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THE ACCOMMODATION OF ISLAMIC FINANCE IN IRELAND'S FINANCIAL LEGISLATION: A COMPARATIVE STUDY OF WHOLESALE ISLAMIC FINANCIAL PRODUCTS

EDANA RICHARDSON*

I. INTRODUCTION

The sacred law of Islam, the *Sharî'ah*,[1] occupies a central place in Muslim society. Indeed Schacht referred to *Sharî'ah* as "the core and kernel of Islam itself."[2] Often described simply as "Islamic law," the term *Sharî'ah* stems from the notion of a way or road, leading towards a watering hole.[3] From a religious perspective it provides a well trodden path towards salvation, an indication of God's will to be respected and followed by believers.[4]

Though not a neatly codified body of law, *Sharî'ah* is believed to be unerringly inclusive in its scope and is composed of rules which touch upon every aspect of life: public and private, ritualistic and mundane.[5] As a result of this expansive character, the application of *Sharî'ah* extends beyond the strictly spiritual and into the sphere of banking and finance, articulating key concepts which underpin compliant financial activity. Even in the contemporary context of personal banking, large scale financings and international commercial activity, the guiding principles of Islamic law inform and underlie Islamic financial transactions. Without this connection between the secular and the sacred, Islamic finance - or finance which is structured in line with the teachings of *Sharî'ah* - becomes disconnected from the ultimate reason for its existence, the provision

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1. There is no single means of expressing Arabic words and sounds in the Latin alphabet. Throughout this article, quotations and the official names of products and organisations, which contain a transliteration and use of italicisation which are different from that used in this article, will be reproduced without adjustment.
2. Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press, 1964), at 1.
3. Michael Nazir-Ali, "Islamic Law, Fundamental Freedoms, and Social Cohesion: Retrospect and Prospect" in Rex Ahdar and Nicholas Aroney eds, *Shari'a in the West* (Oxford University Press, 2010) 71, at 71.
4. John Esposito, *Islam the Straight Path* (2nd ed, Oxford University Press, 1998), at 79.
5. Husam Hourani, "The Three Principles of Islamic finance explained" (2004) *International Financial Law Review* 46, at 46.

to Muslims of a financial system which conforms with their religious beliefs.[6]

The emergence of Islamic finance over the last forty years has, according to some, been driven by an upsurge in Islamic revivalist views in the aftermath of colonialism and the increasing number of Muslims who want to live their lives in accordance with Islam.[7] More recently, global economic upheaval following the 2008 financial crisis, disillusionment with some conventional financial products and calls for a re-assessment of the financialisation trend in the conventional market have further increased interest in alternative forms of finance, including Islamic finance.[8] Islamic countries represent a large market for Islamic financial activity. However, Western economies, particularly the United Kingdom, have emerged as important centres for *Sharî'ah*-compliant transactions.[9] Ireland has been slow to follow this trend. Unlike a number of non-Muslim countries which have sought to regulate and harmonise religious products within their economies, developments in Ireland have until recently, been much more inconspicuous. There are indications though, that Ireland's approach to Islamic finance may no longer be so passive. In October 2009, the Irish Revenue Commissioners released a Tax Briefing confirming that three Islamic products *takâful* (Islamic insurance), *ijârah* (Islamic leasing) and Islamic funds - would be subject to the same tax regime as their conventional counterparts.[10] The move towards a more focussed integration of Islamic finance was reinforced by the February 2010 publication of the Finance Act.[11] The Act outlines legislative amendments which could facilitate the development of Islamic financial products and transactions in Ireland. These developments, though modest when compared with the vocal political support in the UK for *Sharî'ah*-compliant transactions, may go some way towards positioning Islamic finance as a viable sector of the Irish economy.

This article will review Islamic finance in its current form of application. It

6. Frank Vogel and Samuel Hayes, *Islamic Law and Finance, Religion, Risk and Return* (Kluwer Law International, 1998), at 23.
7. Shahrukh Khan, *Profit and Loss Sharing: An Islamic Experiment in Finance and Banking* (Oxford University Press, 1987), at 7.
8. Elaine Housby, *Islamic Financial Services in the United Kingdom*, (Edinburgh University Press, Edinburgh, 2011), at 173. Even the Vatican has voiced support for Islamic finance when it noted that the "[e]thical principles on which Islamic finance is based may bring banks closer to their clients and to the true spirit which should mark every financial service." Loretta Napoleoni and Claudia Segre, "Dalla finanza islamica proposte e idee per l'Occidente in crisis" *l'Osservatore Romano*, 4 March 2009. Translation from original Italian by Adrienne Strubb.
9. Robert Toan, "Cross-Border *Ijarah*; A Case study in the US Taxation of Islamic Finance" in *Third Harvard Islamic Proceedings* (Harvard Islamic Finance Program, 2000), 191 - 197, at 191.
10. The Irish Revenue Commissioners, Tax Briefing Issue 78, "Islamic Finance," October 2009, http://www.revenue.ie/en/practitioner/tax-briefing/archive/78/ (visited 5 September 2011).
11. Finance Act 2010.

will look briefly at the sources of Islamic law and the key, religious principles which form the normative foundation of contemporary Islamic financial activity. Instructed by the UK model, it will consider Ireland's initial steps towards enabling a religiously inspired financial sector, focusing particularly on wholesale financial activity.

II. The Building Blocks of a *Sharî'ah*-Compliant Finance

The roots of Sharî'ah

Islam regards *Allah* as the ultimate law giver and so *Sharî'ah* does not focus only on the sacred to the exclusion of the secular.[12] Religious principles thus form the standard against which every facet of a Muslim's private, social and commercial life will be judged.[13] While comprehensive, *Sharî'ah* is not derived from a single point of reference. It constitutes, rather, a vast corpus of religious norms and rules contained in a number of different "roots" or "sources".

Primary among these, the *Qur'ân* and *Sunnah* are regarded as divine in nature.[14] The *Qur'ân*, the holy book of Islam, is considered to be the direct revelation from God as spoken to the Prophet Mohammad.[15] *Sunnah*, on the other hand, constitute the utterances and actions of the Prophet in light of this revelation and are recorded in the *hadîth* or tradition.[16] The non-divine roots are developed through human effort (*ijtihâd*).[17] These derivative roots comprise *qiyas* (analogy) and *ijmâ'* (consensus of legal scholars) and are used principally as a means of deducing rules of Islamic law where the *Qur'ân* or *Sunnah* are not explicit in their teachings.[18] The roots of Islamic law are therefore disparate

12. Mustafa Hussain, "A general introduction to Islamic Finance" in Rahail Ali ed, *Islamic Finance: A Practical Guide* (Globe Business Publishing Ltd, 2008) 7, at 8.
13. Robert Crane, "The Essence of Islamic Law" in Kareema Altomare ed, *The American Muslim*, 2004, http://www.theamericanmuslim.org/tam.php/features/print/the_essence_of_islamic_law/ (visited 5 September 2011).
14. *Qur'ân* 15:9, "Verily We: It is We Who have sent down the *Dhikr* (i.e. the *Qur'ân*) and surely, We will guard it (from corruption)."
15. Fuad Al-Omar and Mohammed Abdel-Haq, *Islamic Banking Theory, Practice and Challenges* (Zed Books, 1996), at xvi.
16. *Qur'ân* 4:80, "He who obeys the Messenger (Muhammad), has indeed obeyed *Allah*, but he who turns away, then we have not sent you (O Muhammad as a watcher over them." Al-Omar and Abdel-Haq, note 15, at 1.
17. *Ijtihâd* is defined by Weiss as "the process of extracting or deriving (*istinbat, istithmar*) legal rules from the sources of the Law," Bernard Weiss, "Interpretation in Islamic Law: The Theory of Ijtihâd" 26 *American Journal of Comparative Law* 199, at 199-200 (1977-78). The continued use of *ijtihâd* amongst Islamic scholars is an area of controversy, see Wael B Hallaq, "Was the Gate of Ijtihad Closed?" (1984) 16(1) *International Journal of Middle East Studies* 3.
18. Potter LJ in the UK Court of Appeal noted that "most of the classical Islamic law on financial transactions is not contained as 'rules' or 'law' in the *Qur'ân* and *Sunnah* but

in form and origin. This has not, however, prevented legal doctrines from being extracted and applied to contemporary issues, even in the absence of ancient precedent.

Overriding principles of Islamic finance

The connection between *Sharî'ah* and Islamic finance remains indissoluble with rules derived from the roots of *Sharî'ah* informing and determining the nature of Islamic economic activity. This theocentric focus has resulted in an understanding that forces in Western finance such as debt, speculation and materialism are superseded in Islamic finance by ethical considerations and deference to a higher authority.[19] The principles of Islamic law are therefore viewed as bringing to economic activity, a moral and equitable character which is absent from secular finance.[20]

The primary roots of *Sharî'ah* contain, however, only limited rules which are overtly financial in their reference. Nevertheless, Islamic scholars have concluded that four principal concepts, which are established in the *Qur'ân* and *Sunnah*, are applicable to commercial activity: the prohibition of *ribâ* (etymologically, *ribâ* signifies increase or growth but it is often translated now as interest),[21] the avoidance of *maysir* (gambling and speculation),[22] the need to limit *gharar* (uncertainty) in a contract,[23] and finally, the unlawfulness of certain *haram* (forbidden) activities such as the making or selling of alcohol,

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is based on the often divergent views held by established schools of law formed in a period roughly between 700 and 850 CE" *Beximco Pharmaceuticals Ltd v Shamil Bank of Bahrain EC* [2004] 1 Lloyd's Rep 1, at 30.

