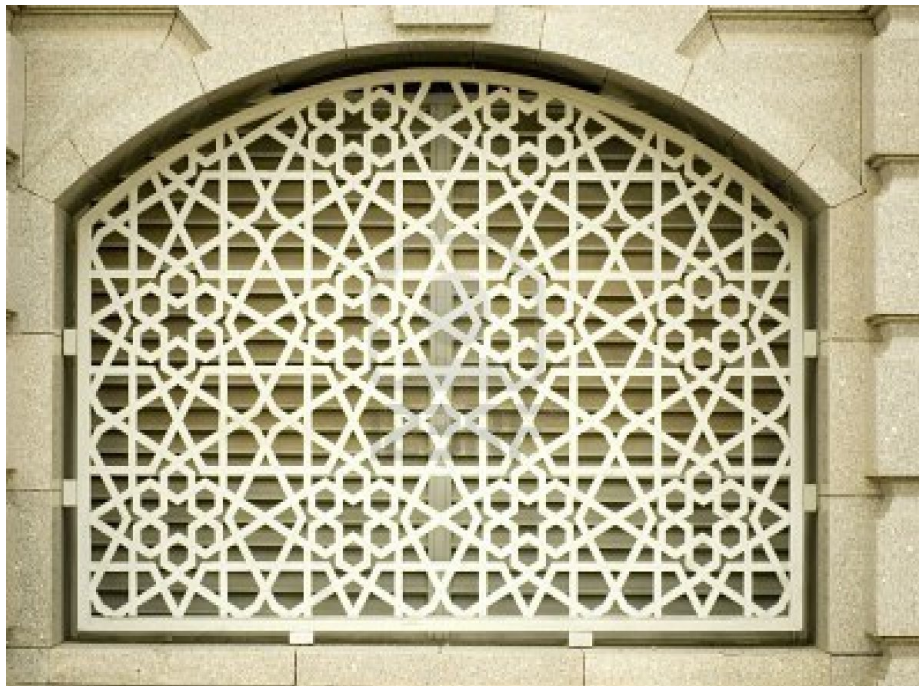


# Compatibility of Dispute Board Agreements with the Principles of Sharia'a and the Rules of Civil Law



# Sharia'a and Legislation

## Article 1 of the Qatari Constitution

- “Qatar is an independent Arab State. Islam is the State’s religion and **the Islamic Sharia’a is the main source of its legislations....”.**

## Article 7 of the UAE Constitution

- "Islam is the official religion of the Federation and Islamic **Sharia’a is a main source of legislation** therein and the official language of the federation is Arabic".

# Sharia's traditional sources

- **Primary Sources:**
  - **Qur'an** (Allah's divine revelations)
  - **Sunna** of the Prophet (the saying and deeds of the Prophet Mohammed).
- **Secondary Sources:**
  - Consensus (Ijma'a)
  - Analogical deduction (Qy'as)

# Human Conduct under Sharia'a Law

*Sharia'a* divides human conduct into five categories:

- Conduct which is **obligatory** (*fard*)
- Conduct which is recommended (*mustahabb*)
- Conduct which is neutral (*mubah*)
- Conduct which is discouraged (*makruh*)
- Conduct which is **forbidden** (*haraam*).

# Sharia'a and Binding Agreements

- The binding character of any agreement:
- The Holy Qur'an says :
- *"Oh, you who believe abide by your contractual commitments"*
- *" Oh, you who believe fulfill your contracts".*

[al-Mā'ida 5:1]

# Codification of Islamic Law

- Developed between 7th -10th Centuries AD
- No codification of these principles and rules until the 19<sup>th</sup> century .
- First Compilation (Ottoman Empire) : **Mejallah** (Uniform Civil Code) 1876
- Mejallah applied to **Arab countries** which were parts of the Ottoman Empire.

# Principles of Islamic Contract Law

- **Doctrine of permissibility**
- **Freedom of contract**
- **Duty to act in "good faith"**
- **Binding effect of the contract**
- **Honesty and fair trade**
- **Prohibition of misrepresentations**
- **Prohibition of usury or interest (riba)**
- **Prohibition of speculation (gharar)**
- **Principle of venture capital (Musharaka) and other Islamic Finance Agreements**

# Comparative conflict resolution approaches

Western Culture	Middle-Eastern Culture
A conflict is <b>normal</b>	A conflict is <b>negative and dangerous</b>
<b>Facing a conflict</b> is a necessary and <b>recommended strategy</b>	A conflict <b>should be avoided</b>
A conflict can <b>bring growth and creativity</b>	A conflict can <b>bring destruction and disorder</b>
The essential components of conflict resolution consist of <b>collaborative and cooperative frameworks</b>	The essential components of conflict resolution consist of <b>full respect of cultural codes and social values</b>



# Dispute Boards

- **DB as part of the Contract Management:** same binding effect as the Contract Terms and conditions
- **Powers entrusted to the DB by the Parties:** enforceable recommendations or decisions
- **Assisting the Parties in a professional manner to resolve their disputes:** Sharia'a compliant in preventing the dispute or avoiding its escalation.

# Questions ?

**THANK YOU**

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