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Financial Arbitration: Comparative Perspectives on Islamic and Common Law Approaches

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ABSTRACT

Research Aims: This paper aims to examine arbitration as a bridge between Islamic finance and international arbitration standards, identifying key areas of convergence and divergence and proposing harmonised solutions that uphold Sharia compliance while ensuring international enforceability.

Design/methodology/approach: It evaluates Islamic arbitration frameworks, such as the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) *Sharia Standard on Arbitration* and the Asian International Arbitration Centre's (AIAC, formerly KLRCA) *i-Arbitration Rules*, against established international benchmarks, including the United Nations Commission on International Trade Law (UNCITRAL) Model Law and the New York Convention.

Research Findings: The analysis highlights key areas of convergence and divergence, revealing the complexities of integrating Sharia-compliant dispute resolution within the global legal context.

Theoretical Contribution/Originality: The paper proposes practical strategies to harmonise Islamic arbitration practices with international norms, including clarifying and standardising Sharia principles, fostering wider acceptance of Islamic finance arbitration, and ensuring procedural compliance with Sharia and international arbitration frameworks. By doing so, the article argues that arbitration can provide an effective, credible, and globally compatible mechanism to resolve Islamic financial disputes.

Research limitations and implications: This study is limited by its focus on comparative legal frameworks, primarily drawing from doctrinal analysis and literature. Review rather than empirical data. Nonetheless, the findings provide practical insights for policymakers, financial institutions, and legal practitioners in designing harmonized arbitration frameworks that align Sharia principles with international commercial standards.

***Keywords**:* Islamic finance, Sharia law, arbitration, common law, regulatory framework, dispute resolution, Sharia-compliant contracts

INTRODUCTION

Islamic finance has grown rapidly worldwide, yet integration into the global financial system remains constrained by structural and doctrinal challenges. In many common-law jurisdictions, courts adjudicate Islamic finance disputes using conventional interest-based frameworks, often disregarding the core Sharia principles prohibiting *riba* (interest) and *gharar* (uncertainty). This approach undermines the ethical and legal objectives of Islamic financial contracts, producing outcomes inconsistent with Sharia-compliant norms.

Arbitration has emerged as a credible alternative, offering doctrinally sound and procedurally efficient dispute resolution. Rooted in classical Sharia principles, arbitration emphasises justice, equity, and amicable settlement *(ṣulḥ)*, ensuring decisions avoid excessive uncertainty and maintain ethical commercial behaviour. Modern arbitration allows parties to appoint experts knowledgeable in both Sharia and commercial practice, safeguarding doctrinal integrity while addressing practical transaction needs.

International arbitration frameworks, notably the New York Convention (1958) and the UNCITRAL Model Law, provide mechanisms for cross-border enforceability and legal certainty. However, tensions arise when secular enforcement systems intersect with Sharia-compliant awards, particularly regarding public-policy objections and doctrinal incompatibilities. Recent empirical studies highlight inconsistent recognition of Sharia arbitration awards across jurisdictions, reflecting gaps in harmonisation, institutional capacity, and judicial familiarity.

These challenges underscore the need for a harmonised arbitration framework that integrates Sharia principles with internationally recognised procedural norms. Hybrid models — combining doctrinal fidelity, procedural neutrality, and institutional oversight — can enhance the predictability, enforceability, and credibility of Islamic financial dispute resolution. Institutional innovations, including Sharia supervisory bodies and specialised arbitration centres, further support consistency and ethical alignment.

This study applies a comparative methodology to examine arbitration as a bridge between Islamic and conventional legal frameworks. It evaluates doctrinal foundations, assesses practical enforcement mechanisms, and proposes pathways for harmonisation. By integrating Sharia compliance with globally enforceable procedures, the research contributes to a resilient, ethically grounded, and internationally recognised Islamic financial system capable of supporting sustainable growth, market integrity, and investor confidence.

LITERATURE REVIEW

Theoretical Background

The theoretical foundations of dispute resolution in Islamic finance derive from classical Sharia principles, which emphasise justice *(adl)*, equity *(qisṭ)*, and the peaceful resolution of conflicts *(ṣulḥ)*. Islamic jurisprudence provides a cohesive framework for resolving financial disputes through mechanisms that uphold contractual fairness and preserve the objectives of the Sharīʿah *(maqāṣid al-sharīʿah).* These objectives include safeguarding wealth, promoting transparency, and preventing exploitation—principles that form the bedrock of Islamic commercial transactions *(fiqh al-muʿāmalāt).* Early jurists such as Abu Hanifa, Malik, Al-Shāfiʿī, and Ibn Hanbal developed detailed doctrines governing

contracts, agency, partnership, and remedies, many of which underpin contemporary Islamic finance dispute resolution.

Within this tradition, arbitration *(taḥkīm)* has long been recognised as a legitimate and efficient method for resolving commercial disputes. Classical jurists have long emphasised that arbitration is valid only where decisions uphold justice, avoid gharar (excessive uncertainty), and maintain ethical commercial behaviour—a position clearly articulated by scholars such as Al-Saati (2003) and Al-Dareer (1997). These classical principles continue to shape contemporary Islamic finance, where contractual arrangements must align both commercial objectives and Sharia-mandated ethical norms. Classical scholars endorsed arbitration as a means of achieving amicable resolution while avoiding excessive litigation before formal courts. Contemporary Sharia scholars continue to affirm the permissibility of arbitration, particularly in cross-border financial dealings, because it enables parties to select experts knowledgeable in both commercial practice and Islamic jurisprudence. Oseni and Hassan (2015) emphasise that arbitration aligns with Islamic procedural justice, provided the arbitrator possesses integrity, independence, and relevant Sharia knowledge.

In parallel, international commercial arbitration is governed largely by secular frameworks, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and the UNCITRAL Model Law. These instruments form the backbone of modern arbitral enforcement, ensuring that awards—regardless of their substantive governing law—can be recognised and enforced in over 170 signatory jurisdictions. The principle of party autonomy allows disputing parties to choose Islamic law as the governing law of their relationship or to adopt arbitration rules that incorporate Islamic jurisprudence.

However, tensions arise because Islamic law and common law systems are grounded in distinct philosophical and legal traditions. Common law enforcement mechanisms emphasise contractual autonomy, judicial predictability, and narrow use of public policy defences, whereas Sharia-based reasoning prioritises substantive justice, moral legitimacy, and adherence to divine injunctions. This divergence becomes particularly visible when courts assess the enforceability of Islamic finance arbitral awards under Article V of the New York Convention, especially where public policy objections are raised.

Theoretically, the two systems are not inherently incompatible. Scholars such as Ballantyne (2006) argue that Islamic finance can coexist with conventional arbitration frameworks as long as tribunals consider Sharia principles as questions of fact or expert evidence. Enforcement challenges arise because the New York Convention does not explicitly recognise Sharia as a standalone legal system, nor does it clarify how courts should treat awards whose reasoning or substantive outcomes depend on Sharia rulings. This lack of doctrinal harmonisation gives rise to an important theoretical and practical problem.

As noted by Al-Amine (2012) and Hassan & Zeller (2023), the accelerating globalisation of Islamic finance has intensified the need for a coherent framework capable of reconciling Sharia-based substantive requirements with the procedural autonomy, neutrality, and enforceability central to international arbitration. This perspective positions arbitration as a bridge between Sharia's classical tradition and the demands of modern financial dispute resolution. Arbitration is thus neither a departure from Islamic jurisprudence nor a wholesale adoption of Western norms; rather, it is an adaptive mechanism ensuring that Islamic finance operates with both religious integrity and global

credibility. Hence, developing such hybrid arbitration frameworks is essential not only for resolving disputes efficiently but also for sustaining investor confidence and the continued growth of Islamic finance globally.

Previous Studies

A substantial body of academic literature has examined arbitration and dispute resolution within Islamic finance, though with varying depth and emphasis. Early contributions focused on explaining the normative foundations of Sharia-based dispute resolution. For example, Al-Zuhaili (2003) and Kamali (2008) explored the ethical and contractual bases of Islamic commercial law, while El-Gamal (2006) analysed the philosophical underpinnings of Islamic finance and its relationship to classical jurisprudence. These works provide essential doctrinal context but do not engage in extensive comparative analysis with secular enforcement frameworks.