19 Shahid Siddiqui, *Islamic Banking: Genesis and Rationale, Evaluation and Review, Prospects and Challengesection* (Royal Book Company, 1994), at 47-48.

20. Mabid Ali Al-Jarhi, *Islamic Finance: An Efficient & Equitable Option* (The Islamic Research and Training Institute, 2004), at 8.

21. See, amongst others, *Qur'ân* 4:161, "that they took *ribâ*, though they were forbidden; and that they devoured men's substance wrongfully. We have prepared for those among them who reject faith, a grievous punishment." The area remains contentious (Chibli Mallat, "Tantawi on Banking" in Muhammad Khalid Masud, Brinkley Messick and David S Powers eds, *Islamic Legal Interpretation: Muftis and their Fatwas* (Harvard University Press, 1996) 286, at 293). However Saleh suggests that enough Islamic scholars now interpret the *Qur'ân* as prohibiting all forms of bank interest that *ijmâ'* may have been reached on the issue, Nabil A Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law* (2nd ed, Graham & Trotman, 1992), at 15.

22. *Qur'ân* 5:90-91, "O, you who believe! Intoxicants (all kinds of alcoholic drinks), and gambling ... are an abomination of Satan's handiwork. So avoid that (abomination) in order that you may be successful."

23. One *hadîth* notes that the Prophet forbade the "sale by means of pebbles" (*Bay'al-Hast*) and the *gharar* sale (*Bay' al-Gharar*), *Sahih Muslim*, Book 10, Introduction, *Hamid Siddiqui* (trans), available at: http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/muslim/010.smt.html. See also, Vogel and Hayes, note 6, at 87.

pork products, and pornography.[24] These prohibitions are the theological norms upon which the Islamic finance industry has been built, and the ideological parameters within which Islamic financial activity takes place.

Islamic law has not, therefore, set down a fully formed financial system or financial transactions which it explicitly obliges Muslims to follow. Rather, it has established specific rules which are *relevant* in financial activity. The prohibitions of *ribâ*, *maysir*, *gharar* and *haram* activities are based on textual references in the *Qur'ân* and *Sunnah*. These teachings do not simply catalogue undesirable activity but repeatedly refer to practices which, if engaged in, would result in punishment in the hereafter.[25] The fact that these practices are prohibited by Islamic law is widely acknowledged and uncontroversial.[26] How these prohibitions are to be interpreted and applied in contemporary financial activity is, however, subject to variations in opinion.[27] Like much of Islam, there is not unwavering unanimity over the contemporary meaning of the financial prohibitions or the finer details of Islamic financial transactions - Islam is itself "internally plural."[28] In the absence of a central *Sharî'ah* body or a definitive indication of what is and is not required by Islamic law in relation to financial activity, there may never be unanimous agreement on how the prohibitions of *ribâ*, *gharar*, *maysir* and *haram* activities can be adhered to. Nevertheless, while controversy remains, contemporary Islamic financial activity often displays a number of distinguishing characteristics – such as an avoidance of interest – and it is suggested that it is these prevalent features of the Islamic finance industry that Ireland is now attempting to accommodate. This article will not consider the correctness of any interpretation of Islamic law. It will, however, proceed on the basis that for Muslims who do not consider the conventional financial system to be compatible with their religious beliefs, certain elements of that conventional system are frequently highlighted as contrary to the theological norms outlined above.

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24. For example, the *Qur'ân*ic prohibition of pork; *Qur'ân* 2:173: "He hath forbidden you only carrion, and blood, and swineflesh, and that which hath been immolated to (the name of) any other than *Allah*. But he who is driven by necessity, neither craving nor transgressing, it is no sin for him. Lo! *Allah* is Forgiving, Merciful."
25. See for example *Qur'ân* 2:275: "those who devour *ribâ* ... will not stand (on the Day of Resurrection) except as stands a person beaten by Satan leading him to insanity."
26. Muhammad Ayub, *Understanding Islamic Finance* (John Wiley & Sons Ltd., 2007), at 44.
27. In Egypt, for example, Muhammad Sayyed Atiyya Tantawi, Mufti of the Egyptian Republic legitimated the use of interest-bearing government bonds as not contrary to the prohibition of *ribâ*. Mallat, note 21, at 293
28. Werner Menski, "Accommodating religious needs in relation to marriage: Flying kites and navigating state law and other forms of law", Paper presented for Diritto & Religione. Prima giornata di studio—Edoardo Dieni, Il riconoscimento civile dei matrimoni religiosi: conflitto di leggi o di culture?, Università degli Studi dell'Insubria, Facoltà di Giurisprudenza, Como, 28-29 November 2008, at 8.

III. *SHARÎ'AH* COMPLIANCE IN IRELAND

Within Ireland, there were 32,539 Muslims living in the Republic according to the 2006 Census, an increase of almost 70% since 2002.[29] The discernable growth in this number establishes adherents to Islam as a discrete social group in Ireland and a strengthening presence in Irish life. Internationally, the Islamic finance industry has developed rapidly and continues to mature, buoyed by liquidity from the East and rising interest in religiously-guided financial structures. Fostering an environment which is conducive to the development of transactions compliant with the principles of Islam may therefore have a dual benefit for Ireland. Not only would it fulfil the economic needs of Muslims in Ireland who wish to use Islamic finance, but could position Ireland as a viable destination for *Sharî'ah*-compliant investment from abroad, potentially attracting much needed capital into the Irish economy.

The reality is, however, that notwithstanding the contemporary benefits of developing a *Sharî'ah*-compliant financial sector, transactions and services structured to observe Islamic teachings are underpinned by concepts which are distinguishable from those operating in a conventional economy. While Islamic financial transactions often replicate the economic substance of conventional products, they may be structurally distinguishable in line with the participants' interpretations of Islamic legal dictates. The unique form of some Islamic transactions raises uncertainties in terms of their treatment within the context of a secular legal system which was developed for interest-based financing. Precisely because of this, various regulatory and financial authorities, particularly in the UK, have actively supported a tailored integration of Islamic finance, addressing inconsistencies between the principles of Islamic law and the established legal framework.[30] Building upon legislative and regulatory arrangements already in place, the British authorities have thus sought to encourage Islamic finance through the establishment of a "level playing field" between conventional and economically comparable Islamic finance, ensuring that "no obstacles, no special favours" are applied to "alternative (i.e. Islamic) finance arrangements."[31]

Islamic finance in Ireland has only just begun to receive political backing.[32]

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29. Census 2006, Ireland, *Principal Demographic Results* http://www.cso.ie/census/documents/Amended%20Final%20Principal%20Demographic%20Results%202006.pdf (visited 5 September 2011). Informal estimates now place the domestic Muslim population at approximately 50,000.
30. Darko Hajdukovic, "London acts as global gateway for Islamic Finance," in Sarah Minns ed, *The 2008 guide to Opportunities & Trends in Islamic Finance* (Euromoney Research Guides, 2007) 6, at 6.
31. Financial Services Authority, "Islamic Banking in the UK", *Briefing Note BN016/06*, 9 March 2006 http://www.fsa.gov.uk/pages/About/Media/notes/bn016.shtml (visited 5 September 2011).
32. See for example, Enda Kenny, "Speech given at the IFIA Annual Conference," Dublin, 2 June 2011, available at: http://www.merrionstreet.ie/index.php/2011/06/speech-by-

Nevertheless the British experience is extremely useful. The similarities between the legal and regulatory systems of the two countries are strong and so in working to encourage the growth of this alternative financial system, Ireland has a precedent against which its own legislative and regulatory alterations can be considered.

The Finance Act 2010

Following the clarifications outlined in the Tax Briefing 2009, the Finance Act 2010 and subsequent Guidance Notes represented an important opportunity for those wanting to develop an Islamic finance industry in Ireland.[33] Proposing amendments to the taxation of certain structured products, section 39 and section 137 of the Act insert into the Taxes Consolidation Act (TCA) 1997 two new provisions, Part 8A[34] and section 85A[35] respectively, which deal with "Specified Financial Transactions."[36] In line with the British model of accommodation, these new provisions do not specifically refer to Islamic finance. *Any* financial transaction structured in a manner which falls within the ambit of the legislation will theoretically be taxed accordingly. However, the inclusion of a mandatory "opt-in" clause would suggest that in practice, the likelihood of the inadvertent application of these provisions is minimal.[37] Indeed, the Government has acknowledged that the measures have been designed to accommodate Islamic financial products and their practical effect will be to amend existing legislation so as to incorporate structures commonly found in Islamic finance.[38] The intended aim of the provisions appears therefore to be one of enabling Islamic finance by removing some of the legal obstacles faced by *Sharî'ah*-compliant structures under Irish law.

With the intention of creating greater consistency in the taxation of conventional and economically similar Islamic financial activity, this "first step"[39] with regard to facilitating Islamic finance domestically provides

the-taoiseach-mr-enda-kenny-t-d-to-the-ifia-annual-conference/?cat=11 (visited 5 September 2011).

