

New No-interest Superannuation and Mortgages within the Australian Capitalist System

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Abstract

This exploratory paper looks at reconciling Islamic Shari'ah law which forbids profiting from interest (riba) and how this can work in Australia where everyone must legally pay 9.25% of their salary into a superannuation fund and all desire to own a house available only through a mortgage, while intending simultaneously to adhere to Muslim religious beliefs.

Methodology: *An analytical overview of the Muslim population in Australia, their religious laws, and ways to cope with riba (interest forbidden by Shari'ah religious laws) and Australian financial laws may be accommodated within compulsory superannuation. Finding appropriate mortgages which follow the teachings of the Holy Qu'uran and Hadith will be searched using quotations, scholarly writings, government policy and case studies from internet sources.*

Findings : *Shari'ah principles, rules, teachings and usage permit both superannuation savings with compound interest and home mortgages under specified conditions (and different names) verified by Fatwas are carefully followed by recently-formed companies in Melbourne and Sydney. These two banking instruments were designed for the purpose of using approved religious principles to allow the devout in the Islamic community to follow the Holy Qu'uran encouraged by the federal government.*

Keywords: Islamic finance, Shari'ah compliance, Australian superannuation, mortgage, riba, gharar, ethical investment, socially responsible investment,

Background

Islam is both a religion and a way of life providing its own social, political and economic system for guidance of human behavior in social interaction; and in an ideal Islamic society, socio-economic justice is the most significant element for its 1.6 billion Muslims (2010) or one quarter of the global population, according to Drew De Silver, Senior writer at the Pew Research Centre (De Silver, 2013).

The 2012 census count of Australian Muslims was 320 370 or 2.2% of the total 23 million, a growth of 40% (39.92%) since the 2006 census five years ago, with 61.5% born overseas because Australia accepts many immigrants and refugees. The 2.2% Islamic population is heavily concentrated in the two largest capitals: selected Sydney suburbs (60+%) or 208 149 people (Australian Bureau of Statistics,[ABS] 2013) and in Melbourne with 35% or about 100 000 people (ABS, 2006). These groups constituted 3.9% of Sydney's total 4.1 million and 2.9% of Melbourne's 3.6 million. In 2006 about 1.4% of the total Australian population reported speaking Arabic at home uniting in religion and language those who come from about 60 countries (Australian Social Trends, cat. No. 41020.0)

The chief sources of Islamic Shari'ah law are the following. The Holy Qu'ran is the book of revelation given to the Prophet Muhammad; supplementary principles and teachings are taken from the Hadith which is the narrative relating the deeds and utterances of Muhammad; the Sunna refers to the habitual practice and behavior of Muhammad during his lifetime; Ijma is the consensus among religion scholars about specific issues not envisaged in either the Holy Qu'ran or the Sunna; while Qiyas is the use of deduction by analogy to provide an opinion on a case not referred to in the Qu'ran or the Sunna and the Ijtihad represents a jurists' independent reasoning relating to the applicability of certain Shari'ah rules on cases not mentioned in either the Qu'ran or the Sunna (Gait and Worthington, 2007, 2008).

The Qu'uran clearly states: "Those who charge *riba* [interest] are in the same position as those controlled by the devil's influence... As far as those who persist in *riba* they incur Hell wherein they abide forever" (2:275). Therefore questions on Shari'ah compliance in banking and finance or halal superannuation are often referred to Al Azhar University, Egypt where a group of distinguished religious scholars issue individual Fatwas giving advice. Additionally there is a Dow Jones Islamic Market World Index (DJIM) launched in Bahrain in February, 1999 which created a Shari'ah compliant global industry benchmark to provide transparency and accountability for Islamic investors and an investment universe to structure Shari'ah-compliant products. This provided a vehicle allowing faith-based investment to be publicly managed using a socially-responsible basis (Moran, 1999 p. 257-8). Because Shari'ah law prohibits *riba* or interest and superannuation is based on compounded interest from saved capital accruing over a prolonged period, how do the half million plus Australian Muslims both follow superannuation law in Australia and own their homes?

Aims

To determine how to reconcile Shari'ah religious requirements with Australian superannuation civil law and bank mortgages in a predominantly Christian capitalistic society where the law forces all workers to have a superannuation fund and where the Australian dream is to own a home when both of the latter apparently go against the requirements of Islamic Shari'ah law.