More recent studies examine the practical challenges associated with applying Islamic principles in modern arbitration. Oseni, Ahmad, and Hassan (2018) analyse the emergence of Islamic arbitration institutions such as the Kuala Lumpur Regional Centre for Arbitration (KLRCA now AIAC) and their efforts to harmonise Islamic procedural principles with international best practices. Their findings highlight the promise of Sharia-compliant arbitration rules but also note inconsistent judicial reception across jurisdictions.

Aldabbousi et al. (2023) contribute to the literature by examining how courts treat Sharia-based awards when asked to enforce them under the New York Convention. Their research shows that courts often struggle when Islamic principles conflict with mandatory rules of national law. The authors argue that while the Convention promotes uniform enforcement, it offers insufficient guidance for disputes governed wholly or partly by Islamic law, thereby leaving significant room for judicial discretion and doctrinal variability.

Several comparative studies explore the intersection between Islamic law and common law in dispute resolution. For example, Sornarajah (2021) and Blackaby et al. (2020) analyse public policy exceptions and their implications for arbitral enforcement. Their findings indicate that courts tend to adopt a restrictive approach to public policy objections, but the degree of restrictiveness varies, particularly in jurisdictions where Islamic law forms part of the constitutional or legal fabric. Malaysian and UAE courts, for instance, are more willing to examine the Sharia compliance of awards, while English and Australian courts typically avoid substantive review and instead focus on procedural regularity.

Research also documents the broader legal environment surrounding Islamic finance disputes. Authors such as Vogel & Hayes (1998), Usmani (2002), and Hamoudi (2010) provide detailed examinations of the interpretive methods used in Islamic finance, the role of Sharia supervisory boards, and the challenges arising from divergent jurisprudential schools. These doctrinal studies highlight the internal complexity of Islamic commercial law but generally stop short of addressing how such complexity affects cross-border enforcement.

Finally, several empirical studies assess arbitration enforcement trends under the New York Convention. Born (2021), Redfern & Hunter (2015), and van den Berg (2017) provide comprehensive analyses of enforcement outcomes and judicial tendencies. Yet, these works rarely examine Islamic finance as a standalone category, treating it instead as part of broader themes in international arbitration.

Collectively, the literature reveals a rich but fragmented landscape: strong doctrinal foundations, growing institutional practices, and extensive discussion of arbitration theory, but limited integration of these themes into a comprehensive analysis of Islamic finance enforcement under the New York Convention.

Research Gaps and Problem Definition

Despite the expanding body of scholarship on Islamic finance dispute resolution and the enforcement of arbitral awards, several significant gaps remain. First, existing studies tend to analyse Islamic law and common law frameworks in isolation, often presenting descriptive accounts of Sharia principles or outlining statutory enforcement mechanisms under national arbitration laws. While these contributions are valuable, they do not sufficiently explore how the two systems interact in real enforcement scenarios, particularly where Sharia-based awards must be recognised under the New York Convention (1958).

Second, although scholars such as Oseni, Hassan, Aldabbousi, and Ballantyne have addressed various aspects of Islamic arbitration—from procedural legitimacy to practical enforceability—there remains limited comparative work that synthesises these insights into a coherent analytical framework. Much of the existing comparative analysis centres on high-level doctrinal contrasts, leaving gaps in understanding how judges, arbitral tribunals, and regulatory authorities manage conflicts between Sharia principles and public policy exceptions invoked under Article V of the Convention.

Third, the literature has yet to adequately address the inconsistent judicial treatment of Sharia-based financial instruments when subjected to cross-border enforcement. Some national courts adopt a flexible and commercial interpretation, while others impose strict requirements that inadvertently undermine the autonomy of Islamic finance parties. This variation contributes to uncertainty for investors, regulators, and practitioners, who require predictable enforcement outcomes to structure cross-border transactions effectively.

Fourth, although the New York Convention is often presented as neutral, value-free, and universally applied, in practice its implementation varies significantly across jurisdictions. The literature does not sufficiently interrogate how public policy doctrines are invoked to challenge Islamic finance awards, nor does it fully examine the varying judicial thresholds for determining Sharia compliance when disputes move beyond Muslim-majority jurisdictions. As Hassan and Zeller (2023) note, this intensifies the pressing need for harmonisation between Sharia principles and the procedural autonomy of international arbitration frameworks.

Finally, few studies explicitly identify how these doctrinal inconsistencies translate into practical risks—legal, financial, and operational—for parties engaged in Islamic finance transactions. As a result, the connection between theory (doctrinal foundations), practice (case enforcement), and market behaviour (transaction structuring) remains underdeveloped. Therefore, the research problem emerges from the need to provide a comprehensive comparative analysis of Islamic and common law enforcement frameworks, assess how Sharia-based arbitral awards are treated under the New York Convention, and identify the legal and operational risks that arise from inconsistent interpretations.

RESEARCH METHOD

This study adopts a comparative qualitative methodology, grounded in doctrinal and analytical legal approaches, to evaluate the compatibility of Islamic arbitration with international commercial arbitration frameworks, particularly the New York Convention (1958). Consistent with the theoretical foundations outlined in the literature review—justice (ʿadl), fairness, transparency, and the avoidance of gharar—the methodological design ensures that classical Sharia principles meaningfully inform the examination of contemporary enforcement mechanisms. By situating the research within the jurisprudential tradition of fiqh al-taḥkīm, the approach maintains strong conceptual coherence between Islamic legal heritage and modern arbitration practice.

The study relies exclusively on secondary data, including statutory materials, arbitral rules, judicial precedents, and contemporary academic scholarship. Key documentary sources include arbitration legislation from Muslim-majority and common law jurisdictions; institutional rules such as AAOIFI's Sharia Standard on Arbitration, the AIAC i-Arbitration Rules, and the UNCITRAL Model Law; and leading judicial decisions such as Shamil Bank v Beximco. Scholarly works—including Oseni et al. (2018), Aldabbousi et al. (2023), and Hassan & Zeller (2023)—provide doctrinal insight, empirical observations, and critical perspectives on procedural safeguards, arbitrator qualifications, and international enforceability.

The research applies comparative legal reasoning to assess points of convergence and divergence between Islamic arbitration and international arbitration frameworks. Analytical attention is directed to four primary dimensions: the doctrinal foundations of taḥkīm, including arbitrator integrity, impartiality, and Sharia expertise; the procedural and substantive enforceability of Sharia-compliant awards under the New York Convention; the institutional role of arbitration centres and Sharia Supervisory Boards in ensuring legitimacy and ethical compliance; and the feasibility of hybrid arbitration models capable of harmonising Sharia-based substantive requirements with procedural autonomy and neutrality.

To ensure analytical rigour, the study employs triangulation by cross-referencing statutory sources, arbitral rules, judicial trends, and academic commentary. This enhances objectivity, coherence, and transparency, while acknowledging interpretive diversity within both Islamic jurisprudence and international arbitration law. The methodology thus provides a robust foundation for assessing how hybrid frameworks can preserve Sharia authenticity while ensuring international enforceability.

RESULTS AND DISCUSSIONS

Arbitration in Islamic Law

In Islamic law, arbitration (*tahkīm*) occupies a central position in both modern international commercial law and the Islamic legal tradition. Within Islamic jurisprudence, arbitration is recognised as a legitimate and effective mechanism for resolving disputes in a manner consistent with justice (*ʿadl*), equity, and mutual consent. Its significance has grown in recent decades as Islamic finance and cross-border trade have expanded, requiring mechanisms that reconcile *Sharia* principles with international commercial practices.

In financial contexts, arbitration is increasingly recognised as a practical and effective method for resolving complex disputes involving cross-border investments, financing contracts, and multi-jurisdictional parties (Born, 2021). Financial disputes often raise technical issues and confidentiality concerns that make arbitration preferable to public court proceedings.

Arbitration as a concept predates Islam and was practised in pre-Islamic Arabia as a form of private adjudication among tribes (Vikor, 2005). Islam later institutionalised this practice within a moral and legal framework that emphasised impartiality, reconciliation, and justice. The Qur'an provides explicit endorsement of arbitration in interpersonal disputes, highlighting its role in achieving equitable settlements and maintaining social harmony. The Qur'an supports this through its guidance on appointing arbiters to promote reconciliation:

> *"If you fear a breach between them twain, appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation."* (Al-Qur'an, Surah An-Nisa, 4:3).