33. Revenue Commissioners, *Guidance Notes on the Tax Treatment of Islamic Financial Transactions* (Revenue Commissioners, October 2010), hereinafter referred to as *Guidance Notes.*
34. Inserted by the Finance Act 2010, section 39 see also, Finance Act 2010, Explanatory Memorandum at 10.
35. Inserted by the Finance Act 2010, section 137.
36. Defined in Part 8A as meaning a "credit transaction," a "deposit transaction" or an "investment transaction."
37. Taxes Consolidation Act 1997, section 267U as inserted by the Finance Act 2010, section 39.
38. Department of Finance, "Publication of Finance Act," *Press Release*, 4 February 2010, http://www.finance.gov.ie/viewdoc.asp?DocID=6189 (visited 5 September 2011).
39. Barry O'Halloran, "Changes to attract Islamic investment 'a first step'" *The Irish Times*, 5 February 2010.

details on the tax position of "deposit transactions" (Islamic deposits), "credit transactions" (financing transactions), and "investment transactions" (*sukûk* or Islamic bonds).[40] While its treatment of retail finance appears to be subsidiary, and its immediate impact will certainly be limited to the wholesale market, the Act is not explicitly confined to wholesale financial arrangements. As a result, Part 8A and section 85 address some of the issues that have elsewhere led to the inconsistent and discriminatory taxation of Islamic financial transactions.[41]

The modifications introduced by the Finance Act however do not now justify complacency on the part of the Irish Government. While a decisive step towards accommodation, the Irish provisions are not wholly satisfactory. Inelegantly drafted and lacking in some important details, the amendments to the TCA fall short of the changes needed to ensure a genuinely level playing field between Islamic and conventional products. The October 2010 Guidance Notes brought some clarity to the area, but they too are modest in impact and at times, contradictory.

The following section will consider the current state of Islamic finance in Ireland. In light of the more immediate impact which the Finance Act and the 2009 Tax Briefing will have on the Islamic finance industry, discussion will focus on three, largely wholesale areas: financing products for commercial entities, *sukûk* and Islamic funds. Though the Act and Briefing deal only with issues of taxation, the structures which they outline are likely to be indicative of the form Islamic financial transactions will adopt if offered in Ireland. In addition to tax therefore, the structure of Islamic products, and where relevant their regulation, will also be considered.

IV. Corporate Financing ("Credit Transactions")

Although formal Islamic lending has yet to emerge as an option in Ireland's economy, Part 8A TCA (as introduced by the Finance Act 2010) provides for some of the basic contracts most commonly used in this form of financial activity.[42] Clarifying the tax position of "credit transactions" Part 8A outlines a number of contracts which are ostensibly *Sharî'ah* neutral, but which encapsulate the structures of *murâbaha* (cost-plus financing) and diminishing *mushâraka* (diminishing partnership) transactions. The following section will deal with these contracts in the context of corporate borrowing looking first at the individual

40. Department of Finance, "Publication of Finance Act," note 38.
41. For example the classification of returns in Islamic financial transactions as interest. A similar approach has been adopted elsewhere; see for example, the UK which introduced sections 49 and 54 Finance Act 2005 (c5) which treat the return on *mudâraba* deposit accounts as deductible interest rather than a distribution.
42. Strictly speaking the different Islamic contracts are not financial products in and of themselves and are simply the contractual basis upon which products are developed.

definitions of *murâbaha* and diminishing *mushâraka* contracts before addressing their similar tax treatment.

Murâbaha

Two forms of *murâbaha* cost-plus financing are subsumed by the different types of "credit transaction" outlined in the Part 8A TCA: a basic *murâbaha* structure[43] used to finance asset purchases, and commodity *murâbaha*[44] which can be used as a means of obtaining and managing capital.[45] One of the most commonly employed forms of Islamic borrowing,[46] basic *murâbaha* structures involve a client instructing a financial institution to purchase a defined asset at a specific cash price. The financier then sells the asset to the borrower at a mark-up covering the initial consideration paid for the asset plus the bank's profit. This mark-up price is repaid to the financier on a deferred basis either in one lump sum or in instalments.[47] The commodity *murâbaha* is similar to a basic *murâbaha* structure with one key difference. Immediately upon receiving the asset (which is usually an easily tradable good such as copper),[48] the financier transfers its interest in the asset to the borrower who must immediately sell the asset to a third party at spot price.[49] The cash generated is credited to the borrower.

Classified in the Part 8A TCA as "credit return,"[50] the bank's profit for both types of *murâbaha* must be "equivalent" to the return generated by an interest bearing loan.[51] As such, *murâbaha* contracts substantially resemble conventional borrowing.[52] This very fact has been used as a basis for suggesting that *murâbaha*

43. Which falls under paragraph (a) of the definition of "credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.
44. Which falls under paragraph (b) of the definition of "credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.
45. Vogel and Hayes, note 6, at 140-143.
46. Humayon Dar, "Incentive compatibility of Islamic financing" in Kabir Hassan and Mervyn Lewis eds, *Handbook of Islamic banking* (Edward Elgar Publishing, 2007) 85, at 85.
47. Munawar Iqbal and Philip Molyneux, *Thirty Years of Islamic Banking; History, Performance and Prospects* (Palgrave Macmillan, 2005), at 22, Ayub, note 26, at 221.
48. Ayub, note 26, at 233.
49. The Finance Act does however allow a potential 5% reduction in value between the first and the third sales.
50. Paragraph (a) of the definition of "Credit return," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.
51. Paragraph (a)(iii) of the definition of "Credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.
52. Revenue Commissioners, *Guidance Notes*, note 33, at 23.

transactions and interest-based financing are distinguished only by semantics.[53] However, the assumption of risk by the financier between the first and the second sale distinguishes *murâbaha* from their conventional counterparts. During this period, ownership is transferred to the financier who correspondingly bears the risk that the asset may be destroyed or damaged or that the borrower may reject the good before the second sale.[54] In theory, this increased risk prevents idle gain and underscores the *Sharî'ah* legitimacy of the financier's profit. In practice, banks frequently and not uncontroversially[55] employ mechanisms for minimising their risk, a practice which has essentially been legitimised by the commodity *murâbaha* provisions of Part 8A TCA which *require* that on acquisition of the asset the financier must immediately transfer ownership of the asset, along with all corresponding risks, to the borrower.[56] The actual period during which the financial institution is owner of the assets is thus negligible.[57]

Considering the regulatory position of mark-up financial arrangements, the Office of the Comptroller of the Currency (the OCC) in the US has noted that *murâbaha* is "functionally equivalent to or a logical outgrowth of" secured lending and therefore permissible under existing banking law.[58] Though a *murâbaha* transaction requires certain modifications to the allocation of risk between participants, its ultimate economic effect is to provide a borrower with funds which are repayable over a specified period. Nevertheless, despite the ostensibly straightforward regulatory position of *murâbaha* agreements, Ireland's Central Bank should consistently adopt a substance over form approach to regulation of this product. As an agreement to sell an asset at a particular price on a specified future date, commodity *murâbaha* in particular could be classified as futures contracts within the meaning of "investment instruments"

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53. Mahmoud El-Gamal, "Overview of Islamic finance," *Occasional Paper No 4,* Office of International Affairs, Department of the Treasury, Washington, DC, 2006.
54. It was these differences which lead the *Organisation of Islamic* Conferences' Fiqh Academy to approve the use of *murâbaha* in Islamic financing transactions, "Decision 3," Fifth session, (1988) *Fiqh Academy Journal* 2:1599.
55. Vogel and Hayes, note 6, at 9.
56. This can be contrasted with the situation in the UK where the first sale must be immediate only where the first party is not a financial institution.
57. This minimisation of risk in some commodity *murâbaha* has recently come under criticism by the OIC Islamic Fiqh Academy in Saudi Arabia who, in June 2009, declared similar transactions impermissible, The International Council of Fiqh Academy, *Resolution 179 (19/5), In Relation to Tawarruq : Its Meaning and Types (Classical Applications and Organized Tawarruq)*, in its 19th session, Sharjah, United Arab Emirates, April 26-30, 2009, Translation into English by the International Shari'ah Research Academy for Islamic Finance available at: http://www.isra.my/fatwas/topics/commercial-banking/financing/tawarruq/item/342-oic-fiqh-academy-ruled-organised-tawarruq-impermissible-in-2009.html.
58. OCC Interpretive Letter No. 867 (June 1, 1999), [1999-2000 Transfer Binder] *Fed Banking L Rep* (CCH) 81-361 (*Murâbaha* Financing Products).

in the Investment Intermediaries Act 1995.[59] Since ordinary corporate lending is not subject to the provisions of this Act, such an approach impairs consistency in regulatory treatment between *murâbaha* and conventional loans. Classifying *murâbaha* as an investment rather than a *Sharî'ah*-compliant form of lending will run counter to the notion of equal treatment of financial products. This could subject Islamic and conventional participants to different regulatory standards, increasing the potential for regulatory arbitrage while reducing the ability of Ireland to deal consistently with all forms of financial activity.[60]

Diminishing *Mushâraka*

Basic *mushâraka* financing involves an equity-oriented commercial relationship in which two or more parties contribute to a venture and share in any profits or losses which result.[61] In recent years one of the most frequent applications of this "partnership financing"[62] structure has been the diminishing *mushâraka* or *mushâraka mutanaqisah*.[63] Commonly used in the UK as a means of providing *Sharî'ah*-compliant real estate finance,[64] diminishing *mushâraka* generally combine two classical Islamic contracts; an *ijarah* lease and a *mushâraka-ul-milk* (joint ownership).