Methodology

Analytical overview of Muslim population of Australia, their religious and social laws, Shari'ah banking principles, acceptable banking instruments and how to avoid *riba* (forbidding interest by Shari'ah religious law) are explained, given Australian financial laws of compulsory superannuation. Suggested are ways for possible halal superannuation investment and home ownership mortgages. Means of following Holy Qu'urnic requirements are researched using Qu'uranic interpretations found in scholarly writings, through present case studies on superannuation and mortgages available for Australian Muslims from internet sources.

Results:

1. Islamic background: Riba.

Regarding *riba* (interest): the Holy Qur'an instructs Muslims not to acquire another's property wrongfully (Qur'an 2:188, 4:29). In fact, initially the lending of money for interest was both abhorred and mostly prohibited in all three monotheistic religions (Al-Harran, 1993, p.6) Al-Harran claims that interest and usury are synonymous with the Arabic term *riba*, but he argues there are two types of *riba* classified by Muslim jurists. *Riba al-nasi'ah* refers to interest on loans, which is not permitted by Shari'ah (Capra, 1992, p. 35) The second type is *riba al-fadl*: the excess beyond and exceeding the loan paid in kind (such as gold for gold or silver for silver). In sum, *riba al-nasi'ah* and *riba al-fadl* are both covered by verse 2:275 "Allah has allowed trade and prohibited *riba*", where *riba al-nisi'ah* relates to loans and *riba al-fadl* relates to trade (Al Harran, 1993). While trade is allowed with its attendant profit to support business in principle, it does not mean that all types of trade are allowed. Some exceptions not in the interests of social justice always obtain: alcohol, pork-related products, entertainment (eg. hotels, casinos, gambling etc.), tobacco, weapons and defense.

2. Shari'ah compliance and interest-free background.

Islamic finance is defined as a financial product or service principally implemented to comply with the main tenets of Shari'ah (Islamic law) (Khan, AA., 2002 p). <<http://www.halalmonk.com/azah-ahmed-khan-sharia-compliant-finance>>. Retr. 11/8/13. In 1963 in Ghamr, Egypt, Islamic interest-free banking began as an experiment to cater for the needs of the Muslim populations in their religious obligations (Al-Omar and Abdel-Haq, 1996). Other countries opened their own Islamic bank: Dubai Islamic Bank opened in 1975 as the first private Islamic institution and subsequently it become the largest Islamic bank by 1987, while *Global Finance* rated Abu Dhabi Islamic Bank the Best Islamic Retail Bank for 2013. According to Gait and Worthington (2008) over three hundred Islamic financial institutions existed worldwide operating in seventy-five countries; now according to *Global Finance Magazine* <http://www.gfmag.com> publisher J.D. Giarraputo in April 2013, the rapidly expanding number of Islamic banks in the world is over 500 which are fully Islamic, or provide Islamic products and services to their customers, as well as several hundred more investment banks and insurance companies or *takaful*. Notably the winner of *Global Finance's* Best Shari'ah-Compliant Index Provider was Dow Jones Market Indexes. Wherever there are a significant numbers of Muslim populations there is strong demand for some form of Islamic financial institution.

In late 2007 the Tokyo launched an index of companies complying with Shari'ah law: investment vehicles paying no interest nor benefitting from gambling, that is socially responsible investments (SRI). (Bunchuan, 2006, <http://www.gfmag.com>www.djiindexes.com<http://www.investopedia.com/terms/s/shariah.asp>).

Only in the last thirty years have the world's Islamic banks been offering Shari'ah-compliant products and such services have become more substantial and widespread (Gait and Worthington, 2008). The Islamic banking system provides people with an alternative for their banking needs apart from the conventional banking based on interest which was established centuries before. Since the establishment of Islamic banking, the system was considered a niche market player catering for the special religion-oriented and non-capitalist needs of the world's 1.6 billion Muslims. However, in real terms Islamic banking does not only cater for the Muslim population, but also for many non-Muslims who have taken advantage of the system, particularly in Malaysia (Bunchuan, 2006; Dusuki and Abdullah, 2007).

