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## Islamic Finance

the new legal giant



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# Islamic Finance – the new legal giant



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*There's a tremendous market available for lawyers and law firms with expertise in Islamic banking and finance, says Laurent Marlière, general manager of iSfin.*

As world finance faces heavy challenges and some Western economies collapse, Gulf and Southern Asian investors are boosted with cash. Mr Marlière noted that high energy prices are a significant factor. Another is the fact that ethical Islamic banks were not hit by the credit crunch as they did not offer toxic products like many conventional banks.

"Internationally, one can estimate that there is a need for 50,000 Sharia law experts to advise on Islamic banking and finance matters within the next 10 years," said Mr Marlière.

Islamic finance has seen spectacular growth since 2008, growing 30% in 2010. Islamic banking is just part of the overall Islamic finance sector, which includes asset management and increasingly more sophisticated investment products. Total Islamic assets under management reached \$1 trillion in 2010.

This growth, Mr Marlière explained, is being driven by record-high oil profits, which in turn is driving Middle Eastern countries to create world-class financial centres such as Dubai, Bahrain, Abu Dhabi and Kuala Lumpur.

According to a McKinsey estimate, Middle Eastern countries will have a total of \$9 trillion to invest by 2020. Further demand for Islamic banking will come from the growth in population and wealth of the world's 1.6 million Muslims. "The ongoing global credit contraction provides

an opportunity for Islamic financing to blossom," said Mr Marlière. "In fact, it is the fastest growing area of world finance. Islamic finance has now become a global and worldwide phenomenon."

#### Why are law firms aiming at Islamic finance?

Mr Marlière explained that some law firms are now realising the need to develop a practice in Islamic banking and finance law. In fact, in the MENA countries, Islamic finance is a well recognised area of practice. With the exception of London and the offshore jurisdictions, law firms did not take a deep look at it. Mr Marlière believes that this is now changing, and opportunistic firms have understood that there is a new financial and legal mainstream there.

"Interestingly enough, one has seen many Indian desks or China desks appearing on law firm's websites, but few Islamic desks," observed Mr Marlière. "It is a paradox as in macroeconomics, the global power of Islamic finance is even more substantial!"

Many countries in the world have a large Muslim community facing difficulties in ensuring its financial needs in a non-Muslim society. There are few options for the growing Islamic communities abroad to access financial arrangements that comply with Sharia-based principles and that also meet the legislative

### Key figures (Financial Times 2010)

Sharia-compliant financial institutions:  
**1,124**

Assets in Islamic finance:  
**between \$822 billion and \$1 trillion**

Increase in such assets in 2009:  
**29%**

Worldwide Muslim population:  
**approximately 1.6 billion**

Percent who use banks:  
**approximately 14%**

Islamic mutual funds:  
**473**

Islamic money market funds in this total:  
**79**

Islamic real estate funds in this total:  
**28**

Assets in Islamic mutual funds:  
**\$35 billion**

needs of the local financial system.

Mr Marlière states that the demand is great, and he believes that opportunistic lawyers will attempt to gain the knowledge they need in order to fill the emerging gap in experienced professionals in Islamic banking.

"At the moment, Western banks are hiring people from non-Islamic banking backgrounds, and they cannot produce a financial product which is ethically sound to Muslims," commented Mr Marlière. "These finance experts are trained in conventional finance areas and don't care about the risk between the buyer and the lender, the need for sharing.

"By training lawyers and finance experts in the non-Muslim countries, iSfin can seize on the opportunity of Islamic countries looking abroad given these countries' performance after the global financial crisis."

Mr Marlière explained that the interest is certainly not limited to the banking & finance practices of firms. In fact, iSfin requires its members to set up an Islamic Finance desk composed of one banking & finance partner, one corporate partner, one tax partner and one regulatory partner. That team is then backed up by the firm's marketing department.

"We see that Islamic investments inbound and outbound raise questions in the corporate and tax area," said Mr Marlière. "We notice that many of our member firms are advising their local governments and authorities on creating a proper regulatory environment as well."

#### iSfin

iSfin is the world's leading network of Islamic finance law specialists. iSfin members are all specialists from elite law firms with an international focus and deep understanding of Islamic finance. Each member is admitted only after substantial due diligence and peer review procedures.

"Our objective is to be global and cover all key jurisdictions in the world," said Mr Marlière. "We admit that some jurisdictions do not benefit from a proper Islamic finance training as that area is just emerging locally. We provide them with the right training and coaching."

#### Reasons for the creation of iSfin

As a result of the political turmoil in the Arab world and with the global financial crisis fostering opportunities in many countries, sovereign funds are now going global and seeking more secure and stable investments.

"There are very few specialists on this high potential emerging market in the world," observed Mr Marlière. "We have built an unchallenged initiative gathering the best specialists with interest in Islamic finance and able to act both on a global and local scale."