Part 8A TCA outlines a financial instrument which bears clear similarities to diminishing *mushâraka*.[65] Under this amortising ownership structure, a customer pays a specific percentage of the ultimate purchase price of an asset to the vendor. The customer then enters into a *mushâraka* partnership agreement to co-own the asset with the financier who provides the balance of the capital. The initial investment of the customer represents his share of the property with the bank holding the remainder. The customer then undertakes to purchase the bank's interest. With each payment, the financier's share of the joint ownership

59. Investment Intermediaries Act 1995, section 2.
60. As regards the regulation of these products in the UK, Hainsworth notes that *murâbaha* contracts have, like interest-based lending, generally fallen outside the scope of the Regulated Activities Order. The two forms of financing have thus been dealt with in a similar manner by the FSA, Antony Hainsworth, *Islamic Financial Institutions and Islamic Finance* (Reed Elsevir, 2009), at 30.
61. Ibrahim Warde, *Islamic Finance in the Global Economy* (Edinburgh University Press, 2000), at 136, Angelo Venardos, *Islamic Banking and Finance in South-East Asia. Its development and future* (World Scientific Press, 2005), at 72.
62. Ibrahim Warde, "The Revitalization of Islamic Profit-and-Loss Sharing: Lessons from Western Venture Capital" *Proceedings of the Third Harvard University Forum on Islamic Finance*, 2000.
63. Hainsworth, note 60, at 26.
64. Michael Ainley, Ali Mashayekhi, Robert Hicks, Arshadur Rahman and Ali Ravalia, *Islamic Finance in the UK: Regulation and Challenges*, (Financial Services Authority, 2007), at 20.
65 Paragraph (c) of the definition of "credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.

is reduced. Concurrently, the parties also enter into an *ijârah* leasing agreement in which the financier charges the customer rent for the use of the asset during the period of the arrangement.[66] This rent represents the financier's profit over the course of the transaction and, in the context of Part 8A TCA, the "credit return".[67]

Part 8A's definition of the diminishing *mushâraka* credit transaction is not, however, without its problems and may exclude from its ambit, *mushâraka* which are structured to include features often presented as highly compatible with Islamic law. In line with the approach adopted in the UK, Part 8A explicitly prevents the financier in a diminishing *mushâraka* from benefitting from an increase in the value of the assets.[68] This restriction could be regarded as questionable from a *Sharî'ah* perspective since Islamic legal doctrine has been interpreted as requiring the parties in a *mushâraka* to be joint owners of an asset. This joint ownership should result in the parties sharing in any profits or losses associated with that ownership.[69] However, the UK provisions do go on to confirm that the financier may share in the *loss* arising out of a reduction in the value of the asset without falling outside the accommodating tax provisions.[70] This provision thus permits diminishing *mushâraka* in the UK to involve some level of "sharing" between the parties involved. In contrast, stating that the financier's interest in the asset will only pass to the borrower "for a consideration which exceeds the consideration paid by the finance undertaking for the asset,"[71] the provisions of Ireland's Part 8A TCA would seem to prevent the financier from sharing in any loss in value of the asset. This restriction undermines the risk and reward sharing nature of *mushâraka* contracts and makes limited accommodation

66. Taxes Consolidation Act 1997, section 267N(c)(I)(C) as introduced by Finance Act 2010, section 39 which notes that the borrower agrees to make payments to the financier amounting to the aggregate of the consideration paid by the financier (diminishing *mushâraka* aspect) and any consideration paid or payable by the borrower for the use of the asset (*ijarah* aspect), Muhammad Ashraf, "Shariah-Compliant Financial Products" (2007) *Accountancy*, http://www.accountancy.com.pk/articles.asp?id=174 (visited 5 September 2011).
67. Paragraph (c)(II) of the definition of "credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.
68. Paragraph (c)(B) of the definition of "credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39. The UK equivalent can be found, for example, in section 504(1)(g) Corporation Tax Act 2009 (c4).
69. Muhammad Siddiqi, *Partnership and Profit-Sharing in Islamic Law*, (The Islamic Foundation, 1985), at 15.
70. See for example section 504(5) Corporation Tax Act 2009 (c4) which notes that "Subsection (1)(g) does not prevent the first owner [i.e. the financier] from—
    (a) having responsibility for *any reduction in the asset's value*, or
    (b) having a share in a loss arising out of any such reduction." Emphasis added.
71. Paragraph (c)(III) of the definition of "credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.

for the dictates of *Sharî'ah*. As a result, the fact that the financier will earn a return is assured, notwithstanding the ultimate value of the financed assets.

Credit transactions: taxation

Shunning association with interest-based financial techniques, the returns on *murâbaha* and diminishing *mushâraka* arise from trade. *Murâbaha* returns take the form of a mark-up on the sale of an asset while diminishing *mushâraka* involve the payment of rent by the borrower. These returns, while economically similar to interest, are structurally distinguishable and as a result, sit uneasily within taxation legislation designed for interest-based structures.

In the UK, amendments directed at bringing the taxation of *murâbaha* and diminishing *mushâraka* (among others) into line with conventional lending began in 2005[72] and have most recently been consolidated and expressly integrated into the various Tax Acts by the Corporation Tax Act 2009[73] and the Taxation (International and Other Provisions) Act 2010.[74] Treating all alternative finance arrangements as "loan relationships" for corporation tax purposes[75] and the relevant return as interest for the other Tax Acts,[76] the ultimate effect of these provisions has been to tax and relieve Islamic finance returns as if they were conventional interest payments. The provisions introduced by Ireland's Finance Act 2010, dealing with "credit returns," likewise seek to address the inconsistencies in taxation between Islamic and conventional financings. For both *murâbaha* and diminishing *mushâraka* transactions therefore, the credit return is, for the purpose of the Tax Acts, treated as if it were interest on a loan.[77] Effectively Part 8A TCA seeks to bring these arrangements within the scope of the existing rules applying to loans and interest, where the structural distinctiveness of Islamic financial returns would otherwise have led to anomalous tax results.

Like the UK, the Irish provisions contain an anti-avoidance clause which limits comparable tax treatment to the extent that the credit returns do in fact

72. Finance Act 2005 c7, section 47 dealing with "purchase and re-sale" agreements, Finance Act 2005 (c7), section 47A dealing with "diminishing shared ownership" agreements, inserted by Part 3, section 96(3), Finance Act 2006 (c25).
73. Corporation Tax Act 2009 (c4), Part 6, Chapter 6.
74. Taxation (International and Other Provisions) Act 2010 (c8), Schedule 2, see Explanatory Notes to the Act http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100008_en.pdf (visited 5 September 2011).
75. Corporation Tax Act 2009 (c4), sections 509-510.
76. Income and Corporation Taxes Act 1988 (c1), section 367A, Income Tax (Earnings and Pensions) Act 2003 (c1), section 173A, *Income Tax Act 2007 (c3),* section 372A and section 564M- section 564Q inserted by Taxation (International and Other Provisions) Act 2010 (c8), Schedule 2.
77. Taxes Consolidation Act 1997, section 267O(1) as introduced by Finance Act 2010, section 39.

resemble interest.[78] Participants in Islamic financings cannot therefore benefit unjustifiably from these accommodations by claiming that the whole credit return should be treated as interest even where it far exceeds a normal return on a conventional loan.[79] A closer reading of the language used in the Irish and British legislation however raises a potential issue. While the alternative finance returns in the UK must "equate in substance" to interest, the same returns in Ireland will fall within Part 8A only if they are "equivalent" to a return on an interest-based loan. By giving no explanation of what is required for equivalence or whether this equivalence is considered in light of the payments as a whole or on each instalment, the standard set by the Irish legislation is arguably too high. Due to their differing structure and form, Islamic financial returns simply cannot be "equivalent" to interest in every respect; any divergence from the form of conventional interest could therefore prevent a transaction from benefitting from these provisions. Tailored legislative treatment of Islamic financial transactions is needed precisely because the products and their returns are structurally distinguishable from conventional financing. Limiting this treatment only to those contracts whose returns are wholly "equivalent" to interest undermines its effectiveness in practice.

The centrality of asset ownership in Islamic transactions also raises separate tax issues. In light of this, Part 8A TCA deals quite extensively with the potentially anomalous impact of credit transaction structures on the calculation of chargeable gains and the allocation of capital allowances between the parties. As is the case for interest payments therefore, credit returns cannot be deducted from the consideration paid when determining the capital gain on disposal of the asset.[80] Equally, in both *murâbaha* and diminishing *mushâraka* transactions, the borrower, and not the financer, will be able to claim capital allowances as the cost of the asset will ultimately be borne by the borrower.[81] This move prevents the unique ownership arrangements needed for Islamic compliance from resulting

78. Paragraphs (a)(iii), (b)(iv) and (c)(II) of the definition of "credit transaction," Taxes Consolidation Act 1997, section 267N(1), as introduced by Finance Act 2010, section 39.
79. Mohammed Amin, "UK Taxation of Islamic Finance – Where are we now?" Lecture given at the Institute of Islamic Banking and Insurance, July 2006 http://newhorizon-islamicbanking.com/index.cfm?section=lectures&action=view&id =10982 (visited 5 September 2011).
80. Taxes Consolidation Act 1997, section 267O(3) as introduced by Finance Act 2010, section 39. Equally, in order to ensure that the borrower in a commodity *murâbaha* is not put in a better position to conventional borrowers, any loss which may occur on the sale of the commodity to a third party cannot be deducted from chargeable gains, Taxes Consolidation Act 1997, section 267P(3) as amended.
81. In doing so, Section 267O(2) and section 267P look at the substance of the transactions rather than their strict legal form in order to determine which party should be entitled to claim allowances on the relevant asset.