Islamic Banking has the same purpose as conventional banks: to act as financial intermediaries between depositors and borrowers. However, in Islamic banking it is more than a depositors' and borrowers' relationship. It is more a partnership where banks are entrusted to invest and any to share any profit generated (Kahn, 2000). This notion of profit and loss sharing is a completely different concept from the conventional bank's depositors' and borrowers' relationship where the depositors receive interest based on the funds deposited into the bank's account and borrowers pay interest on the loan received (Dusuki and Abdullah, 2007; Bunchuan, 2006). The Shari'ah board within the Islamic bank is one factor that differentiates it from a conventional bank, it adds the key principles of ethical investing and moral purchasing. The Dow Jones Islamic Market Index exists in 57 countries (in 2013) is managed by an independent Shari'ah Board which screens out forbidden products in business and secondly checks for financial ratios while enforcing Fatwas from revered scholars (Clement & Wilson, 2004).

However in Islamic Banks, the bank's board of directors has no power to implement any new products unless it obtains Shari'ah approval. The Shari'ah board will look at all aspects of the new product in relation to the Qur'an and Hadith before coming to consensus for approving it as policy. However, this Shari'ah board lacks any power in approving or deciding financing applications from the banks' customers. Such a procedure ensures the Islamic bank does not pursue its product innovation based on profit maximization goals alone, like capitalist banks who must always be conscious of profit and shareholder dividends, but has a more balanced goal, taking into consideration the social and religious aspect of its business, or ethical responsibility (Gait and Worthington, 2007; Bunchuan, 2006).

3. Riba and risk or speculation prohibition.

Given the primacy of social justice, the prohibition of Arabic *riba* (translated roughly as interest or usury) in Islam is one of the crucial factors explaining why Islamic banking came into existence. Interest earned from deposits or charged to a loan is not permissible (*haram*) under Shari'ah law. Interest in whatever form or making money from money is not acceptable under Islam (Iqbal and Molyneux, 2005). Money used to gain extra money without effort or labour is *haram* and if pursued it is as if waging war against God and His Prophet (Ahmad, 2004). *Riba* is not allowed due to its negative distributive justice and equity effects. Islam always promotes socio-economic justice, fair and equitable treatment to everybody irrespective of their social standing. The key point is that *riba* does not permit this interest-earning activity in order to avoid social injustice (Gait and Worthington, 2007; Dusuki and Abdullah, 2007).

Transactions also should not have elements of *Gharar* (uncertainty, risk or speculation) under Islamic banking (Gait and Worthington, 2007). Parties involved in a sale and purchase contract must understand the values of the intended transactions. Also where financing involves profit and loss sharing for an agreed venture to be transacted, any profit to be generated cannot be guaranteed at the start of the transaction. These prohibitions are to avoid uncertainty and to act as a shield for the losing parties in business dealings. Muslims must not indulge in such practices at any costs or at any time (Bunchuan, 2006; Iqbal and Molyneux, 2005).

4. Islamic financial system and instruments Four Principles of Islamic financial system

A. Islamic transactions following the strictest form do not allow any business forbidden (*haram*) in the Qur'an. *Riba* and *gharar* stated above are not the only prohibitions for the stricter form;

all transactions related to the business of alcohol, pork, entertainment or casinos are deemed to be *haram* and the Islamic financial system provides four basic principles to avoid violating these prohibitions:

1. **Risk sharing** : relates to the banking term of symmetrical risk on return to be distributed to each of the participants and is subject to the fluctuation in the economy the transaction may face during the contract term.
2. **Materiality**: the transaction must relate to the real economic transaction so there is an essence of “material finality”, important in the Shari’ah ruling on business transactions.
3. **Social justice**: is an integral part of the whole system. If there is any exploitation of any party to the transaction then it will be deemed to be un-Islamic, therefore not permissible.
4. **Sinful activities**: there is absolutely no financing for the *haram* (sinful) base activities such as the producing alcoholic beverages, casinos, pork- related business and other types of business transactions not permissible under the Islamic law. Transactions are guided by the Shari’ah law that governs each country (Gait and Worthington, 2008, 2007; Iqbal and Molyneux, 2005).

