

**Keywords:** Islamic Sharia; Islamic business; Non-Muslims; Corporate religion

## Introduction

In principle, Islamic Sharia does not discriminate between Muslims and non-Muslims in the rules of trade and business. It mostly focuses on the transaction itself and the treatment of its dealing parties more than their personal status or religion. However, it does differentiate in their treatment in some religious matters that have a direct effect on business transactions between them, most importantly, in terms of control and money.

dealings between Muslims and non-Muslims such as sharecropping<sup>4</sup> and others in relation to buying and mortgages<sup>5</sup>. This perspective of Sharia shows that it is permissible for Muslims to have businesses or partnerships of any kind with non-Muslims dealing in areas such as buying, leasing, and having mortgages and loans. Furthermore, business transactions between Muslims and non-Muslims are governed by the same rules that govern the transactions between Muslims themselves. Accordingly, what is prohibited between Muslims is also prohibited in dealings between Muslims and non-Muslims. The transaction itself and its subject should be to the extent permitted by Sharia. This means that the rules of Islamic Sharia will be the law of contract if one party is Muslim.

Nevertheless, Islamic Sharia still distinguishes between Muslims and non-Muslims in some matters related to religion which have a direct effect on business transactions between them. Most importantly in terms of control and money. It is worth mentioning that 'non-Muslims' here refers to the followers of Abrahamic religions other than Islam, i.e., Christians and Jews. Therefore, people from other faith backgrounds might have different rules.

### **The Distinction between Muslims and Non-Muslims in Islamic Business**

There are two main differences in terms of the treatment of Muslims and non-Muslims: (1) the preference for the Muslim party to hold control over a business; and (2) the permissibility of accepting prohibited money.

#### **In terms of control**

In Sharia, if Muslims want to enter into a partnership with non-Muslims, it is preferable that they hold control over the money and be in charge of all financial transactions; otherwise, this partnership is *makruh* (disliked/hateful)<sup>6</sup>. This is a precautionary rule to avoid the likelihood of becoming involved in transactions prohibited in Sharia that are usually conducted by non-Muslims, such as interest-based transactions which are considered as usury in Sharia and prohibited to Muslims<sup>7</sup>.

---

<sup>4</sup> Narrated by Ibn 'Umar: 'Allah's Messenger gave the land of Khaibar to the Jews on the condition that they work on it and cultivate it, and be given half of its yield'. Muhammad Muhsin Khān (tr), *Al-Bihar al-Rai'iq* (v3 the book of cultivation and agriculture 41 hadith no 2331, Dārussalām 1997) 299.

<sup>5</sup> Narrated by Aisha: 'Allah's messenger PBUH bought food grains from a Jew on credit and mortgaged his armour to him'. Muhammad Muhsin Khan (tr), *Sahih Al-Bukhari* (v3 the book of sales 34 hadith no 2096, Darussalam 1997) 181.

<sup>6</sup> This is the approach of early Muslim scholars. Abi Bakr Al-Khallāl,

---

**Money of Muslims and non-Muslims:** The rule of taking prohibited money from its owner varies depending on the owner's religion:

A. Money of non-Muslims: Sharia confirms that it is permissible for Muslims to accept the money of non-Muslims even when it is known that it has come from a prohibited source. This money is not seen as prohibited to Muslims because its owners earn it in a permissible way in their own religion

---

- It is much more preferable to impose some restrictions on business between Muslims and non-Muslims in which all financial transactions to be conducted under the supervision of the Muslim parties.
- The trader's religion determines whether Muslims are allowed to accept his money. Therefore, if the money has been earned in a lawful way according to the owner's religion then this money can be accepted by Muslims and vice versa.
- Following the majority opinion, if a trader is Muslim and it is known for certain that he earns his money from a prohibited source then other Muslims are not allowed to deal with him.
- According to the rule of the admixture of prohibited and permissible money, the percentage of the prohibited money determines whether the whole amount of money is contaminated or not.

From the previous explanation, it can be said that recognizing a trader's faith is an important element in Islamic business transactions. In other words, in Sharia it is important –in some cases- to know the religion of the dealing parties.

It is acknowledged that traders can be a natural or artificial person and following a religion is imagined for humans, but is this possible for corporations? Corporate religion is addressed in the following section.

## Corporate Religion

This section is divided into two parts: first, the international right of corporations as artificial persons to follow and manifest a religion; and second, the criteria for determining the religion of corporations in Islamic business.

### International right of corporations to follow and manifest a religion

It is legally recognized in most jurisdictions that corporations, institutions, firms, companies as artificial persons have many similar rights to natural persons<sup>34</sup>. This includes the right to freedom of religion and to manifest this religion in practice as stated in Article 18 of the Universal Declaration of Human Rights 1948 (UDHR). The same right is adopted in Article 9 of the European Convention on Human Rights 1950 (ECHR) and Article 18 of the International Covenant on Civil and Political Rights 1966 (ICCPR). Hence, institutions enjoy this right as much as individuals do. This is especially the case given that the ECHR, in Article 34, conferred on non-governmental organisations, as legal persons, the right to raise an application to the European Court of Human Rights for any violation to the Convention's rights including right of religion.

Accordingly, artificial persons are capable of having and practising a religion and for being recognised as following a religion<sup>35</sup>. It is worth mentioning that, although the ECHR, under Article 34, has limited the

---

<sup>34</sup> Mr Chief Justice Waite said: 'The Court does not wish to hear an argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does.' *Santa Fe* 118 US 394 (1886).

<sup>35</sup> 'A church body is capable of possessing and exercising the rights contained in Art 9(1) in its own capacity as a representative of its members'.

---

the world such as religious advocacy groups, religious organisations and religious universities and schools. For example the CBMC International organisation which explicitly acknowledges that it is an interdenominational, evangelical Christian organization in its official website <sup>39</sup>. Other factors also can give indications on the faith

---

follow a religion at all. This change in membership has its effect on the company which may change accordingly<sup>55</sup>. Consequently, ownership alone is not an accurate measure to determine corporate religion; 'control' is a much more accurate measure<sup>56</sup>.

However, locating control is not an easy task. There has always been

and the permissibility is an exception tied to a condition. Accordingly, Muslims should not accept money that is clearly prohibited in Sharia unless they know it is the money of non-Muslims.

In this case, the company with a non-specified religion that deals with prohibited business in Sharia should be asked to provide evidence that it is not Muslim to get its money accepted by an Islamic company according to the rule set by Prophet Muhammad PBUH: 'the onus of proof is on the claimant, and the taking of an oath is incumbent upon him who denies'<sup>67</sup>, for example, to willingly reveal the identity and faith of the company's controlling owners or to provide an official document

---