Although the verse primarily addresses familial disputes, it establishes the ethical framework of arbitration in Islam, emphasising consent, justice (ʿ*adl*), and fairness. In both international and Islamic contexts, arbitration serves not only as a procedural tool but also as a means of promoting equitable outcomes and preserving relationships, particularly in commercial and financial matters where ongoing cooperation may be crucial. Moreover, the recognition of Sharia-compliant arbitration mechanisms within international frameworks reflects a growing convergence between secular and religious legal traditions, enabling parties to integrate cultural, ethical, and legal considerations into binding dispute resolution (El Ashker & Wilson, 2006). Consequently, arbitration functions as a bridge between diverse legal systems, harmonising the demands of global commerce with the moral and legal imperatives of Islamic jurisprudence.

Islamic Law Framework

Islamic law (Sharia) derives from four primary sources—the Qur'an, Sunnah (Prophetic traditions), *ijmāʿ* (consensus of jurists), and *qiyās* (analogical reasoning). Together, these form the foundation for all aspects of Islamic jurisprudence, including financial transactions and dispute resolution. Supplementary principles such as *ijtihād* (independent reasoning), *maṣlaḥa* (public interest), and ʿ*urf* (custom) enhance Sharia's adaptability to contemporary contexts.

Islamic law (Sharia) regulates social and economic life by delineating the boundaries of permissible and impermissible practices (Ibrahim, 2008). Its application to finance prohibits transactions involving *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (gambling). To appreciate the foundations of Islamic finance, one must understand the hierarchical sources of Sharia, which together provide the normative framework for financial transactions. The *Qur'an* is the primary source, setting out the core principles of Islam, including explicit prohibitions on *riba* (interest) and *gharar* (excessive uncertainty), which form the cornerstone of Islamic financial law. The term "Sharia" is employed as an equivalent to "Islamic law".

The *Sunnah* (the sayings, actions, and approvals of the Prophet Muhammad) complements the Qur'an by clarifying ambiguous provisions, restricting or specifying general rules, and offering practical guidance on applying Islamic principles to financial transactions.

Beyond these divine sources, Islamic jurisprudence (*fiqh*) plays a central role. Jurists (*fuqaha*) interpret the Qur'an and Sunnah through *ijtihad* (independent reasoning) and *ijma* (consensus), producing diverse schools of thought that guide how Sharia principles are applied in different contexts, including finance. *Qiyas* (analogy) extends established principles to novel situations, enabling jurists to respond to emerging financial instruments and practices. Complementary tools such as *istihsan* (juristic preference), *maslahah* (public interest), and *ʿurf* (custom) further facilitate adaptability, ensuring that Sharia remains responsive to contemporary commercial realities. This interaction between divine revelation and scholarly interpretation highlights Sharia's character as a dynamic legal system rather than a static religious code.

Sharia is decentralised and lacks a single authoritative body, unlike state-based legal systems. As a result, interpretations may vary across jurisdictions, potentially leading to disputes over contract validity and enforcement. Such challenges are particularly acute in cross-border finance, where Sharia prohibitions on *riba* (interest) and *gharar* (excessive uncertainty) conflict with conventional finance's interest-based and speculative practices. These divergences underscore the importance of aligning Islamic finance with international commercial law frameworks to ensure predictability and enforceability. Arbitration offers a promising avenue in this regard, as it allows for the accommodation of Sharia principles within internationally recognised dispute resolution mechanisms while safeguarding compliance with Islamic legal norms.

Arbitration in Islamic Jurisprudence

Islamic jurisprudence (*fiqh*) has long recognised arbitration *(tahkīm)* as a legitimate dispute resolution mechanism. Classical jurists emphasised that arbitration is valid only where decisions uphold justice, avoid *gharar* (excessive uncertainty), and reflect mutual consent (Al-Saati, 2003; Al-Dareer, 1997). Arbitrators (*ḥukkām*) are expected to possess knowledge of both Sharia and the subject matter of the dispute, ensuring that rulings are both legally and ethically sound.

Tahkīm historically served as a flexible, community-oriented alternative to qāḍī (judicial) intervention, allowing parties to preserve relationships and avoid the adversarial nature of formal litigation. The process emphasises conciliation, transparency, and adherence to ethical norms, which remain relevant in contemporary Islamic financial arbitration (Vikor, 2005). Modern frameworks have retained these principles, integrating them with institutionalised procedural rules and international arbitration standards to ensure enforceability.

Arbitration has evolved into a pivotal mechanism for resolving cross-border commercial disputes, offering neutrality, efficiency, and enforceability. While international arbitration relies on codified laws and treaties, Islamic arbitration (*tahkīm*) draws upon centuries of jurisprudential practice, Qur'anic guidance, and Prophetic precedents. Together, these systems provide complementary approaches for modern financial and commercial dispute resolution, particularly in cross-border and complex financial matters.

Islamic arbitration builds on pre-Islamic Arab practices of informal dispute resolution, often overseen by community leaders. These practices were formally integrated into the Islamic legal framework, with *sulh* (conciliation) and tahkīm recognised as legitimate methods. Sulh resembles negotiation and mediation, while *tahkīm* aligns more closely with arbitration, guided by Islamic principles. Rooted in both Qur'anic injunctions and the Sunnah, *tahkīm* historically addressed commercial, civil, and personal disputes, with disputing parties selecting impartial arbitrators (*hakam*) to ensure consent and legitimacy (IIFA, 2001).

Meanwhile, international arbitration has emerged as a neutral and efficient means for resolving cross-border disputes. Its procedural legitimacy derives from national laws, institutional rules, and international treaties, ensuring impartiality, due process, and enforceability (Blackaby et al., 2015). Institutions such as the London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC), and Dubai International Arbitration Centre (DIAC) standardise global practices, emphasising neutrality, transparency, and efficiency. The UNCITRAL Model Law (1985, amended 2006) provides legislative uniformity, while the New York Convention (1958) ensures enforcement across more than 160 jurisdictions. These frameworks uphold equality, procedural fairness, and autonomy, resonating with Islamic principles of justice (*'adl*) and trustworthiness (*amānah*).

Qur'anic and Prophetic precedents

> The Qur'an explicitly instructs arbitration in disputes, particularly in family matters: *"If you fear a breach between them (the man and his wife), appoint two arbitrators, one from his family and the other from her family; if they wish for peace, Allah will cause their reconciliation…"* (Surah Al-Imran 4:35, translation by Muhammad Taqi-ud-Din al-Hilali and Muhammad Muhsin Khan).

This demonstrates the Qur'anic emphasis on fairness, impartiality, and reconciliation by appointing trusted arbitrators. Similarly, the Sunnah provides further precedent. The Prophet Muhammad acted as an arbitrator in resolving a dispute among Meccan tribes over the placement of the Black Stone during the reconstruction of the Kaaba. He mediated by asking representatives from each tribe to lift the stone together using a garment, then personally placed it in position, averting conflict (Hisham, n.d.). Post-Prophet, arbitration continued to resolve disputes within the Muslim community, including political conflicts such as the rift between Ali ibn Abi Talib and Muawiya following Caliph Uthman's death (Olayemi & al-Zabyani, 2014). These examples emphasise fairness, impartiality, and reconciliation, principles central to modern Islamic arbitration.

Arbitration in International Commercial and Islamic Financial Disputes

Arbitration has become a preferred mechanism for resolving international commercial disputes due to its neutrality, flexibility, and enforceability. It enables parties from different jurisdictions to settle disputes without resorting to national courts, thereby avoiding the complications of conflicting laws and procedural systems. International arbitration is governed by key legal instruments such as the UNCITRAL Model Law (1985, as amended in 2006) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), both of which provide a harmonised framework for recognition and

enforcement of arbitral awards across jurisdictions. These instruments ensure procedural integrity, party autonomy, and enforceability—core elements that underpin the legitimacy of arbitration in global commerce.

