

# ICC Commission Report on Financial Institutions and International Arbitration: Workstream on Arbitration of Islamic Finance Disputes

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The [Workstream on Arbitration of Islamic Finance Disputes](#) was tasked with looking at whether the development of specific rules and the development of a comprehensive so-called lex Islamica and procedures for Islamic Finance would encourage the use of arbitration in resolving Islamic Finance Disputes. The Workstream's Report proposes a list of recommendations that the ICC may consider while developing its rules and procedures. The Report emphasizes that the applicability of its recommendations should be assessed in light of the Sharia's doctrinal diversity. Islamic Shari'a doctrinal diversity is composed of Primary and Secondary Sources; while the Primary Sources are undisputed, the Secondary Sources may pose a challenge in the development of unified rules and procedures because there is limited consensus on the scope of interpretation of the Secondary Sources.

The Primary Sources of Islamic Shari'a are the Quran and the Sunna. The Quran, the paramount authority, includes the principles that govern the relationships of individuals in society. The second most authoritative source for Shari'a is the Sunna, which is a collection of the actions and sayings of the Prophet compiled by the Prophet's contemporaries and should be used as a reference for actions and decisions. The Secondary Sources comprise the Islamic Schools of Jurisprudence that was developed to address topics not covered within the Primary Sources. However, these Schools differ in the methodology they use to derive their rulings from Quran and Sunna.

There are six main Schools of Islamic Law: four within the Sunni branch of Islam and two within the Shi'a branch. The Schools agree on certain rules and principles and disagree on others. The Report highlights a certain number of principles of Shari'a law, such as the prohibition of the payment or acceptance of interest (Riba), which all Schools agree upon, and the prohibition of the use of conditions precedent in a contract, as an issue deemed permissible according to some Schools and prohibited for others. The Report also provides insights on the possibility of varying interpretations of various principles within Shari'a law. For example, all Schools prohibit speculative transactions, but they disagree as to the point at which a transaction becomes too speculative or uncertain to pass muster. This potential difference in interpretation might pose a challenge in the application of the Report's recommendations to the development of a framework for Islamic Finance Arbitration.

The Report proposes that the ICC lead the development of a framework for the resolution of Islamic finance disputes through establishing fast track and cost effective rules on arbitrating Islamic finance disputes and conducting trainings in Islamic finance transactions and disputes, in cooperation with well-established institutions specializing in Islamic finance to help arbitrators and practitioners gain the needed expertise in the field of Islamic finance. It recommends the development of an arbitration guide for the Islamic finance market, the establishment of a task force dedicated to the development of a *lex Islamica* and the development of a set of uniform, harmonized legal norms for deciding Islamic finance disputes.