in worse or indeed better[82] treatment of the participants for capital gains and corporation tax purposes. A continuing deficiency is, however, evident in terms of stamp duty liability when the underlying asset in a credit transaction is real property. Islamic contracts involve multiple transfers of asset ownership; this could potentially lead to a double imposition of stamp duty, once when the financial institution acquires ownership and then again when that ownership is ultimately transferred to the borrower.[83] As conventional financing transactions will generally not lead to such repeated stamp duty liability, the additional taxation will inevitably affect the competiveness of *Sharî'ah*-compliant financings. Despite this, the provisions of the Finance Act 2010 have made no attempt to address the inconsistency. Even the Revenue Commissioners' Guidance Notes, while referring to the stamp duty issue, reiterate that "stamp duty will arise under normal rules."[84]

Once again, the UK has sought to level the field through a series of legislative modifications. Section 72 of the Finance Act 2003 eliminated double Stamp Duty Land Tax [SDLT] in relation to *murâbaha* transactions in 2003[85] while a similar carve-out was introduced for diminishing *mushârakah* in 2005.[86] These exemptions were subsequently extended to include corporate borrowing by replacing references to the "individual" by a requirement that one party should be a "person."[87] Specifically identifying the points at which the first and second transactions take place and limiting the imposition of stamp duty to only one, the UK amendments have eliminated a huge stumbling block to creating a comprehensive Islamic finance market and equality between investors.[88] In light of the Irish Finance Act's attempt to alleviate other tax burdens experienced by Islamic financial transactions, it is disappointing that it failed to even consider the discriminatory stamp duty treatment of these transactions.

Part 8A TCA represents Ireland's first real attempt to address the ambiguous treatment of Islamic financial structures for the purposes of taxation. In light of the fact that Ireland has had little actual exposure to the principles and structures associated with *Sharî'ah*-compliant transactions, the amendments introduced by the Finance Act 2010 are certainly a noteworthy step towards the effective accommodation of Islamic finance in Ireland. *Murâbaha* and diminishing *mushâraka* form a key aspect of the Islamic finance industry and clarification of their tax position is fundamental to the development of this sector.

82. See for example, Taxes Consolidation Act 1997, section 267P(3) as introduced by Finance Act 2010, section 39.
83. Fahim Uz-Zaman, *Shariah*-compliant *Financial Services: A Guide to Products, Markets and Trends*, (VRL KnowledgeBank, 2006), at 37.
84. Revenue Commissioners, *Guidance Notes*, note 33, at 29.
85. Finance Act 2003 (c14), section 73.
86. Finance Act 2003 (c14), section 71A inserted by the Finance Act 2005, section 94, Schedule 8, [1] and [2].
87. Finance Act 2006 (c25), section 168.
88. Ainley *et al*, note 64, at 8.

However, there remain several unresolved issues with both the wording of the accommodating provisions and the extent to which they will permit meaningful compliance with Islamic principles. As such, the long term effectiveness of these accommodations, in their current form, is not yet assured.

V. *Sukūk*

In recent years one of the most frequently commented upon aspects of Islamic banking and finance has been *sukūk*.[89] While not quite the level of enthusiasm encountered in the UK, Ireland has seen a number of *sukūk* authorised and listed on the Irish Stock Exchange and a considerable portion of section 39 of the Finance Act 2010 deals with structures found in *sukūk* transactions. However, rather than positioning Ireland as a viable destination for the issuance, management and listing of *sukūk*, the inadequacies of the recent accommodations indicate deficiencies in Ireland's regulation and taxation of Islamic financial products.

The prohibition of interest in contemporary Islamic banking and finance means that any profit earned from such financial activities must have been the result of the active involvement or risk undertaken by the party.[90] Conventional bonds resemble interest-bearing loans under which the issuer generally pays holders of the bond a fixed amount periodically in addition to the repayment of the principal at a future date.[91] The bond holders benefit from an assurance that they will receive regular payments as well as the return of their money at maturity. Such certainty combined with returns which bear no correlation to the productivity of the underlying debt contradict the prohibition of *ribâ*.[92]

Sukūk, on the other hand, while often defined as "Islamic bonds,"[93] resemble

89. Plural of *sakk*, Financial Services Authority and HM Treasury, "Consultation on the legislative framework for the regulation of alternative finance investment bonds (sukuk)," (Financial Services Authority, December 2008), at 3 http://www.fsa.gov.uk/pubs/cp/sukuk.pdf (visited 5 September 2011).
90. *Sharî'ah* maxim: "gain accompanies liability for loss," *Sunan Abu-Dawud*, Book 23, Number 3501, Prof Ahmad Hasan (trans), available at: http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/abudawud/023.sat.html, referred to in Frank Vogel, "Islamic finance: personal and enterprise banking" in M Fahim Khan and Mario Porzio eds, *Islamic Banking a Finance in the European Union; a challenge* (Edward Elgar, 2010) 40, at 48.
91. Sara Catley, "Islamic Finance, The core concepts explained" (July-September 2007) *Cross Border Quarterly* 31, at 38.
92. Armen V Papazian, (2010) 1(1) *So Far* 19, at 21.
93. Ken Owens and Omer Khan, *The Sukuk, a catalyst for the growth of Islamic Finance*, (Price Waterhouse Coopers, January 2009), at 1, http://download.pwc.com/ie/pubs/PwC_Sukuk_Flyer_Advisory_Jan09.pdf (visited 5 September 2011). AAOIFI defines *sukūk* as certificates of equal value representing undivided shares in the ownership of tangible assets, usufruct and services or (in the ownership of) assets of the particular

investment certificates under which *sukūk* holders acquire a beneficial interest in underlying assets using one of the *Sharî'ah*-compliant contract forms.[94] As a result of this interest, all of the risks and rewards associated with asset ownership are transferred to the investors who can then enforce these rights against third parties.[95] Throughout the life of the *sukūk*, payouts are based on asset performance and at maturity, the *sukūk* holders share in any capital gain or loss realised.[96] This asset-backed *sukūk* structure has been advocated by Accounting and Auditing Organisation for Islamic Financial Institutions [AAOIFI][97] as a *Sharî'ah*-compliant means of accessing the capital markets.[98] However, while there does appear to be growing interest in this "ideal" form of *sukūk*, the majority of *sukūk* currently issued are more properly described as "asset-based" rather than "asset-backed."[99] These products thus confer on certificate holders an interest in an income generating asset but, as the ultimate repayment of the investment is guaranteed by the originator, the economic characteristics and distribution of risk between the parties resemble those found in fixed-income corporate bonds.[100] An industry-wide preference for asset-based rather than asset-backed *sukūk* is highlighted by the accommodating provisions introduced by the Finance Act 2010 which seek to align the tax treatment of *sukūk* with that of conventional bonds.

Despite the economic similarities between many *sukūk* and conventional debt securities, the UK authorities have struggled to find a consistent classification for *sukūk* and so until recently, regulation of these structures had been dealt with on a case-by-case basis with *sukūk* variously falling under two potential categories for regulatory purposes: a conventional bond or a Collective Investment Scheme [CIS] subject to strict requirements regarding financial

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projects or any specified investment activity, AAOIFI, Shari'a Standard No. (17), "Investment Sukuk", in *Shari'a Standards for Islamic Financial Institutions 1432 H-2010*, (AAOIFI, Bahrain, 2010) 303, at 307.

94. The basic Islamic contractual forms can be used as a means of investing in *Sukūk* assets resulting in a *Sukūk which constitutes partial ownership in a debt (Sukūk Murâbaha, Sukūk Istisnâ' and Sukūk Salam)*, asset (*Sukūk al Ijârah*), business (*Sukūk al Mushâraka* and *Sukūk al Mudâraba*), Rodney Wilson, "Overview of the sukuk market" in *Nathif J Adam and Abdulkader Thomas eds, Islamic Bonds: Your Guide to Issuing, Structuring and Investing in* Sukuk *(Euromoney Institutional Investor PLC, 2004) 3, at 3.* These assets can include debt, physical assets, businesses or investments.
95. AAOIFI, "Resolutions on Sukuk" (February 2008), http://www.aaoifi.com/aaoifi_sb_sukuk_Feb2008_Eng.pdf at 1 (visited 5 September 2011).
96 Ali Tariq and Humayon Dar, "Risks of *Sukūk* Structures: Implications for Resource Mobilization" (2007) 49(2) *Thunderbird International Business Review* 203, at 209.
97. An Islamic finance standard setting body situated in Bahrain.
98. AAOIFI, "Resolutions on Sukuk," note 95.
99. Rachel Evans, "Securitisation could save Islamic structures" (2008) 27(10) *International Financial Law Review* 27, at 27, Iqbal and Molyneux, note 47, at 135.
100. Michael Gassner, "Revisiting Islamic Bonds" (March 2008) *Business Islamica* 22, at 23.

promotions and potential investors.[101] In light of this ambiguous regulatory position, a review conducted by the FSA and the Treasury sought to establish the necessary legislative changes needed to "align the regulatory treatment of AFIBs [Alternative Financial Investment Bonds or *sukūk*] with conventional debt securities"[102] and to ensure a level playing field between most types of *sukūk* and interest-based bonds. Following this consultation, the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment) Order 2010[103] now harmonises the regulatory treatment of *sukūk* with debt securities by creating a new specified investment under the Regulated Activities Order [RAO][104] and explicitly exempting *sukūk* from the CIS regime.[105] These measures are in line with recommendations of the International Organisation of Securities Commissions [IOSCO]. While not advocating a particular policy for the regulation of Islamic securities, the IOSCO has supported a "substance over form"[106] approach and so "whilst Sukuk may closely resemble collective investment schemes in terms of legal structure, economically they are usually designed to replicate the function of conventional bonds."[107]