General Instruments of Islamic banking

The Islamic financial system has the following main six products or instruments among others in order not to violate these Islamic religious prohibitions. Those relevant to mortgages are *murabahah* and *ijarah*, possibly *Bai Bithaman A’ajil* or *Istisna*,

1. **Murabahah**: known as ‘mark-up’ or ‘cost plus’ sale. It is widely used for trade and commodities where the seller advises the buyer on his cost of producing the specified product. Then both parties negotiate the profit margin for the products. The payment will be made in instalments that should not exceed the total cost of the products, used for mortgages exemplified below.
2. **Mudarabah**: is a profit-sharing concept which is similar to a limited partnership where the bank provides the funds and the entrepreneur provides his management skill and business acumen. The bank becomes the *Rabb-ul-mal* (capital owner) providing funding to the *mudarib* (entrepreneur) and the profits from the project financed are shared between them on an agreed fixed ratio. Losses will be borne by the *Rab-ul-mal* (bank) and the *mudarib* (entrepreneur) will lose his time and effort in the project if failure occurs.
3. **Musharakah**: is commonly associated with a joint-venture agreement between the bank and the owner/s of the project. A partnership agreement mimics the venture capitalist approach in which partners will have certain shares in finance and management of the new joint venture. The sharing ratio is predetermined based on shares that each partner has injected into the project and the profits are still dependant on the performance of the company in the near future. In this contract losses will be shared according to the share in the equity.
4. **Ijarah**: is similar to leasing where the bank buys the “productive asset” first and then rents it to the users who really need it. The reason behind this purchase is that the user may be short of funds but can make the rental payment over a period of time from the usage of the assets (essentially a mortgage). In *Ijarah* both parties must be well aware of the value and specification of the property before any agreement can be made. The contract is usually terminated at the end of the leasing period and the user has the option to buy at a nominal value (often used for house mortgage as in *Tayseer-Ijara* Program below).
5. **Bai Bithaman A’ajil**: this type of product involves the buying and selling of an asset, but with deferred payments for a predetermined period of time (hire-purchase). *Bai Bithaman A’ajil* is one of the most popular Islamic banking transactions and is similar to *Murabahah* (#1). However, the difference is that *Bai Bithaman A’ajil* is for buying domestic products, and therefore a more numerous kind of financing requirement, while *Murabahah* is widely used in international trade.
6. **Istisna**: is popularly used in project finance normally for the purchase of industrial equipment or even housing. The manufacturer/contractor agrees to manufacture/build, and the finished goods are to be delivered at a given price on a given date. The price may not be paid in advance but in some cases progress payments are agreed. These financing/investment products are widely used in most countries both internationally as well as in the domestic market. (Gait and Worthington, 2008, 2007; Dusuki and Abdullah, 2006; Bunchuan, 2006).

Australian background and case studies

1. Government view.

In Abu Dhabi, UAE, 2010 the Australian government issued a media release from Hon. Chris Bowen, Minister for Financial services, Superannuation and Corporate Law announced a “comprehensive review of Australia’s tax laws to ensure ...they do not inhibit the expansion of Islamic finance, banking and insurance products”. The subsequent Johnson Report ensured there was a “fair and level playing field” rather than special treatment for Islamic finance within Australia’ banking laws.

In an address to Amanie Australia Islamic Finance Forum in April, 2013 Hon Bernie Ripoll, MP, predicted the world Islamic financial market would be worth US\$2 trillion in the coming three to four years, and describing it as “a form of financial intermediation” which is socially inclusive serving both non-Muslim and Muslim consumers. Introducing New Islamic financial products provides more ethical and underlying environmental opportunities for finance growth. Shari’ah compliant funds are already allowed and available for Australia’s 470 000 Muslims. To further encourage a level playing field, the government must focus on “deepening Islamic finance skills...qualifications and growth in Islamic service providers” . He pointed out that no Commonwealth regulatory tax barriers existed and the sector was in its early stages (Ripoll, B., 2013).

