't perform on religious canons financial operation under stable percent. Usury is forbidden by the Koran. The income of bank consists in redistribution of profit. The Muslim who brings the money in bank, has a choice — to put them on the current account or on the investment. If on current, the client doesn't get any profit, except percent of inflation which establishes the state. If it is the investment account, the banker and the client agree about profit of the client on the income of bank in this or that investment project» [1]. Without drawing interest, Islamic banks share risks by equity. In case of each Islamic bank there is so-called Council for the principles of Islamic financing, in other words, Council for Sharia. The bank carefully studies offered business plans and analyzes risks. The transaction undertaken by banks shall meet the principles and standards of Sharia and passes control from Council for Sharia. According to Sharia, the Islamic bank can't invest money in some forbidden types of activity: production and sale of alcohol, gaming houses, and other restrictions of an ethical sort. If the offered project conform to requirements of bank, means are issued to the entity, and they are invested. In case of a successful outcome or a loss of means will be divided according to the signed agreement. The bank gets profit which is equal in percentage expression about 9–11% per annum if to compare to the regular credits. From the economic point of view in Islamic banks futures contracts are forbidden. For example, oil sale which isn't got yet, so-called futures transactions which are regular for traditional banks is forbidden. Islamic banking is fundamentally oriented to real economy, to real production and to allowing for speculation.

The Islamic bank system functions in 75 countries, with total number of 500 financial institutions, including in non-Muslim countries (Western Europe and the USA). Among regions, the Middle East and Southeast Asia are the main place of the Islamic equity. In particular, the United Arab Emirates, Bahrain and Malaysia are considered as the main centers of Islamic finance which are going to join in the near future and England. Total assets of the Islamic banking sector constitute \$1,8 trillion worldwide in 2012.

It is possible to allocate the following factors which served to rapid development of Islamic banks in the world:

- the first factor which served to so strong development of Islamic banking is considerable inflow of oil dollars to the Muslim countries;
- the second factor is the size of the global Muslim population — 1,3 billion people in more than 50 countries of the world — that promotes its appeal in the opinion of financial institutions;

– the third factor is that Islamic banks individually approach clients, a better risks assessment and their separation of agreements by the parties (bank and clients).

Russia, is the multinational country (by some estimates in the country there live about 20 million Muslims), which shall offer a wide range of financial services, including Islamic financial products. From the CIS countries which are actively implementing Islamic financial services Azerbaijan, Kyrgyzstan and Kazakhstan are allocated. Kazakhstan is the first country in the former Soviet Union who made changes to the law «About Banks and Banking Activity», thereby having opened a way to Islamic banks. Respectively for successful implementation in Russia, it will be possible to study experience of neighboring countries.

Today the Russian legislation isn't adapted under Islamic banking. There are certain restrictions, for example, on the taxation. Islamic banks are in unequal conditions concerning banks traditional, and also under the law the receiver of a non-interest loan in the country is exposed to the additional taxation, as gained «income» in the form of lack of standard percent. Therefore in the Russian Federation, it shall be created the corresponding legal framework, necessary adjustments have to be brought in the Civil, Tax Code, in the law on banks and banking activity (which includes agreements of participation in profits and losses), on the security market, on investment funds, on licensing and standards of Islamic bank. The above amendments require preparation or selection of the personnel knowledge in the field of Islamic economic model. Cases, emergence of moot cases between Islamic bank and its clients that requires creation of Sharia courts or specialized organizations, for example, commercial arbitration aren't excluded. In general, creation of state bodies and organizations which will be actively engaged in projects implementation of Islamic banking is required. We want to note, in cases of adoption of the relevant amendments to the law, Russia passes to two-level model of a bank system where along with traditional financing functions Islamic methods are included. It is also important that for effective functioning it is necessary to develop the Islamic financial market, by international cooperation, namely with such financial institutions as:

- Islamic development bank;
- The organization for accounting and audit for Islamic financial institutions;
- Recommendation on Islamic financial services;
- International Islamic financial market.

One of the interfering factors influencing implementation and development of Islamic banking in Russia is the low awareness of professional participants of the financial market, and also the population in general, about structure and the principles, functioning of the specified banking. In Russia full-fledged Islamic banks aren't present so far, but separate products work or prepare for the start. Among them — mutual funds (Fund of the BKS «Halal» company), and also the expected release of VTB sukuk— Islamic bonds. Moscow and Kazan in which pass various actions directed on studying and market development of Islamic financing are actively distinguished from regions. Step by step they come to new level, focusing attention on practical implementation methods of projects. On November 14–17, 2012 in Baku the V International bank conference of the State Parties of the CIS on a subject «The financial

markets of the CIS: new opportunities and global risks» took place [2]. Within this forum also questions allowances of increase of stability of the financial markets, modern financial products and technologies in the territory of the Commonwealth countries were discussed. Importance of creation of Islamic banks on space of the CIS as during world crisis Islamic products will allow to attract longer and rather cheap money which are necessary for upgrade of economies today was underlined.

Importance of the considered subject is supported also with development of the external economic relations of Russia: traditional close trade and economic relations with regions of the Middle East, a foreign policy on rapprochement with the countries of the Islamic world. In general high degree of reliability of deposits, risk minimization are both attractive to ordinary investors and to investors. Representatives of small and medium business oriented to investments in real sector must be interested in similar services. The potential base of clients in Russia is formed, and the first experiences confirm it. However, the problem can be solved by adjustment of the Russian legislation, creating thereby favorable conditions, both for local and for foreign investors for implementation and promotion of an Islamic bank system. Creation of the relevant coordinating structure and mutual tolerance is required.

REFERENCES/ЛИТЕРАТУРА

- [1] *Cossacks M.* Islamic bank system: the credit without percent. URL: <http://www.dal.by/news/4/31-01-13-10>.
- [2] Financial markets of the CIS: new opportunities and global risks: Resulting document V of the Baku International bank conference of the states of participants of the CIS. 14.11. — 17.11.2012.

ПРАВОВОЕ РЕГУЛИРОВАНИЕ ИСЛАМСКИХ БАНКОВ В РОССИИ

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Сорок лет назад в исламских государствах банков (кредитных институтов в нашем понимании) не было, поскольку в соответствии с шариатом выдача денег под процент расценивается как грех. В настоящее время в мире функционирует более 300 исламских банков, чьи активы превышают 500 млрд долларов США, а их ежегодный прирост составляет от 10 до 15% в год (по данным швейцарского банка UBS, в котором также есть исламское отделение). По шариату исламский банк не может вкладывать деньги в некоторые запрещенные виды деятельности: производство и продажу алкоголя, открытие игорных домов, другие этические ограничения. Исламский банкинг в основном ориентирован на реальный сектор экономики, реальное производство и возможности для торговли. Один из интерферирующих факторов, влияющих на реализацию и

развитие исламского банкинга в России, является низкая осведомленность профессиональных участников финансового рынка, а также населения в целом, о структуре и принципах функционирования данного вида банкинга. Создание потенциальной базы клиентов в России и проведение первых опытов подтверждают это. Тем не менее, есть возможности решения проблемы, например, путем урегулирования российским законодательством, создания благоприятных условий как для местных, так и для иностранных инвесторов для реализации и продвижения исламской банковской системы. Также требуется создание соответствующей координационной структуры и рост взаимной терпимости.

Ключевые слова: исламский банкинг, законы шариата, структура и особенности, проценты, динамичный рост, правовое регулирование исламских банков, банкинг.