The regulatory situation in Ireland is less settled. The Central Bank has so far authorised these Islamic instruments as CIS yet has not indicated any coherent policy approach to the authorisation and regulation of Islamic securities. Automatically assuming that all *sukūk* fall within the CIS regime prioritises form over substance and fails to acknowledge the strong bond-like consequences of many contemporary *sukūk*. Equally, the unclear nature of this authorisation process falls short of the transparent policy approach advocated by the FSA and the IOSCO.[108] Adding to this general uncertainty surrounding the status of *sukūk* in Ireland, at listing stage the authorities have adopted a methodology which aligns the treatment of *sukūk* with conventional bonds. As a result, the NICBM *Sukūk* Ltd[109] and the Sun Finance Limited *Sukūk* have been approved

101. Financial Services Authority and HM Treasury, "Consultation on the legislative framework for the regulation of alternative finance investment bonds (Sukuk)," note 89, at 19.
102. *Ibid*, at 3.
103. Financial Services and Markets Act 2000 (Regulated Activities)(Amendment) Order 2010, No 86 of 2010.
104. This amendment results in the creation of section 77A in the specified investments of the RAO 2001 which has now been extended to include "Alternative Finance Investments."
105. Financial Services and Markets Act 2000 (Regulated Activities)(Amendment) Order 2010, No 86 of 2010, section 3.
106. International Organisation of Securities Commissions, "Analysis of The Application of IOSCO's Objectives and Principles of Securities Regulation for Islamic Securities Products" (September 2008), http://www.iosco.org/library/pubdocs/pdf/IOSCOPD280.pdf (visited 5 September 2011), at 22.
107. *Ibid*, at 20.
108. *Ibid*, at 20.
109. Irish Stock Exchange, Individual Debt Securities Data,

for listing on the Irish Stock Exchange under the category of debt security. Such a position requires *sukūk* issuers to comply with the same disclosure and prospectus requirements as issuers of conventional debt securities.[110]

If a level playing field policy regarding Islamic financial instruments is to work, the Central Bank must consider whether the ultimate consequence of the current regulatory approach is equality between comparable products. While some *sukūk* may share formulaic qualities of investment schemes, the characteristics of these instruments are significantly more nuanced than the blanket label of CIS suggests. For the *sukūk* market in Ireland to grow in size and complexity, the regulatory treatment of these instruments will need to be reconsidered. Though designed with the taxation of *sukūk* in mind, the definitions provided in Part 8A TCA, relevant to "investment transactions," could provide a starting point for the development of an explicit Irish regulatory regime for *sukūk*.[111] The provisions provide a definition of "investment transaction," "investment certificate" and "investment return," outlining structures which are functionally similar to *sukūk*. Describing an investment transaction as a "transaction whereby a person acquires investment certificates and receives an investment return," Part 8A classifies an investment certificate as a "security" which, once issued, establishes a claim over the rights and obligations represented by the certificate, thus entitling the holder to a proportionate share of the profits or losses generated by an underlying asset.[112] This certificate is to be redeemed after a specified period of time[113] and entitles the holder to payment of an "investment return," that is, any excess consideration paid by the issuer on redemption of the certificate, over the initial amount paid by the holder, and any other payments made to the certificate holder during the term of the investment.[114] Though this definition of investment certificates and their implications are fragmented throughout several

http://www.ise.ie/app/showSecSpecialist.asp?secID=1677 (visited 5 September 2011).

110. For example, SI 324/2005 Prospectus (Directive 2003/71/EC) Regulations 2005, SI 277 of 2007 Transparency (Directive 2004/109/EC) Regulations 2007.

111. The suggestion that regulatory guidance could be drawn from a taxation provision finds justification in the approach adopted in the UK where the regulatory definition of "alternative investment bond" in the newly amended RAO shares significant similarities with the taxation definition of these alternative forms of investment in section 507 of the Corporation Taxes Act 2009. Financial Services Authority and HM Treasury, "Consultation on the legislative framework for the regulation of alternative finance investment bonds (Sukuk)," note 95, at 16.

112. Paragraph (b) of the definition of "investment certificate," Taxes Consolidation Act 1997, section 267N(1) as introduced by Finance Act 2010, section 39.

113. Paragraph (c) of the definition of "qualifying company," Taxes Consolidation Act 1997, section 267N(1) as introduced by Finance Act 2010, section 39.

114 Paragraphs (a) and (b) of the definition of "investment return," Taxes Consolidation Act 1997, section 267N(1) as introduced by Finance Act 2010, section 39.

provisions of Part 8A,[115] the basic structural framework provided is sufficient to be attributable to most *sukūk* and bears similarities to that found in the UK. However, there are a number of aspects of the Irish definition which could prove problematic from a regulatory perspective.

Referring to the investment certificate simply as a "security" does not effectively draw *sukūk* out of the CIS regime. There is, thus, nothing to ensure that *sukūk* transactions, which are economically similar to debt, are consistently aligned with conventional debt securities for regulatory purposes. The basic structure of *sukūk*, involving the investment of funds in an asset out of which profit is generated, would still seem to fall within the definition of a CIS in Ireland.[116] Evidently, unlike the provisions of the UK's RAO, Part 8A TCA was not designed to deal with the regulation of financial products. Nevertheless, the inadequacies of the current legislative definition of *sukūk* highlight the fact that if regulation of these transactions is considered by Irish authorities, specific exemptions from the CIS regulations will be needed. This will clarify the position of *sukūk* and in doing so, may encourage domestic *sukūk* origination and issuance.

In addition to uncertainties over the broad classification of *sukūk* in Ireland, the target market for these products is also unclear. Unlike the UK, there is no requirement that the investment certificates are listed on a recognised stock exchange or traded on a regulated market.[117] However, the stipulation that these certificates are to be issued to individuals and/or companies generally seems to prevent any kind of private placement of *sukūk* certificates.[118] Restricting the ability of issuers to make a direct offer of securities to a limited number of sophisticated investors imposes a burden on *sukūk* issuers in Ireland which is not found in conventional bond issuances. This constraint may not only prevent

115. This should be contrasted with the more user friendly approach to defining *sukūk* transactions found in the UK regulatory and taxation instruments
116. Ireland does not have a single definition of CIS but rather a variety of CIS forms (an Undertaking for Collective Investment in Transferable Securities (UCITS), a unit trust, a designated investment company, a limited investment partnership or a common contractual fund). Of these forms, *sukūk* share ostensible similarities with unit trusts in particular. Unit trusts are defined as "...any arrangement made for the purpose, or having the effect, of providing facilities for the participation by the public, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever," Unit-trusts Act 1990, section 1(1), definition of "unit-trust scheme."
117. Regulated Activities Order 2001, section 77A(2)(f)(i) and (ii) as amended. This requirement was justified by the FSA necessary to ensure an enhanced level of transparency, thereby reducing the likelihood of regulatory arbitrage, Financial Services Authority and HM Treasury, "Consultation on the legislative framework for the regulation of alternative finance investment bonds (*Sukūk*)," note 89, at 15. Revenue Commissioners, *Guidance Notes*, note 33, at 33.
118. Tom Woods, "Islamic Finance in Ireland – 2010 budget," KPMG, http://www.kpmg.ie/financeact2010/articles/ (visited 5 September 2011).

the issuer from choosing its investors but it may also trigger the more onerous and costly consumer protection requirements associated with public offerings. While the definitions used in the Part 8A indicate that the Irish authorities are amenable to alternative financial structures, the current accommodating provisions are an insufficient means of ensuring regulatory equality for *Sharî'ah*-compliant securities.

The taxation of *sukûk* issuances has also been a source of confusion in the UK.[119] Unlike conventional bond disbursements which are classified as tax deductible interest payments,[120] *sukûk* payments are not interest and instead take the form of profit shares. As a result, they were treated by tax law as fully taxable profit distributions. This distinction between the taxation of conventional bonds and *sukûk* unsurprisingly made investment by way of *sukûk* more expensive than through conventional channels. Counteracting this, section 53 of the Finance Act 2007[121] expanded the scope of the alternative finance provisions in the Finance Act 2005.[122] The returns paid to the investors in debt-like *sukûk* are now classified as alternative finance returns[123] which are treated as deductible interest payments.