2. Importance of Superannuation.

These employer-sponsored or personal superannuation (funds set aside for retirement during the working life) are brought into prominence given recent changes in superannuation law lifting to 9.25% of workers’ salary being contributed at source into personal superannuation from July 1, 2013. This money is invested in shares and security assets for interest by a fund and available at age 65, attracting only 15% tax. Superannuation amount rises incrementally by .25% annually reaching 12% by 2019 by 2013 Labor government legislation. What are the 60.4% overseas-born Australian Muslims and roughly 40% Australian-born adherents to the faith to do about their compulsory interest-bearing superannuation given the general religious requirement forbidding profit from interest when overseas-born Muslims have increased by 69% since 2002. (Superannuation Industry (Supervision) Act 1993; (ABS, 2012).

After the family home, superannuation is progressively the largest investment of most Australians in their lifetime, so it is of vital interest that both Muslim and non-Muslims understand that their compulsory superannuation, with employees putting in the same amount as their employees, is an asset class. It comprises a structure that allows them to hold assets in a low tax environment for compulsory saving for retirement in an ageing population environment. For over 40’s this assistance towards retirement is essential for old age security when they can no longer work, with fewer young tax-payers coming online and support means-tested old age social security payments for those beyond compulsory retirement age. Additionally, it is the single investment into which deposits of pre-tax dollars can be made and almost the only asset creditors cannot access if the taxpayer falls upon financial hard times (Whittaker, Noel, 2013)

Because superannuation and mortgage involves such large financial sums and citizens’ civic and religious responsibilities, this paper will explore some means of available Shari’ah-compliant finance instruments for superannuation and mortgage instruments available in Australia to accommodate the religious demands of Shari’ah law given the environment of Australian capitalistic banking in a society which includes a government social safety net, by using specific case studies.

3. Case study of Superannuation instruments.

A. Melbourne (Victoria) fund.

One third of Australian Muslims were living in Victoria (ABS 2006). Leading Islamic scholars, most Islamic fund managers researchers and bankers have agreed for their basic research and screening process on the Dow Jones Islamic Market Index methodology where certain businesses are incompatible with Shari’ah law and listed investments are based on public Fatwas. A Melbourne-based public Shari’ah compliant Superannuation fund opening in 2004 uses the methodology of the Dow Jones Islamic Market Index and lists five specific Islamic international Sheiks both clerical scholars and justices who issue Fatwas. Company examples excluded from Salic Super, as briefly referred to above, are listed for Salic Super as:

alcohol, pork products, tobacco, gaming/casinos, hotels, banking, financial services (and insurance), weapons and armaments, and who have a debt to equity ratio of more than 33%, and have receivables of over 45% of assets and interest income in excess of 5% of sales. Such companies are automatically screened out before due diligence on 'qualified' assets is carried out. Salic Super advertises itself as "Australia's Premier Shari'ah Compliant Superannuation Fund". It offers access to a professionally managed fund with planning by professional equity trustees, asset consultants for research to guarantee halal superannuation investment to the Muslim community to allow them to follow their personal beliefs (info@salic.com.au)

B. Sydney (NSW)

Because half Australia's Muslims are in NSW, on Dec. 17, 2012, the Sydney Pakistani newspaper *Sada-e-Watan*, headlined: 'Crescent Wealth Launched Australia's First Islamic Superannuation Fund in Sydney'. Syed Alai reported that Crescent Wealth Executive Director Talai Yassini thought the market would be worth \$22 billion by 2020, to an audience of Australian politicians, business luminaries and Muslim leaders. This dedicated "Ultra-Ethical" fund "pursues ...fairness and justice for all in business and commerce" (www.crescentwealth.com.au).

This means, according to Salic Super, that both superannuation investment funds are conservative or balanced within the bounds allowable by Shari'ah and Australian superannuation law with no speculative (*gharar*) elements "designed to provide the Australian Islamic community with access to halal superannuation investment...firmly based on fundamental rules and principles quoted in the Holy Qu'ran and the Shari'ah teachings" (www.info@salic.com.au).

4. Mortgage Fund Examples : MCCA and ISKAN

Reproduced online for *Islamic Banking and Finance Journal*, a 2009 article for the *International Business Times* 27/11/2009 on "Demystifying Muslim Mortgages" by Kit Kadler points out that because conventional mortgages involve paying interest, they violate Islamic law, but in this article Nail Aykan of MCCA is quoted as saying, "the difference between Islamic and western banking is the notion of interest... hence there must be an alternative" (Kadler, 2009).