Institutional frameworks such as the London Court of International Arbitration (LCIA *Arbitration Rules,* 2020), the International Chamber of Commerce (ICC *Arbitration Rules, 2021*), and regional centres like the Dubai International Arbitration Centre (DIAC) and Kuala Lumpur Regional Centre for Arbitration (KLRCA, now AIAC) have reinforced arbitration's credibility by providing transparent procedural rules and expert arbitrators. Collectively, these structures ensure that arbitration remains a central pillar of international commercial dispute resolution, offering predictability and neutrality for cross-border transactions.

Within the context of Islamic finance, arbitration assumes an even more significant role. Sharia-compliant transactions frequently involve parties from jurisdictions with varying legal systems—often one secular and one based on Islamic law. The Sharia legitimacy of arbitration (*tahkīm*) stems from the Qur'anic principles of justice (*ʿadl*), fairness (*ihsān*), and mutual consent (*tarāḍī*). Classical Islamic jurisprudence recognises arbitration as a legitimate dispute resolution method, provided that the arbitrator is impartial, the decision aligns with Sharia principles, and both parties consent to the process. The Qur'an (4:35) explicitly endorses conciliation through appointed representatives from each side, reflecting a foundational basis for arbitration in Islamic law.

In Islamic finance, this dual legitimacy—procedural and ethical—is of particular importance. Sharia-compliant contracts such as *murābaḥah*, *ijārah*, and *muḍārabah* often involve parties from jurisdictions governed by differing legal systems—one secular and the other Islamic. Arbitration provides a mechanism for resolving such disputes within forums that respect both international norms and Sharia principles. Institutions such as the International Islamic Centre for Reconciliation and Arbitration (IICRA) in Dubai (Rules and Procedures for Arbitration and Reconciliation, 2010) exemplify the integration of Islamic ethical standards within modern arbitral practice.

Thus, while international arbitration derives its legitimacy from procedural harmonisation and state recognition, Islamic arbitration derives it from divine injunctions and moral principles of justice. The convergence of these two legitimacies—procedural and ethical—renders arbitration uniquely suited to resolving disputes in Islamic finance, where both contractual enforcement and moral integrity must coexist.

Relevance to Financial Transactions

Arbitration plays a critical role in the financial sector due to its capacity to manage complex, confidential, and multi-jurisdictional disputes. Modern financial contracts—particularly those involving cross-border investments and project financing—often contain intricate provisions concerning profit allocation, risk-sharing, and ownership structures that require specialised adjudicative expertise beyond what traditional court systems typically provide (Redfern & Hunter, 2015).

Financial institutions and investors frequently incorporate arbitration clauses into loan agreements, investment instruments, and structured finance arrangements because arbitration ensures neutrality, predictability, and procedural efficiency (Born 2021). Its inherent flexibility enables parties to customise dispute resolution mechanisms in accordance with the complexity and cross-border nature of financial transactions.

Within the framework of Islamic finance, arbitration assumes heightened importance, as it provides a dispute resolution mechanism that respects Sharia principles while maintaining compatibility with international commercial standards Lew et al., (2003). Certain litigation procedures may conflict with Islamic ethical norms or contractual forms, and arbitration offers a balanced alternative by allowing Sharia-compliant adjudication within a legally recognised structure (Obaidullah, 2015). Given that Islamic financial arrangements often span multiple jurisdictions—combining conventional and Sharia-based legal systems—arbitration serves as a hybrid framework that accommodates both.

Furthermore, arbitration enables the appointment of arbitrators with specialised expertise in Islamic commercial jurisprudence, ensuring that contracts such as *murābaḥah*, *ijārah*, *mushārakah*, and *muḍārabah* are interpreted in alignment with both religious imperatives and commercial objectives (Al-Saati, 2003). This dual alignment of legal validity and ethical compliance enhances confidence among investors and institutions while reinforcing Sharia conformity in cross-border financial operations.

Common Law Framework

In common law jurisdictions, arbitration is grounded in statutory authority and contractual freedom. Key principles include impartiality, party autonomy, and enforceability of awards, supported by instruments such as the Arbitration Act 1996 (UK) and the New York Convention 1958. Arbitration in common law emphasises efficiency, predictability, and finality, allowing parties to avoid lengthy litigation and cross-jurisdictional conflicts (Redfern & Hunter, 2015).

Where parties to Islamic finance contracts opt for arbitration seated in England, Part I of the *Arbitration Act 1996* applies. The governing law of the arbitration agreement is typically either (a) the law chosen by the parties or (b) the system with the closest and most real connection to the dispute. This allows parties to incorporate Sharia principles as substantive law, provided they do not conflict with English procedural or public policy standards.

English arbitration thus provides a framework in which Islamic finance contracts—such as *murabaha* or *istisnaʿ*—can be executed under Sharia-compliant principles while maintaining recognition and enforceability within the English legal system. This development parallels the broader international adoption of the UNCITRAL Model Law, harmonising arbitration practices across jurisdictions. Arbitration, therefore, bridges the gap between Islamic commercial ethics and modern financial regulation, allowing contractual parties to preserve Sharia integrity within a legally enforceable environment.

Legal Foundations and Party Autonomy

At the core of the common law arbitration system lies contractual freedom, empowering parties to define the procedural rules, seat, and governing law of arbitration. Section 46(1) of the *Arbitration Act 1996* permits arbitrators to resolve disputes according to the law or rules chosen by the parties. Likewise, Section 18 of the UNCITRAL Model Law reinforces the autonomy to select both procedural and substantive laws, provided fundamental fairness is preserved.

This principle is crucial in Islamic finance, where parties often incorporate Sharia as the substantive law of contract. According to AAOIFI Standard 32(10)(3), arbitrators must

observe judicial procedures in matters of public order and may consult Sharia Supervisory Councils for interpretive guidance.

However, case law such as Amin Rasheed Shipping Corporation v. Kuwait Insurance Co. demonstrates that where the governing law is ambiguous, English courts apply the legal system most closely connected to the contract. This ensures predictability and reinforces the preference for national legal systems over non-state laws.

Thus, even when Islamic finance principles are referenced, the English judiciary prioritises the clarity of governing law clauses to avoid uncertainty. The courts have consistently held that Sharia cannot function as an autonomous legal system in English law unless expressly incorporated into the contract as a binding code.

Arbitration has become an essential mechanism for resolving disputes in financial transactions, particularly within the complex landscape of Islamic finance. Its flexibility, neutrality, and confidentiality make it an attractive alternative to litigation, especially in cross-border contracts where parties seek both commercial efficiency and compliance with religious or ethical norms. In Islamic finance, arbitration facilitates the reconciliation of Sharia principles with modern commercial law, ensuring that dispute resolution upholds both legal enforceability and moral integrity. By offering a procedural bridge between secular and religious legal orders, arbitration serves as a key instrument for fostering investor confidence and ensuring the sustainable growth of Islamic financial markets.

Procedural Framework under the Arbitration Act 1996

The *Arbitration Act 1996* c. 23 provides the procedural foundation for arbitration in England, including disputes arising from Islamic finance transactions. Parties may adopt institutional rules such as those of the ICC or LCIA, with English law overseeing procedural issues, including tribunal formation and award enforcement. Arbitration's adaptability enables the incorporation of Sharia principles within proceedings, allowing arbitrators to reconcile ethical and legal requirements. Under Section 1(c) of the Act, courts support arbitral autonomy except where intervention is necessary to uphold public interest.

Parties to Islamic finance agreements may elect to resolve disputes through institutional mechanisms such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA), adopting their procedural rules under the supervision of English law (ICC, 2021; LCIA, 2020). Such flexibility allows for the integration of Sharia-compliant principles—for instance, those concerning *riba* (interest prohibition), *gharar* (uncertainty), and contractual fairness—within the procedural framework of English arbitration, provided they do not contravene statutory or public policy constraints (Adam & Thomas, 2005). Arbitrators with expertise in both commercial and Islamic law can thus reconcile ethical considerations with established legal norms, achieving decisions that are both enforceable and principled.

A significant illustration of this balance between codified and religious principles is found in *Saudi Arabia v. Arabian American Oil Company (Aramco)* (see *Saudi Arabia v. Arabian American Oil Company (Aramco)* (1958) 27 International Law Reports 117). The dispute raised questions regarding the applicability of Saudi Labour Law limitation periods in contrast to Sharia principles. The court upheld the statutory limitation periods, demonstrating judicial preference for codified provisions where conflicts with Sharia-based interpretations arise (Born, 2021). This reasoning parallels the English judicial approach,

which respects Sharia-based contractual reasoning when explicitly incorporated into the agreement, yet gives precedence to statutory certainty and procedural consistency under the Arbitration Act.