Private and public Islamic finance investors are now seeking a truly global solution to allow for the diversification of their investments.

They require a provider of legal services which can handle outbound investments, inbound investments and offshore investments.

According to Mr Marlière, no firm can possibly provide a team of legal experts active in:

- Outbound countries such as UAE, Saudi Arabia, Qatar, Oman, Bahrain, Kuwait, Malaysia, Singapore and Indonesia.
  - Inbound countries such as the G20 countries as well as emerging markets like India, China and Brazil.
  - Offshore territories such as Jersey, Guernsey, Isle of Man, and BVI that offer tax structuring.
- "Banks, funds, private and public investors are seeking a broader network," explained Mr Marlière. "They want to be serviced on a global and regional scale. They are looking to do business in all major centres and seek a true one-stop shop."

#### Geographical spread and focus

iSfin aims at truly global coverage, following the path of Islamic investments which currently occur just about anywhere in the world. Mr Marlière noted that initiatives and projects across Asia, in Latin America, Africa, Eastern Europe, Russia and CIS are currently drawing a lot of attention.

"We have taken the challenge of membership by its hardest part, which is to identify specialists and interested parties in non-Muslim countries," said Mr Marlière. "It is more challenging to identify I.F. specialists in Sweden or Greece than in Malaysia or Saudi Arabia!"

However, despite this global focus, iSfin excludes London from its membership at this stage.

"London is such a strong financial centre that we do not wish to create conflicts of interests with some of our members already working with the global law firms," explained Mr Marlière. "Besides, we believe that the global players will use the expertise of some of our local members in Islamic finance."

In a second affiliation phase, which is now starting, iSfin is considering the Middle East and Asia, and has begun to assess potential member law firms.

#### Member firms

iSfin's member firms include: Afschrift; Gide Loyrette Nouel; P+P Pöllath; Bahas Gramatidis; Appleby; Maples & Calder; Studio Legale Chiomenti; Arendt & Medernach; Houthoff Buruma; Saslo; Mlgt; Cuatrecasas; SyCipLaw; Gernandt & Danielsson; and Lenz & Staehelin.

The profile of member firms that iSfin is looking at varies very much from one country to another. The network is cherry-picking independent law firms (not affiliated to the giant global law firms) with a strong banking and finance reputation and valuable tax expertise. "Our member lawyers all have amazing credentials and are highly regarded by Cham-

bers, IFLR, Legal 500 or PLC," commented Mr Marlière. "We want entrepreneurs who are open-minded and willing to improve their business development and marketing skills with the system of 'Legal Networking 2.0' that we have put in place."

Member firms receive exclusivity for their territory, with one firm per country. Exclusivity is however not implied for the exchange of referrals as iSfin is targeting law firms with a long experience in international business.

"We focus on our fast growing niche of Islamic finance and want to be the best in that area," added Mr Marlière.

#### Benefits of membership

##### • Adapting local legislation

All governments now have a think tank to adapt their local legislation to make it Islamic finance friendly. Members can pull out the experience of colleagues who have advised their State and become a reference in the area.

##### • Catching inbound investments

Members can catch investments made by sovereign funds and Islamic investors/banks in their home country by showing that they understand their culture and needs.

##### • Catching outbound investments

Members are able to accompany domestic companies and banks when they invest in Islamic countries via an Islamic desk, showing that the lawyers have broad understanding of local business culture.

##### • Ensuring retention and fidelity of current Islamic clients

Member's current Islamic clients appreciate that they invest in this key area of interest for them and the firms generate more business from this existing clientele.

##### • Receiving referrals from other iSfin members

The peer to peer system of the iSfin network, based on specialists, opens up the borders between member firms and generates referrals, often in areas broader than Islamic finance as trust is built up.

Beyond these commercial advantages, members access an unchallenged source of knowledge and know-how.

"The exchange of expertise is considerable," said Mr Marlière. "Training sessions, coaching from specialists, support from a strong marketing team and effective leadership comes on top. Members work on RFPs and tenders. Our headquarters prepare them tailor-made business plans for their local markets."

#### Member's views

SyCip Salazar Hernandez & Gatmaitan became a

member of iSfin this year. The firm has an Islamic finance practice group and wants to interact and interface with fellow practitioners in that field.

“iSfin provides us the forum for such interaction and interface,” said Rafael A. Morales, managing partner and member of the board of iSfin.

“Being a member of the network enhances our stature in Islamic finance. We foresee that, in the near future, Islamic finance will play an important part in the development of Philippine capital market. As the largest and leading law firm in the Philippines, SyCip Salazar Hernandez & Gatmaitan has the natural desire and inclination to assume a pioneering role in the practice of Islamic financial law. iSfin is our partner in this endeavour. “We will attend iSfin’s seminar on Islamic finance this November in Dubai. This and other forthcoming iSfin activities will keep us abreast of trends and updates in Islamic finance.”