The re-characterisation of *sukûk* returns in the UK has been complemented by further legislative amendments to the SDLT and stamp duty position of both the bond holder and the issuer. *Sukûk* often use real property as the underlying asset. Like the credit transactions already discussed, this resulted in SDLT being charged twice. Further uncertainty surrounded the liability of *sukûk* holders themselves to pay stamp duty on transfer of their *sukûk* certificates. Alleviating this disparity of treatment, the Finance Act 2008 sought to include alternative finance investment bonds within the meaning of "loan capital" in the Finance Act 1986,[124] thus allowing the *sukûk* holders to benefit from stamp duty relief on transfer.[125] Following this, the Finance Act 2009 has dedicated an entire schedule to tax reliefs for alternative finance investment bonds.[126] Section 5 of schedule 61 of this Act specifies detailed conditions which, once met, will result in an elimination of the double SDLT charge to which *sukûk* were previously subject.[127] Acknowledging that future expansion of the legislation may be

119. Catley, note 91, at 39.
120. Income and Corporation Taxes Act (ICTA) 1988, section 209(2)(e)(iii).
121. Finance Act 2007, (c11).
122. The Finance Act 2007 thus added to the 2005 Act; section 48A and B which establish the nature and effect of alternative finance investment bonds and modified section 50, section 52, section 53 and section 54.
123. Finance Act 2005, (c7), section 48B(1).
124. Finance Act 2008, (c9), section 154.
125. Finance Act 1986, (c41), section 78.
126. Schedule 61, Finance Act 2009, (c10).
127. The provision was reinforced by the Stamp Duty Land Tax (Alternative Finance Investment Bonds) Regulations 2010 (No 814 of 2010) which further extended the scope of AFIB SDLT relief.

necessary, HM Treasury appears conscious that given the innovative nature of Islamic finance, developments in the area will need to be monitored in order to minimise the potential for unequal taxation.[128]

Like in the UK, distributions in Ireland are not tax deductible for corporation tax purposes while interest payments are. The amendments to the TCA 1997 introduced by the Finance Act 2010 appear, at least initially, to counteract the problem faced by *sukūk* returns with section 267R noting that "the Tax Acts shall apply to an investment return as if that investment return were interest on a security."[129] However, as section 267R is explicitly subject to section 130 of the TCA 1997,[130] the actual effect of this provision is ambiguous. Section 130(2)(d)(iii)(I) of the TCA 1997 defines as a "distribution" any payment by a company the level of which is "dependent on the results of the company's business or any part of the company's business." The new Part 8A however identifies an investment certificate as entitling its holder to share in the "profits or losses derived from an asset held by the qualifying company"[131] and classifies investment return as including "any other payments (if any)"[132] derived from the underlying asset. Since any gains or losses arising from the underlying asset are to be treated as those of the qualifying company,[133] it is arguable that payments made to certificate holders are, at least to some extent, dependent on the results of the issuer's business and thus prevented from being classified as interest. The internal contradiction in the legislation is evident. *Sukūk*, in order to be *Sharī'ah*-compliant and to fall within the scope of Part 8A, should be based on underlying assets with returns dependent on the performance of those assets. Yet this very fact would appear to deny *sukūk* transactions the benefit Part 8A was attempting to provide. In the October 2010 Guidance Notes, the Revenue attempted to clarify the incongruity in the legislation by stating that "[i]n general, Revenue will not regard the return as being dependent on the results of the business"[134] as long as, the amount of the return equates in substance to a commercial return on an investment, the return is determined at the outset, it is equivalent to the rate of interest *and* it is not altered during the course of

128. HM Treasury, *Stamp duty land tax: Commercial sukuk. A response to the Consultation*, (HM Treasury, London, 2009), at 5.
129. Read in conjunction with existing provisions of the Taxes Consolidation Act 1997, this exemption would appear to apply only to those payments which "represent[] a reasonable commercial return for the use of [the] principal" (section 130(2)(d)(iii)(II)) thus ensuring that only those transactions whose economic implications are similar to conventional bonds will actually benefit from parity of treatment.
130. Taxes Consolidation Act 1997, section 267R.
131. Paragraph (b) of the definition of "investment certificate," Taxes Consolidation Act 1997, section 267N(1) as introduced by Finance Act 2010, section 39.
132. *Ibid.*
133. Taxes Consolidation Act 1997, section 267S(2) as introduced by Finance Act 2010, section 39.
134. Revenue Commissioners, *Guidance Notes*, note 33, at 34.

the transaction except where such alteration follows interest rates.[135] These conditions are highly prescriptive and appear to contradict the idea that *sukūk* returns are not *ribâ* precisely because they are linked to the performance of the underlying asset. As a result, it seems likely that only a limited number of *sukūk* could successfully be marketed as *Sharî'ah*-compliant while also complying with these prerequisites.

As an important anti-avoidance provision, the application of section 130 cannot simply be excluded for *sukūk*. Yet in their current form, Ireland's tax laws do not establish a level playing field between Islamic and conventional bonds. As a result, it is suggested that specifically amending section 130(2)(d)(iii)(I) to limit its application to transactions other than those falling within Part 8A may successfully counter the tax problem. This amendment would also protect the continuing legitimacy of Ireland's taxation framework since Part 8A itself contains an anti-avoidance provision.[136]

Finally, stamp duty burdens for *sukūk* in Ireland have, in part, been alleviated by section 137 of the Finance Act 2010. Inserting section 85A into the Stamp Duties Consolidation Act 1999,[137] this accommodating provision states that "[s]tamp duty shall not be chargeable on the issue, transfer or redemption of an investment certificate..." This provision brings the stamp duty treatment of *sukūk* certificates into line with that of conventional bonds[138] although it stops short of equating capital raised in the investment transaction with "loan capital." Section 85A will however relieve stamp duty liability only in relation to the investment certificates, not the underlying asset upon which the certificates are based. Of more concern, therefore, is the failure of the Irish authorities to deal with the double stamp duty which could arise in circumstances where the underlying asset of the *sukūk* is real property. This puts *sukūk* transactions, in which the relevant property is situated in the State, at a significant disadvantage particularly when similar arrangements in the UK would be relieved of SDLT liability on both transfers of land.

The Finance Act 2010 provided a significant opportunity to actively counter the taxation challenges faced by Islamic securities in Ireland. Investment transactions are indeed dealt with quite extensively by the newly inserted provisions of the TCA 1997. However, particularly when compared with the extensive and internally consistent tax provisions relevant to *sukūk* in the UK, the shortcomings of the Irish measures are plain. Placing Islamic securities at a

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135. *Ibid*, at 35.
136. Taxes Consolidation Act 1997, section 267V as introduced by Finance Act 2010, section 39.
137. Stamp Duties Consolidation Act 1999.
138. Stamp Duty Consolidation Act 1999, section 85 exempts the issue and transfer of "loan capital" which refers to any debenture stock, bonds or funded debt, by whatever name known, or any capital raised which is borrowed or has the character of borrowed money, whether in the form of stock or in any other form.

disadvantage when compared with their conventional equivalents domestically and their *Sharî'ah* counterparts in the UK, the accommodating provisions of the TCA do not establish a clear taxation framework for *sukūk* or create a level playing field between economically similar products.

VI. *Sharî'ah*–Compliant Funds

An influx of Islamic investors on the international market has increased global interest in *Sharî'ah*-compliant investment opportunities. As a result, Islamic investment funds are amongst the fastest growing areas of Islamic finance expanding from 150 funds in 2000 to over 680 funds in 2008.[139] These funds are structured so as to spread the investment risk and protect returns through a pooling of investor capital.[140] However, unlike conventional investment funds, Islamic funds do not invest in *haram* industries or business. An Islamic fund must thus avoid involvement with investments which involve pork, alcohol or pornography.[141]

Ireland has sought to benefit from this global growth and the Islamic funds industry in Ireland has witnessed considerable development to date. An expanding number of funds are now domiciled in Ireland following their authorisation by the Central Bank,[142] with Malaysia's CIMB-Principal Islamic Asset Management announcing that its first European Islamic global equity fund will be operating out of Dublin.[143] In authorising these funds, the Central Bank, which has established a *Sharî'ah* Funds Specialist Unit specifically charged to approve *Sharî'ah*-compliant funds,[144] has adopted a "no special treatment" approach in line with its British counterpart.[145] These funds, which fall within the CIS regime, are most frequently authorised as Undertakings for Collective Investment in Transferable Securities [UCITS] or non-UCITS

139. Chris Sioufi and Ammar Al-Saleh, "*Sharî'ah*-compliant funds: The golden child of Islamic Finance" (2006/2007) *Islamic Finance Review* 64, at 64.
140. *Ibid.*
141. *Supra*, at 4.
142. For example; Oasis Crescent Global Equity Fund, DWS Noor Islamic Funds plc.
143. Association of Islamic Banking Institutions Malaysia, "CIMB-Principal to launch Islamic equity fund," http://aibim.com/content/view/1419/129/, 23 June 2009 (visited 5 September 2011), see also CIMB unit eyes US$100mil from Dublin funds, The Star (Malaysia), 14 December 2010 http://biz.thestar.com.my/news/story.asp?file=/2010/12/14/business/7613513&sec=businessection (visited 5 September 2011).
144. Matheson Ormsby Prentice, "Ireland as a Centre for Shari'ah-compliant Funds," *Briefing Note*, 2008 http://www.mop.ie/__data/assets/pdf_file/0020/5591/Briefing-Note-Ireland-as-a-Centre-for-Shariah-Compliant-Funds,-May-2009.pdf (visited 5 September 2011).
145. Thomas Ryan, Financial Institutions and Funds Authorisation, Financial Regulator, Personal Communication, 31 March 2009.

funds in the same authorisation process as conventional funds.[146] The variation in classification as a UCITS or non-UCITS fund will determine to whom the Islamic fund can be promoted and the extent to which full compliance with regulatory requirements is needed.[147] Fund managers located in Ireland will also be subject to the authorisation and supervision of the Central Bank regardless of whether the funds they manage are religiously guided or not. The reality is that funds which are compatible with *Sharî'ah* and the activities of Islamic fund managers strongly resemble conventional socially responsible investment (SRI) opportunities. As a result, their regulation fits relatively seamlessly into the existing legal framework.[148]