Therefore, the *Arbitration Act 1996* not only supports arbitral autonomy but also provides the procedural legitimacy required for cross-border Islamic finance disputes. Its adaptability enables arbitrators to integrate Sharia principles within an internationally recognised legal framework, thereby fostering confidence, predictability, and enforceability in Islamic financial arbitration. This approach mirrors English judicial philosophy: respect for Sharia-based reasoning where codified, but deference to statutory certainty.

Comparative Analysis: Islamic and Common Law Approaches

The interaction between Islamic law and common law in arbitration reveals a complex blend of compatibility and divergence. Both systems uphold the principle of dispute resolution through consent and impartial adjudication, yet their underlying normative foundations differ significantly. In Islamic jurisprudence, arbitration (*tahkīm*) operates within the broader framework of Sharia, which seeks to achieve justice (*ʿadl*), fairness (*insāf*), and public welfare (*maṣlaḥah*) (Kamali, 2003). It is therefore governed by substantive moral and legal principles that shape contractual relationships and arbitral outcomes.

Central to this framework are the prohibitions of *riba* (interest), *gharar* (excessive uncertainty), and *maysi*r (speculative risk or gambling), which collectively ensure that financial dealings remain equitable and transparent (Vogel & Hayes, 1998). Consequently, while parties in Islamic finance contracts enjoy autonomy of choice, their contractual freedom is qualified by religious compliance—ensuring that agreements uphold ethical integrity and align with divine injunctions. This creates a system in which party autonomy is balanced by moral accountability, distinguishing Islamic arbitration from its secular counterparts.

Conversely, common law arbitration is underpinned by contractual freedom, party autonomy, and procedural flexibility (Born, 2021). The enforceability of arbitral agreements under statutes such as the *Arbitration Act 1996* (UK) or the *Commercial Arbitration Acts* (Australia) reflects a pragmatic, value-neutral approach to dispute resolution. The focus lies primarily on efficiency, finality, and enforceability, with minimal interference from ethical or religious considerations (Redfern & Hunter, 2023). As such, while common law systems permit parties to choose religious law as a governing framework, they remain ultimately bound by public policy and statutory limitations.

Modern international arbitration provides a pragmatic bridge between these two traditions. Institutional frameworks—such as the UNCITRAL Model Law and AAOIFI's Sharia Standard No. 32 on Arbitration (2015)—enable the integration of Sharia principles within the procedural and enforcement structures of global arbitration. This hybridisation ensures that Islamic finance disputes can be adjudicated in a manner that respects Sharia compliance while satisfying international enforceability standards. Nonetheless, challenges persist, particularly in aligning the ethical underpinnings of Islamic law with the secular orientation of common law arbitration. Issues such as the enforceability of profit-sharing provisions, the exclusion of interest, and the interpretation of uncertainty clauses continue to test the limits of compatibility.

Thus, while both systems share a commitment to fairness, consent, and impartial adjudication, they diverge in their sources of legitimacy—with Islamic law grounded in divine authority and moral order, and common law anchored in contractual autonomy and judicial precedent. The future of Islamic arbitration, therefore, lies in advancing harmonised frameworks that maintain doctrinal integrity while facilitating international recognition and cross-border enforcement.

Party Autonomy vs. Sharia Restrictions

In both Islamic and common law arbitration, party autonomy—the ability of contracting parties to determine the rules governing their disputes—forms a central pillar. However, the scope and limitations of this autonomy differ fundamentally between the two legal traditions.

Under Islamic law, parties are permitted to define arbitration procedures, select the number and qualifications of arbitrators, and even stipulate that decisions conform to religious principles (Kamali, 2003). The concept of *tahkīm* allows flexibility in procedural design, but such autonomy is bounded by Sharia, which serves as the ultimate reference for legitimacy (Al-Dareer, 1997) Any agreement or clause that contravenes the prohibitions of *riba* (interest), *gharar* (excessive uncertainty), or m*aysir* (gambling) is deemed void and unenforceable, irrespective of the parties' mutual consent. Hence, autonomy in Islamic arbitration is not absolute, but operates within a moral-legal framework that seeks to uphold justice (*ʿadl*) and prevent exploitation.

In contrast, common law jurisdictions adopt a far more liberal interpretation of party autonomy. The prevailing principle—enshrined in instruments such as the Arbitration Act 1996 (UK) and the UNCITRAL Model Law—allows parties to freely determine the governing law, venue, language, and procedural rules of arbitration (Born, 2021). Courts generally respect these choices, intervening only where the agreement conflicts with public policy, illegality, or fundamental fairness. The English courts, for instance, have repeatedly upheld arbitration agreements that designate non-national or religious laws, provided they do not undermine the integrity of the judicial system or the rule of law (*Jivraj v. Hashwani* [2011] UKSC 40).

The tension between contractual freedom and religious compliance becomes particularly evident in cross-border Islamic finance transactions (Bälz, 2002). Multinational Islamic financial institutions, operating across diverse jurisdictions, must reconcile the binding force of Sharia with the enforceability expectations of secular courts. In practice, this requires meticulous drafting of arbitration clauses to ensure that awards rendered under Islamic law remain recognisable and enforceable under international instruments such as the New York Convention (1958).

Thus, while both legal systems recognise party autonomy as a cornerstone of arbitration, their philosophical foundations diverge. Common law prioritises individual consent and contractual freedom, whereas Islamic law places individual autonomy within the framework of divine injunctions and moral accountability. The reconciliation of these frameworks remains essential to the global acceptance and enforceability of Sharia-compliant arbitral awards.

Enforceability of Arbitral Awards

Enforceability represents a critical concern in both Islamic and common law arbitration frameworks, yet the two systems diverge significantly in their approach. In Islamic finance, arbitral awards must strictly comply with Sharia principles to be considered valid (Usmani, 2002; Al-Amine, 2012). Any award that contravenes core prohibitions—such as *riba* (interest), *gharar* (excessive uncertainty), or *maysir* (speculation/gambling)—may be deemed null and unenforceable, even if agreed upon by the parties (Kamali, 2003). This requirement ensures that the outcomes of arbitration not only resolve the dispute but also uphold ethical and religious compliance, reinforcing the integrity of Islamic financial transactions.

International instruments such as the UNCITRAL Model Law and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) provide mechanisms for cross-border enforceability, provided that Sharia requirements are respected. Compliance with these instruments is essential for Islamic finance awards to gain recognition beyond Muslim-majority jurisdictions.

By contrast, common law courts primarily emphasise contractual certainty, procedural fairness, and finality (Born, 2021). Under both domestic legislation and international treaties, awards are generally enforceable unless they conflict with the public policy of the enforcing jurisdiction. While parties may include Sharia-compliant clauses in contracts, courts in common law systems assess enforceability through a secular lens, potentially rejecting awards that incorporate elements incompatible with national law (Lew, Mistelis & Kröll, 2003).

The tension between these systems becomes particularly pronounced in cross-border Islamic finance, where transactions often span multiple jurisdictions with differing legal and ethical standards. Contracts structured under Sharia principles—such as *murabaha* (cost-plus financing) and *musharakah* (partnership financing)—require careful drafting to ensure that awards are both religiously compliant and recognisable under common law enforcement mechanisms. Failure to align procedural and substantive requirements can result in disputes over enforceability, creating uncertainty for investors and financial institutions.

To mitigate these risks, Islamic financial institutions often adopt hybrid frameworks, combining Sharia governance structures, the guidance of Sharia Supervisory Boards (SSBs), and adherence to international arbitration standards, such as the UNCITRAL Model Law, AIAC i-Arbitration Rules for Islamic Finance Disputes (2020), or other recognised procedural norms. Such measures enable awards to maintain legitimacy under Islamic law while remaining enforceable under domestic and international common law frameworks. Harmonisation of these standards is therefore essential for promoting confidence, predictability, and legal certainty in global Islamic financial arbitration.