Arendt & Medernach is one of the founding members of the iSfin network. The inaugural meeting of iSfin in May 2011 was held in the firm’s main office in Luxembourg, which coincided with the annual meeting of the Islamic Financial Services Board (IFSB), one of the two standard setting bodies in Islamic Finance

Bishr Shibliq, head of Arendt’s representative office in Dubai, stated that the firm joined iSfin because of the strong development of Islamic finance in Luxembourg. Many Sharia compliant institutions have used Luxembourg investment vehicles for their international real estate and private equity investments. Luxembourg has also become the leading European jurisdiction for the set-up of Islamic funds.

“Having formed a dedicated Islamic finance team, we wished to share our experience in this field with other specialised and leading law firms worldwide,” explained Mr Shibliq.

“Although iSfin is still young, we have had a very positive feedback from clients and other contacts, who are interested to learn more about it. iSfin is unique as there is no comparable network, offering clients access to a truly global network of Islamic finance practitioners from independent first tier law firms and enabling knowledge transfer between the various member firms.

“The next meeting of iSfin is planned for November 2011 and will take place in Dubai during the annual meeting of the International Bar Association (IBA). Arendt & Medernach is an active participant in these meetings and is assisting the iSfin team by inviting interesting speakers.”

Cuatrecasas, Gonçalves Pereira joined iSfin at the beginning of 2011. Josep Marsal, partner, explained that this is because the firm expects Spain to introduce legislation to become Sharia compliant.

“We would like to be the law firm of reference to assist those Islamic finance investors that might invest in Spain,” said Mr Marsal.

“We are very happy with how the network is improving,” continued Mr Marsal. “Since we joined a large number of very good law firms have also joined. We have already had one meeting with all members and we have another one in Dubai in November. The network is moving fast.”

Mr Marsal believes that iSfin’s last meeting in May in Luxembourg was very successful. He noted that the members had a chance to discuss how



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they are promoting legislation for Islamic finance, particularly in jurisdictions like Spain where such legislation does not yet exist.

### iSfin’s next meeting

iSfin will meet during the IBA conference in Dubai on 1st November. iSfin has a stand in the main hall of the IBA and interested professionals can visit to learn more about the project.

“During our meeting, we invite top-notch panellists, Sharia-scholars, and investors,” said Mr Marlière. “We discuss strategy and our members join in a ‘speed-dating’ session to foster tighter cooperation. The ‘crème de la crème’ of Islamic finance law is there!

“We are very honoured that IBA President Akira Kawamura himself has confirmed his presence,” added Mr Marlière.

### 2011 so far

iSfin was launched on January 1st 2011, and Mr Marlière states that it has been tremendously successful so far: evidence that it is filling a gap in the market.

Josep Marsal, partner at Cuatrecasas, Gonçalves, Pereira and member of the Board of iSfin, explained: “We have managed to affiliate some of the strongest law firms in the world.”

Mr Marlière added: “With a current membership of some 20 law firms, we probably already are the largest team of Islamic finance lawyers in the world. This is just a start. A lot of territories still need to be covered.”

### Competitors

Global firms have understood the potential behind Islamic Finance and have started investing in sub-practice groups within their banking and finance departments. Key players in the sector include the magic circle firms such as Allen & Overy, Linklaters or Clifford Chance. They had the capacity to establish a broader presence and have opened up offices in several centres in the Middle East.

They were followed by some international firms who started establishing one or two small outposts; looking to take advantage of the high predicted growth rates for the Middle East.

Mr Marlière explained that practically, many of these firms simply send a partner from their home office who recruits a couple of local associates to set up their Islamic Finance practice. The most skilled lawyers of these firms, often at the associate level, remain in the home office. Resident partners often stay a couple of years then go home and lose the personal connections they had just started to establish.

“Geographically, this results in bilateral or at best slightly multilateral connections: London – Dubai, Ney York – Abu Dhabi,” observed Mr Marlière.

“Even some of the global firms are missing out, as, while they may be able to place a few real specialists in Islamic finance law in some locations, they are certainly not able to cover all their offices!

“Actually our business model and positioning on the market is unique and that is why it will be success-drive. Besides, it really is a truly international project. No culture is predominant.”

### Services beyond Islamic finance law

On top of these geographical constraints, financial markets are increasingly producing deals combining both conventional and Islamic aspects. Mr Marlière explained that they require two sets of expertise and multi-jurisdictional access.

“Property-based lending, project finance and infrastructure projects require experience from true Islamic finance specialists,” he said.

Another huge emerging market is opening up for I.F. specialised lawyers around the world: many states and governments are changing their regulatory environment to make it Islamic finance friendly.

“Skilled lawyers should accompany the legislative process, as has been the base in France, Luxembourg or Spain,” observed Mr Marlière. He concluded: “Only local lawyers specialised in the specificities of Sharia law can achieve this.”