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Some Concepts and Related Terms for the Analysis of the Law of Islamic Finance

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ABSTRACT

As Islamic Finance matures, it needs more specialisation. The study of its legal aspects is one facet of this specialisation. In order to move forward, we need a set of concepts and related terms in order to facilitate clear analysis. This short note contains some suggestions in this regard.

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I. INTRODUCTION

As Islamic Finance matures, it needs more specialisation. The study of its legal aspects is one facet of this specialisation. In order to move forward, we need a set of concepts and related terms in order to facilitate clear analysis. This short note contains some suggestions in this regard.

II. THE NEED FOR CONCEPTS AND TERMS

The history of an emerging field of activity is one of a move from general ideas, through broad principles, to more detailed concepts. Islamic Finance has now reached the stage where, in the study, analysis and development of its legal aspects, it needs such concepts. The alternative is vagueness and imprecision, which often results in misunderstanding and error. Set out below are some suggestions for a few concepts.

The initial ideas for the analytical framework underlying these concepts, and the terms themselves, were initially conceived by the author, but have been refined and further developed in conversations with Jonathan Ercanbrack and Radin Ariff Taquiddin Amir during their PhD studies, supervised by the author.

III. THE CONCEPTS AND TERMS

The Law of Islamic Finance (the LIF)

The totality of the legal aspects of Islamic Finance, including:

- (a) the Financial Sharia (FS – defined below);
- (b) international hard and soft law relevant to finance; and
- (c) municipal law¹ relevant to Islamic Finance (IF), of all jurisdictions significant for IF.

The Financial Sharia (the FS)

The legal aspects of the sharia relevant to finance.

¹ Municipal law is the law of a jurisdiction. A jurisdiction is a territory in which one legal system is in force. Nation states may have one or more jurisdictions. For example, Italy is both a nation state and a jurisdictions. The United Kingdom, however, is one nation state, but has three jurisdictions: England and Wales; Scotland; and Northern Ireland.

A Municipal Law of Islamic Finance (an MLIF – plural MLIF’)

The totality of the legal aspects of Islamic Finance for a particular jurisdiction, including:

- (a) the FS as applied and adapted to the circumstances of that jurisdiction;
- (b) international hard and soft law relevant to finance in that jurisdiction; and
- (c) the municipal law of that jurisdiction relevant to IF.

Note the differences between *the Law of Islamic Finance* and *a Municipal Law of Islamic Finance*. The former is one overarching transjurisdictional concept; the latter are local, jurisdiction-bound concepts.

This concept can be used for particular jurisdictions, eg *Malaysian Municipal Law of Islamic Finance*, which itself can be further sub-divided such as *Malaysian Takaful Law*, ie those aspects of the Malaysian Municipal Law of Islamic Finance relevant to takaful.

Islamic Finance Statute (an IFS)

A statute concerning IF.

IV. FURTHER DEVELOPMENT

Comments are invited on the above concepts and terms (to nf4@soas.ac.uk). In addition, as IF continues to grow and becomes more sophisticated, more concepts and terms will be needed. Readers with suggestions for additions to the list are also invited to contact the author, so that a coherent set of ideas and terminology can be devised.