Comparative Analysis: Islamic and Common Law Approaches

Table 1 provides a structured comparison of key procedural, ethical, and enforceability dimensions between Islamic and common law arbitration:

Table 1. Key Differences Between Islamic and Common Law Arbitration

Aspect	Islamic Law	Common Law Arbitration
Source of Authority	Qur'an, Sunnah, Ijma, Qiyas; moral and divine principles	Statutes (e.g., Arbitration Act 1996 UK), judicial precedent, party agreements
Legitimacy Basis	Ethical and divine compliance (adl, fairness, tarāḍī)	Procedural fairness, contractual autonomy, and enforceability
Party Autonomy	Permitted but bounded by Sharia; cannot violate riba, gharar, maysir	Broad freedom: parties choose governing law, seat, procedures, and arbitrators
Arbitrator Requirements	Must be impartial and knowledgeable in Sharia; religious credentials valued	Professional expertise prioritised; doctrinal alignment optional
Procedural Flexibility	Flexible within Sharia bounds; consultation with Sharia experts recommended	Highly flexible; courts intervene minimally, primarily for enforcement
Enforceability of Awards	Must comply with Sharia to be valid; violation of prohibitions renders the award unenforceable	Enforced if consistent with public policy; secular lens applied; awards generally recognised internationally
Integration with International Frameworks	Requires hybrid mechanisms; AAOIFI standards guide Sharia-compliant arbitration	UNCITRAL Model Law and, New York Convention provide a harmonised procedural and enforcement framework
Conflict Resolution Approach	Seeking ethical justice, reconciliation, and public welfare	Focuses on contractual certainty, efficiency, and finality

The table underscores that while both systems uphold fairness, impartial adjudication, and consent, Islamic arbitration operates within a moral-legal framework, whereas common law prioritises contractual freedom and procedural uniformity. The integration of these frameworks in modern financial arbitration requires careful harmonisation to ensure enforceability without compromising ethical compliance.

Integrating Islamic and International Arbitration Frameworks

Islamic arbitration (*tahkīm*) shares key conceptual features with international arbitration, including mutual consent, impartial adjudication, and the binding nature of awards. Historically, *tahkīm* was recognised in classical *fiqh* as a legitimate process for resolving civil and commercial disputes outside state courts (*qaḍāʾ*) (Coulson, 1964). The *ḥakam* (arbitrator), appointed by the parties, was bound to issue an award consistent with the principles of justice (*ʿadl*) and equity (*qisṭ*), thereby ensuring procedural fairness and moral accountability.

Modern Islamic finance has adapted these classical principles to align with international arbitration norms. The Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), through Sharia Standard No. 32 on Arbitration (Manama: AAOIFI 2010), provides comprehensive guidance for resolving disputes in compliance with Sharia. The standard requires Sharia-compliant arbitration clauses, qualified arbitrators, and referral of complex religious issues to recognised scholars.

At the national level, countries such as Malaysia have incorporated Sharia oversight into statutory and arbitral frameworks. The Sharia Advisory Council (SAC) of the Central Bank of Malaysia, established under the Central Bank of Malaysia Act 2009 *(*Part VII ss 51–

58) possesses statutory authority to issue binding rulings on Sharia matters in both arbitration and litigation (Central Bank of Malaysia Act, 2009 (Malaysia) Part VII ss 51–58. This ensures legal certainty, interpretive consistency, and enforceability of Sharia-based awards.

The integration of *tahkīm* and international arbitration reflects a convergence of values—contractual freedom, procedural fairness, and ethical governance (Al-Amine, 2012). By embedding Sharia compliance within modern arbitral procedures, Islamic jurisdictions have strengthened the credibility and global recognition of Islamic financial dispute resolution.

Accordingly, arbitration constitutes a vital bridge between conventional and Islamic legal systems, enabling Islamic finance to operate within a legally coherent and internationally enforceable framework.

Application to Financial and Commercial Disputes

The increasing integration of Islamic finance into the global economic system has brought cross-border financial and commercial transactions into sharper focus. Unlike conventional finance, Islamic finance operates under a dual legal framework, simultaneously governed by Sharia principles and the secular laws of the jurisdictions in which transactions occur. This duality introduces a unique set of challenges in dispute resolution, particularly in cross-border contexts where contractual norms, regulatory expectations, and enforcement mechanisms may vary widely.

The application of arbitration and dispute resolution mechanisms in Islamic finance is, therefore, critical for ensuring the legitimacy, enforceability, and operational effectiveness of financial and commercial agreements. This section examines the practical implications of Islamic finance arbitration for Sharia-compliant transactions, international trade and commercial disputes, and the broader challenges and limitations that arise in institutional capacity, enforcement, and legal harmonisation. By analysing these dynamics, the section highlights strategies for reconciling doctrinal fidelity with global commercial practices, providing a framework for navigating complex cross-border disputes while maintaining Sharia compliance.

Islamic Finance and Sharia-Compliant Transactions

Cross-border arbitration in Islamic finance presents distinctive challenges arising from the intersection of Sharia principles, national legal systems, and international commercial arbitration norms. Unlike conventional financial disputes, Islamic finance arbitration operates within a dual legal paradigm that simultaneously engages religious doctrine and secular procedural law. This tension manifests primarily in three dimensions: conflict of laws, institutional and professional capacity, and enforcement challenges. Each factor critically influences the predictability, credibility, and global acceptance of Islamic finance arbitration.

A structural challenge is the divergence between Sharia-based contractual norms and the governing laws of secular jurisdictions. In many international transactions, parties elect governing laws such as English or New York law for their clarity, predictability, and robust enforcement mechanisms (Tamimi & Co., 2014). However, these choices may produce latent

conflicts with embedded Sharia principles, potentially affecting both enforceability and recognition. As Tamimi & Co. (2014) observe:

> *"In practice, English law is widely chosen as the governing law of Islamic cross-border finance transactions…yet the reference to Sharia rules and principles amid the choice of law clauses…is included with no particular thought of the effect or implementation of the provision by the judicial system."*

Judicial outcomes illustrate this tension. In Glencore International AG v. Metro Trading International Inc., the English court applied Fujairah law, incorporating Sharia elements, demonstrating courts' willingness to recognise Sharia-derived principles when properly framed. Conversely, in Saudi Arabia v. Arabian American Oil Company *(Aramco)* (1958), domestic courts reaffirmed local limitation periods despite Sharia-based contractual norms. Similarly, in Shamil Bank of Bahrain EC v. Beximco Pharmaceuticals Ltd (2004) EWCA Civ 19, the English Court of Appeal rejected a reference to "principles of the Glorious Sharia" due to vagueness, highlighting the necessity for explicit codification of Sharia provisions in secular contracts.

Institutional capacity is critical for credible arbitration. Effective cross-border Islamic finance arbitration requires arbitrators trained in both Sharia and international commercial law, supported by procedural frameworks integrating religious authenticity with legal enforceability. Institutions such as the Dubai International Arbitration Centre (DIAC), the International Islamic Centre for Reconciliation and Arbitration (IICRA), and AAOIFI guide procedural rules, Sharia compliance, and ethical standards, ensuring awards are both legally valid and morally acceptable (AAOIFI, 2010; DIAC Rules, 2019).

International Trade and Commercial Disputes

Islamic finance principles increasingly intersect with international trade and commercial transactions, necessitating specialised arbitration frameworks. Cross-border trade disputes often involve parties operating under different legal systems, creating potential conflicts between Sharia-compliant contractual provisions and international commercial law. Trade finance instruments such as Murabaha, Istisna, and Sukuk-based financing require that the underlying obligations conform to both Sharia principles and the commercial norms of jurisdictions such as London, New York, or Singapore (Usmani, 2002; Vogel & Hayes, 1998).

Key challenges in international commercial disputes within the context of Islamic finance can be categorised as follows:

1. Divergent Contractual Norms – Trade and finance contracts frequently incorporate Sharia prohibitions, including riba (interest), gharar (excessive uncertainty), and maysir (speculation). These doctrinal requirements can conflict with conventional contract principles recognised under secular legal systems, creating potential ambiguities in interpretation and enforceability.
2. Enforceability Across Jurisdictions – Although most jurisdictions are signatories to the New York Convention (1958), enforcement of Sharia-compliant clauses may be challenged if national courts deem them inconsistent with domestic public policy (Al-Suwaidi, 2020). This creates uncertainty in cross-border dispute resolution and necessitates careful drafting of arbitration agreements to ensure compatibility with both Sharia and secular legal norms.