Ireland's favourable taxation environment for investment funds has no doubt been a key catalyst in the growth of the domestic Islamic funds industry.[149] Though Islamic funds were not dealt with specifically in the Finance Act 2010, the Tax Briefing 2009 confirmed parity of taxation between Islamic and conventional funds.[150] As a result, if Islamic funds which are structured so that they fall within Chapter 1A, Part 27 of the TCA 1997,[151] a gross-roll-up taxation regime will be applied eliminating annual tax on the profits of the fund but requiring the fund to deduct and account for tax when unit holders are paid.[152] This regime is particularly advantageous for Islamic funds as no tax will need to be deducted if the unit holder is a non-Irish resident[153] or if they are classified as one of the exempt Irish domiciled entities.[154] Though domiciled in Ireland,

146. The CIMB Global Islamic Equity Fund for example will use the UCITS III standards. This will allow the fund to expand its target customer base to sophisticated investors within Europe, Association of Islamic Banking Institutions Malaysia, note 143.
147. Financial Services Authority, "The Collective Investment Scheme Information Guide" (FSA, 2006), at [1.1.3] http://www.fsa.gov.uk/pubs/foi/collguide.pdf (visited 5 September 2011).
148. A similar situation has occurred in the UK where Islamic funds and their managers have been subject to the same authorisation procedures and requirements as their conventional counterparts. For more information on Islamic funds in the UK see; Rodney Wilson, "Why London is so influential" (Summer 2007) 5(2) *Islamic Banking & Finance*, 29, at 30.
149. Taxes Consolidation Act 1997, section 110, as amended by the Finance Act 2003. Omer Khan and Ken Owens, "A greater understanding brings new opportunities" (2009/2010) *Islamic Finance Review* 53, at 53.
150. Revenue Commissioners, "Islamic Finance", *Tax Briefing*, note 10.
151. Introduced by the Finance Act 2000, section 58.
152. Taxes Consolidation Act 1997, Chapter 1A Part 27.
153. Following the Finance Act the requirement for non-Irish resident investors to make a declaration of non-residence in order to avoid taxation of redemption payments from an Irish domiciled fund has been removed.
154. Revenue Technical Guidelines, "Investment Undertakings, General Guidelines for Calculating Tax Due and for Completing Declaration Forms," at 7-8, www.revenue.ie/en/practitioner/tech-guide/investment-undertakings.pdf. (visited 5 September 2011)

Islamic funds are frequently marketed to investors abroad.[155] As a result, the existence of a straightforward and favourable tax regime represents a significant advantage for Irish Islamic funds.

The amendments introduced by the Finance Act 2010 to facilitate the UCITS IV Directive may further bolster Islamic funds which are managed in Ireland. UCITS IV now permits UCITS managers established in one EU member state to passport their services by managing a UCITS domiciled in another member state.[156] The Finance Act seeks to ensure that funds managed but not domiciled in Ireland will be treated as non-resident in Ireland for taxation purposes.[157] Complementing this, Irish investors in these non-domiciled UCITS will be treated as investing in an offshore fund and thus subject to the same gross roll-up regime and maximum tax rate as investments in Irish funds.[158] In light of the significant growth of European Islamic funds,[159] and the reinforced passporting rights established in UCITS IV, the amendments introduced by the Finance Act could complement Ireland's emerging domestic Islamic funds industry while also encouraging other funds to consider Ireland as a destination for domicile or management.

From a strictly legal standpoint therefore, parity of treatment between Islamic and conventional funds, their investors and managers requires no tailored modification of Ireland's existing laws. However, such a neutral approach evidently makes no provision for the *Sharî'ah* supervision of Islamic fund activities. Like the UK, Ireland does not oblige fund managers to appoint a "*Sharî'ah* supervisory board" [SSB] that is responsible for overseeing the Islamic compatibility of the fund's activities.[160] The absence of legislatively mandated *Sharî'ah* governance should not however undermine Ireland's potential as a

155. See for example the Asia-Pacific equity fund, China equity fund, Global select equity fund, Japan equity fund and a precious metals securities product which are domiciled in Ireland but marketed in Singapore.
156. See the introductory section generally and Article 16, Recast Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (UCITS IV), OJ No L302 of 17 November 2009, at 32.
157. Taxes Consolidation Act 1997, section 747G(2) as introduced by Finance Act 2010, section 31.
158. Taxes Consolidation Act 1997, section 747F(3) as introduced by Finance Act 2010, section 31 which has the effect of extending the scope of section 743 Taxes Consolidation Act 1997, to include funds operating under UCITS IV. The gross roll-up regime is extended to offshore funds by the Finance Act 2007, section 39 amending Part 27 of the TCA 1997.
159. Numerous European countries are now actively promoting themselves to the Islamic fund market, see for example; France, where the EasyETF DJ Islamic Market Titans 100 Fund is managed, "Launching your Islamic Fund in Paris" (Paris Europlace, December 2009) http://www.paris-europlace.net/files/Launching_your_Islamic_Fund_in_Paris.pdf (visited 5 September 2011).
160. Irish authorities have confirmed that it is "a matter for each individual entity wishing to market Islamic finance products to have a Shari'a Board available," Department of

destination for Islamic funds. Conformity with Islamic principles is a defining attribute of any Islamic financial venture, particularly an investment fund due to the lack of control which investors exercise over the use of their capital. The market itself may therefore exclude those funds which do not engage some form of *Sharî'ah* vetting framework. In addition to this, the creation of the FTSE Global Islamic Index Series (GIIS) in 1998 and the Dow Jones Islamic market index (DJIMI) in 1999 reinforce *Sharî'ah* oversight.[161] These indices implement screening procedures which allow them to track the performance of listed companies whose activities conform with the principles of *Sharî'ah*.[162] As a result, investment by the fund manager in entities approved by an Islamic index will provide a level of assurance to customers that their capital is being invested in a *Sharî'ah*-compliant manner.

VII. CONCLUSION

The Islamic finance industry as a whole is still in a development phase and there remain several barriers to its establishment as a competitive alternative to conventional finance. Issues relating to a shortage of suitably trained scholars, a lack of global consensus and general consumer unease with a religiously based financial system must be addressed by both national governments and international Islamic organisations.[163] However, these are not insurmountable difficulties and as interest in Islamic finance grows, greater experience of Islamic products could bring with it increased standardisation, consistency and public awareness.

Ireland's foray into non-interest based finance comes some time after the current leaders in the sector, such as Malaysia, Bahrain and London. At a time both of financial difficulty and increasing religious pluralism, the Irish Government's somewhat delayed attempts to facilitate Islamic finance do not come as a surprising development. The Tax Briefing 2009 and the Finance Act 2010 do not represent a leap in financial innovation but are, rather, in line with a global trend in favour of accommodating *Sharî'ah*-compliant financial structures. Ireland thus stands to benefit from precedents established by other economies whose Islamic finance industries have already undergone various refinements and modifications. In light of this it is dissapointing that Ireland's initial steps

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Finance, *Islamic Finance in Ireland; An Information Note* (Department of Finance, March 2010), at 7.

161. Khaled Hussein, "Islamic Investment: Evidence from Dow Jones and FTSE Indices" *6th International Conference on Islamic Banking and Finance*, Jakarta, Indonesia, November 14-21 2005, at 2.
162. Elaine Housby, *The development of the Islamic financial tradition in contemporary Britain*, PhD Thesis submitted in the Department of Religious Studies of the Open University (2005), at 204.
163. Catley, note 91, at 40, Zaman, note 83, at 36.

to integrate Islamic finance fall short of the depth and consistency needed to enable a comprehensive Islamic financial sector domestically.

Accommodation of Islamic finance finds justification in the fact that though distinguishable in legal structure, Islamic and conventional products are often similar in purpose and effect. In theory, Islamic products will thus be subject to analogous regulation and taxation to the extent that they are functionally similar to interest-based transactions. Applying a requirement of equivalence too strictly, however, may prevent *Sharî'ah*-compliant transactions from being structured in accordance with Islamic economic teachings. In light of this potential conflict, the UK authorities have adopted an approach to integration which is accommodating enough to enable products to fulfil many of the dictates of *Sharî'ah* while maintaining economic comparability with their conventional counterparts. In Ireland, the Oireachtas is not, and indeed should not be an arbiter of religious conformity. Nevertheless, the recent accommodating provisions repeatedly fail to account for defining characteristics of *Sharî'ah*-compliant financial transactions. Ireland's legislation appears to require that Islamic transactions are not simply economically analogous to interest-based alternatives but are structurally identical as well. As a result, the extent to which many products can be *Sharî'ah*-compliant while still falling within Ireland's legislative framework is uncertain.

It must, however, be emphasised that Ireland's accommodation of Islamic finance is at a very early stage of development and it is inevitable that further refinements will be needed. The process of integration is likely to be gradual and it will be some time before Ireland can compete with the more mature Islamic finance industries globally. Nevertheless, as Ireland's first attempts to enable Islamic financial transactions, the Tax Briefing and Finance Act seek to deal with numerous aspects of Islamic finance at once. These instruments are conceptually important steps as they indicate a growing awareness of Islamic financial structures domestically. Noticeable growth in the number of practitioners in Irish legal and professional services firms who are familiar with Islamic finance principles, is perhaps also an indication of domestic support for this industry as it matures. Such developments could signal the beginning of more robust measures by the Government and industry to facilitate Islamic finance in Ireland.