A. Melbourne.

As a manager with the Australian first Melbourne based Muslim Community Cooperative of Australia (MCCA) founded in 1998, he suggests paying in cash or borrowing from friends could be difficult, so the MCCA follows overseas lenders by using Islamic finance instruments. To share risk of purchase, MCCA forms a partnership with each home-buyer. Thereby the homebuyer pays a fair market rent instead of interest to the MCCA until full ownership is granted upon the agreed sum being repaid. In fact, it is both easier and cheaper to borrow mortgages from conventional western banks, unless the buyer has religious scruples.

To take an MCCA example quoted in the company's online article, the originally- Lebanese Mohammad Tabiaat purchased a Melbourne three-bedroom home in 2008 for \$270 000 using a 20% deposit. By paying rent of \$1 600 per week through *muharabah* to MCCA, the borrower Tabiaat established a lease-to-own mutual agreement wherein he paid rent. Following 180 weeks' payment, Mohammad had paid \$288 000 in addition to his \$54 000 deposit over three and a half years, or \$342 000 in total. Compound bank interest may have cost the same, but how the money was processed made the Shari'ah compliant difference. ("Islamic Banking Information" (2009) *Islamic Banking and Finance Journal* http://www.mcca.com.au_1.html).

B. Sydney.

Iskan Mortgage Finance of Sydney demonstrates an example of Tayseer-Ijara Program (originated in 2002) to finance home acquisition or re-finance in an *halal* way based on Fatwas issued by leading Islamic scholars and opinions from Al Azhar University, Egypt in line with the laws of Australia. This is a similar Shari'ah compliant home finance method as MCCA above where Iskan buys the property from the vendor and the customer pays a fixed or variable mortgage rental fee plus principal to acquire Iskan's equity in the property over a stipulated time by the termination of the transaction, and as a surety it includes mortgage insurance. Capital growth occurring through market conditions of inflation over time (annual consumer price index increases) or value increases accruing from extensions or renovation is profit for the sole benefit of the buyer/mortgagee.

Requirements are savings of a minimum 5% for deposit with a recognized institution and the payment of monthly rental must not exceed 35% of gross taxable income. The original source of funding used by Iskan is Australian owned First Mortgage Co. Pty. Ltd. or Perpetual Australia Ltd. as mortgage custodians.

By Shari'ah demand, financing sources do not include “conventional” banks, and these sources are also excluded by the Superannuation funds. Such funding sources are approved by Fatwas from leading and reputable Shari'ah scholars who assure the faithful that the fund source and capital raising methods will not “pollute the Islamic model provided that the relationship between the Muslim client and the funding institution is Halal” (Iskan Finance Pty. Ltd. www.iskan.com.au/). The above is a fair transaction and an excellent example of (4) Ijara discussed above for this mortgage. (<http://www.iskan.com.au/homeloan.htm>)

Conclusion

The key to *halal* Islamic banking lies in the interpretation of *riba* as interest (forbidden) or profit (allowable as trade). Superannuation and mortgage services are available in Australia though not through a “conventional” bank which, because it profits from interest, is *haram* or forbidden by Shari'ah law as not providing socio-economic justice for all. By following the four Islamic principles of banking and using usually two of the listed traditional banking Instruments, both superannuation and Shari'ah compliant mortgage services have been recently provided in Australia's largest financial capitals.

Shari'ah compliant Superannuation funds are available in Sydney, Crescent Wealth Super (Dec. 2012) and in Melbourne (2004), Salic Super advertises itself as “Australia's Premier Shari'ah Compliant Superannuation Fund” both guaranteeing *halal* superannuation investment to the faithful in the Muslim community;

To provide *halal* mortgages, since 1998 the Melbourne based MCCA has provided *murabahah* (#1 above) partnerships with home buyers wherein the risk of purchase is shared between the capital provider and the home buyer; and the buyer pays agreed and adjustable rent instead of interest until the transaction is completed with the title deed passing to the homeowner. The Iskan Mortgage Finance, founded in Sydney in 2002, provides a similar *Ijarah* (#4 above) Shari'ah-compliant service. These services answer in part the question posed by the faithful on reconciling Shariah religious prohibition of interest with Australian superannuation civil law and house mortgages in the affirmative, using present available resources.

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