3. Institutional and Professional Capacity Constraints – Effective adjudication requires arbitrators with dual expertise in both international commercial law and Sharia principles. The absence of professionals with this hybrid competence can undermine the legal validity of awards, compromise doctrinal compliance, and result in inconsistent or unenforceable decisions (El-Gamal, 2006).

Practical examples illustrate these challenges. In cross-border Islamic trade finance, courts and arbitration panels often default to conventional commercial principles unless Sharia clauses are explicitly codified. Consequently, hybrid dispute resolution frameworks, clear arbitration clauses, and specialised training for arbitrators are essential to mitigate legal risks, enhance enforceability, and foster confidence in Sharia-compliant commercial arbitration.

Institutional and Operational Challenges

The legitimacy and effectiveness of Islamic arbitration depend heavily on the availability of qualified arbitrators and competent institutions. Many jurisdictions still face limitations in arbitrator expertise, particularly regarding combined proficiency in Sharia and contemporary commercial law (Oseni, Ahmad & Hassan, 2018). While institutions such as the Kuala Lumpur Regional Centre for Arbitration (now AIAC) have developed Sharia-compliant arbitration rules, capacity constraints persist, potentially affecting the predictability and quality of outcomes.

A central limitation lies in the enforceability of Sharia-compliant awards under international law. The New York Convention provides a robust framework for cross-border recognition, but it does not explicitly address awards grounded in religious law. Consequently, public policy objections under Article V are frequently invoked, resulting in inconsistent judicial decisions that undermine contractual certainty. Aldabbousi et al. (2023) document that some courts adopt a flexible commercial interpretation, while others apply strict procedural scrutiny, limiting the predictability of enforcement and creating operational risks for Islamic finance stakeholders.

Cross-border Islamic finance transactions inevitably engage multiple legal systems. Conflicts arise when Sharia requirements intersect with mandatory national laws, particularly in jurisdictions unfamiliar with Islamic jurisprudence. These tensions challenge the principle of party autonomy and can delay enforcement, increase litigation costs, and diminish investor confidence(Hassan & Zeller, 2023). Such conflicts highlight the importance of clear arbitration clauses, expert determination on Sharia issues, and institutional support to mitigate jurisdictional risks.

Reconciling Sharia with International Arbitration

Reconciling Sharia principles with international arbitration practices is critical for ensuring the legitimacy, enforceability, and operational viability of Islamic finance transactions. Cross-border arbitration provides a structured mechanism for dispute resolution; however, the intersection of religious law and secular legal frameworks presents unique challenges requiring both doctrinal understanding and procedural expertise. Two complementary dimensions are central to this reconciliation: the comparative analysis of arbitration mechanisms and the practical harmonisation of Sharia compliance with international norms.

A comparative understanding of Islamic and common law arbitration highlights both convergence and areas requiring harmonisation. Islamic arbitration permits parties to appoint arbitrators with Sharia-compliant qualifications, which may include religious credentials or considerations related to gender (El-Gamal, 2006). By contrast, common law frameworks typically prioritise professional expertise over doctrinal alignment, allowing broader flexibility regarding arbitrators' backgrounds. Harmonisation requires recognising these differing selection criteria while ensuring procedural competence.

Procedural approaches further emphasise the need for integration. Islamic arbitration often embeds consultation with Sharia experts to ensure doctrinal compliance, whereas common law arbitration prioritises procedural neutrality, with judicial intervention largely restricted to enforcement or challenge of agreements (Vogel & Hayes, 1998). Aligning these frameworks entails embedding Sharia oversight mechanisms without undermining the procedural efficiency and impartiality that international arbitration demands.

Enforceability remains a critical consideration. Common law courts generally uphold arbitral awards under instruments such as the New York Convention (1958, Articles III–V), whereas Sharia-compliant awards may face obstacles if certain contractual elements conflict with national laws or public policy (Aldabbousi et al., 2023). Drafting arbitration agreements that clearly reconcile Sharia principles with applicable national and international legal standards is therefore essential to ensure enforceable and legitimate outcomes.

Harmonisation can be achieved through contractual, institutional, and procedural strategies. First, a clear articulation of applicable Sharia principles in arbitration clauses ensures that parties' intentions and doctrinal requirements are explicitly recognised. Second, consultation mechanisms with recognised Sharia boards or experts help maintain doctrinal fidelity while mitigating enforcement risks (Hassan & Zeller, 2023). Third, strengthening institutional capacity by training arbitrators in both Sharia jurisprudence and international arbitration procedures ensures professional, predictable, and compliant dispute resolution. Fourth, the adoption of hybrid procedural rules, such as AIAC i-Arbitration and DIFC-LCIA frameworks, allows for Sharia compliance while aligning with standardised international arbitration norms.

Hybrid models—incorporating Sharia supervisory boards, expert determinations, and codified procedural rules—demonstrate the feasibility of harmonisation. This reconciliation does not constitute a departure from Islamic jurisprudence; rather, it represents an adaptive mechanism that ensures compliance with both ethical mandates and international standards(Al-Amine, 2012; Oseni & Hassan, 2015). Classical principles, including fairness, transparency, and avoidance of gharar, continue to guide arbitrators, while contemporary rules provide procedural predictability and enforceability in cross-border contexts.

Emerging trends illustrate the practical evolution of harmonisation. The increased inclusion of women as arbitrators in Hanafi jurisprudence jurisdictions reflects interpretive flexibility within Sharia. Similarly, progressive statutory recognition of Sharia-based awards in some common law jurisdictions reduces enforcement uncertainty and fosters convergence between religious and secular frameworks (Al-Suwaidi, 2020; Kettani, 2022). By integrating doctrinal fidelity with procedural flexibility, Islamic financial institutions can navigate complex cross-border disputes effectively. Harmonised frameworks enhance contractual certainty, foster confidence among domestic and international stakeholders, and

demonstrate that Sharia compliance and international arbitration standards are mutually compatible rather than conflicting.

Towards a Harmonised Framework and Policy Implications

Building upon the preceding analysis of Sharia-compliant arbitration and the challenges of cross-border enforcement, it becomes clear that the sustainable growth and legitimacy of Islamic finance depend on the establishment of a coherent and harmonised legal and regulatory framework. The lack of standardisation in dispute resolution undermines contractual predictability, limits cross-border enforceability and weakens investor confidence. Hence, there is an argument for a harmonised arbitration framework that reconciles Sharia principles with international commercial law, identifying its theoretical justification, guiding principles, institutional mechanisms, and policy implications.

Rationale for Integration

The growing internationalisation of Islamic finance underscores the need for harmonised legal mechanisms capable of bridging *Sharia* principles with secular arbitration frameworks. The fundamental tension arises from the incompatibility between Sharia prohibitions on *riba* (interest) and *gharar* (excessive uncertainty) and conventional financial structures where interest functions as compensation for time and risk (Usmani, 2002). The Shamil Bank of Bahrain EC v. Beximco Pharmaceuticals Ltd (2004) EWCA Civ 19 case exemplifies how English courts, prioritising contractual certainty, favoured the explicit governing law over vague references to "principles of the Glorious Sharia." This judicial stance exposes the risks associated with non-standardised contracts and highlights the necessity of clear, enforceable Sharia-compliant arbitration provisions.

Harmonisation mitigates such discrepancies by promoting uniformity in Sharia interpretation across jurisdictions. Malaysia's dual legal system, which integrates the Sharia Advisory Council (SAC) into its judicial and arbitration mechanisms, offers a functional model for reconciling religious and secular legal orders. Similarly, Bahrain's Central Bank and the UAE's DIFC-LCIA arbitration centre have adopted hybrid models that embed Sharia-compliant procedures within conventional frameworks (Hassan & Lewis, 2007). This integration ensures that Islamic financial institutions operate within global markets without compromising religious legitimacy. Theoretically, harmonisation advances the *maqasid al-Sharia* (objectives of Sharia)—justice, equity, and public welfare—while practically enabling enforceable, ethically grounded cross-border financial contracts.

Institutional Capacity and Competency Challenges

Despite the promise of arbitration as a forum for embedding Sharia principles, institutional and professional deficiencies pose significant barriers to its effective implementation. Many arbitral institutions lack the structural capacity and procedural mechanisms needed to address disputes that require the concurrent application of Sharia and international arbitration law (El-Gamal, 2006). Because Sharia financial jurisprudence incorporates prohibitions relating to riba, gharar, and maysir, conventional commercial arbitration models are often ill-equipped to engage with these substantive norms

Enforcement challenges compound the complexity. Recognition of Sharia-compliant awards depends on their compatibility with domestic public-policy doctrines and the governing law of the enforcing jurisdiction. As Al-Suwaidi (2020) notes:

> *"Enforcement of foreign arbitral awards in Islamic countries could be challenged if these awards are contrary to Sharia public policy."*

Judicial precedents reinforce this reality. In Sanghi Polyesters Ltd v International Investor (2000) EWHC 152, English courts affirmed the primacy of English law over Sharia principles in an *istisnaʿ*-based dispute. Likewise, *Shamil Bank v Beximco* confirmed that courts in non-Islamic jurisdictions are generally reluctant to enforce Sharia-based obligations unless the contract expressly defines how those norms interact with the governing law and the seat of arbitration.

A further systemic challenge is the limited pool of arbitrators with dual expertise in Sharia jurisprudence and international arbitration. Such hybrid competence is essential for interpreting Sharia-based substantive principles while maintaining compliance with procedural and evidentiary standards under international arbitration rules. The scarcity of such professionals increases the risk of inconsistent awards, annulment, non-enforcement, and prolonged dispute resolution.

In response, institutions such as the Asian International Arbitration Centre (AIAC) and the DIFC-LCIA have launched specialised training, certification, and accreditation programmes aimed at developing arbitrators capable of bridging the two systems. Building institutional capacity and cultivating hybrid expertise are therefore essential for the credibility and sustainability of Sharia-compliant arbitration frameworks.

Enforcement Challenges in Cross-Border Islamic Arbitration

Enforcement remains one of the most critical—and contentious—dimensions of Islamic finance arbitration. Even where parties successfully obtain arbitral awards, converting them into executable judgments is complicated by the intersection of Sharia principles, domestic legal frameworks, and international instruments such as the New York Convention (1958). Although most Muslim-majority states are Convention members, enforcement may be refused where national courts perceive awards as contravening public policy or Sharia fundamentals (Articles III–V).

A central tension lies in diverging interpretations of public policy. In secular jurisdictions, public policy refers to the principles of justice and legality within the civil legal order. In Sharia-based jurisdictions, however, public policy may be evaluated through a religious lens, particularly where awards involve riba, speculative transactions, or other prohibited elements (Al-Suwaidi, 2020). This divergence increases the likelihood of refusal or annulment even where awards are valid under international norms.

Judicial precedents highlight these tensions. In Shamil Bank, the English court declined to interpret the Sharia reference clause, reaffirming the primacy of the stated governing law. In Kuwait Airways Corp v Iraqi Airways Co No. 3 (2002) UKHL 19, enforcement was refused on public policy grounds, illustrating the courts' willingness to prioritise domestic legal principles over foreign awards. These cases underscore the urgent need for precisely drafted arbitration clauses that establish how Sharia norms will interact with governing law, seat, and enforcement forum.

Hybrid arbitral rules, such as the AIAC's i-Arbitration Rules, attempt to reconcile procedural internationalism with Sharia-compliant principles. However, their success ultimately depends on sustained judicial cooperation and the willingness of courts to adopt a harmonised rather than exclusionary approach.

Contemporary Challenges and Policy Considerations in Islamic Arbitration

Despite significant institutionalisation, Islamic arbitration faces enduring substantive and procedural challenges. Divergent interpretations of Sharia across jurisdictions impede doctrinal coherence. For example, Article 55 of Saudi Arabia's Arbitration Law requires compliance with both Sharia and public policy, restricting the recognition of awards that are inconsistent with local interpretations of riba or gharar. Such jurisdictional diversity undermines investor confidence and complicates cross-border finance.

Public-policy objections further complicate recognition. Courts in Saudi Arabia, Kuwait, and elsewhere consistently refuse awards involving interest or speculative elements (El-Gamal, 2006). While this protects ethical integrity, it conflicts with the principle of finality under the New York Convention. Cases such as Soleimany v Soleimany and Sanghi Polyesters illustrate how divergent public-policy doctrines can lead to fragmented and unpredictable enforcement practices.

Institutional capacity remains uneven across jurisdictions. Although Malaysia, Bahrain, and the UAE have developed sophisticated models integrating Sharia expertise within arbitration, many states lack qualified arbitrators and institutional experience (Hegazy, 2011). Strengthening capacity requires coordinated training, joint certification programmes, and collaboration between global standard-setting bodies such as AAOIFI, IFSB, and ICC.

Sociocultural perceptions also influence the acceptance of arbitration. In some communities, formal arbitration is perceived as a Western import, overshadowing traditional forms of conciliation such as ṣulḥ (Kamali, 1999). These perceptions can discourage reliance on arbitration unless institutions demonstrate procedural transparency, religious legitimacy, and alignment with Islamic ethical values.

The qualifications of arbitrators remain a further area of reform. Classical jurisprudence limited eligibility to Muslim men with Sharia knowledge, but modern practice has expanded inclusivity. Jurisdictions such as Malaysia and the UAE now permit non-Muslims and women to serve as arbitrators where they possess appropriate expertise and integrity. This reflects evolving norms of equality and professional competence while adhering to the moral objectives of Sharia.

Toward harmonisation, Islamic arbitration would benefit from standardised Sharia-compliant procedural rules modelled on AAOIFI and IFSB frameworks, integration with global institutions such as ICC, LCIA, and UNCITRAL, and the establishment of regional centres of excellence for arbitrator training and Sharia advisory coordination. Achieving a harmonised framework requires balancing the *maqāṣid al-sharīʿah*—justice, equity, harm prevention—with international standards of due process and enforceability. Such convergence would transform Islamic arbitration from a fragmented niche practice into a credible global mechanism capable of supporting cross-border financial stability and ethical commercial conduct.

CONCLUSION AND RECOMMENDATIONS

The advancement of Islamic finance within the global financial system depends fundamentally on a coherent and harmonised legal and regulatory framework. Arbitration stands at the centre of this transformation, offering a practical mechanism to reconcile Sharia principles with conventional legal systems, where financial regulation remains rooted in traditional banking practices and legislative reform has been slow. This regulatory inertia has created gaps that limit the full expression of Sharia-compliant finance, highlighting the need for solutions that respect both ethical imperatives and enforceability requirements.

Arbitration provides the flexibility and doctrinal space necessary to address these gaps. Tribunals can apply the governing law chosen by the parties while incorporating Sharia-compliant ethical and religious principles. This dual capacity preserves doctrinal integrity and ensures that awards remain enforceable under domestic and international standards, effectively bridging the tension between Sharia fidelity and cross-border legal certainty.

The establishment of the International Islamic Standard Setting Commission (IISSC) represents a key step toward harmonisation. By offering uniform guidance, the IISSC addresses doctrinal fragmentation and enhances predictability. Complementing this, an International Islamic Finance Advisory Council could provide systematic Sharia expertise to arbitral tribunals, ensuring fairness, consistency, and ethical enforcement. Together, these innovations strengthen the credibility and operational effectiveness of Islamic financial arbitration, particularly in complex transnational disputes.

These developments demonstrate the adaptability of Sharia principles and their capacity to operate effectively within non-Sharia legal environments. When embedded through harmonised arbitration frameworks and expert oversight, Sharia's core values—justice, equity, and harm prevention—reinforce ethical and risk-sensitive foundations for global finance. Enforcement mechanisms that avoid reliance on conventional interest-based penalties further highlight the compatibility of Islamic finance with contemporary regulatory expectations, including transparency, fairness, and responsible risk management.

Harmonised arbitration structures, institutionalised expert guidance, and ethically aligned enforcement mechanisms are essential for embedding Islamic finance within conventional legal systems. They safeguard Sharia compliance while enhancing legal clarity, operational consistency, and market confidence. More importantly, they enable Islamic finance to contribute constructively to global financial diversity and resilience, positioning it as a sustainable, innovative, and ethically driven force in international commerce.

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