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KAMATA I GARAR U ISLAMSKOM BANKARSTVU

Prevod
obežbedili
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Rezime

Iako još uvek relativno nepoznato kod nas, i za sada samo „niša“ globalnog bankarskog tržišta, islamsko bankarstvo igraće u ne tako dalekoj budućnosti značajniju ulogu. Islamske banke, naročito u svetlu najnovijih ekonomsko-političkih dešavanja u Srbiji (Etihadova akvizicija JAT-a, projekat „Beograd na vodi“ itd) nisu tako daleko od bankarskog sistema Srbije, pa je nužno razumeti osnovne zabrane islamskog bankarstva, što je tema ovog rada. Kamata i garar, što je kategorija u islamskom bankarstvu mnogo šira, sveobuhvatnija i višeznačnija od rizika ili špekulacije, detaljno su razmotreni.

Ključne reči: islamsko bankarstvo, kamata, garar, rizik, špekulacija

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INTEREST AND GHARAR IN ISLAMIC BANKING

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Summary

Islamic banking is relatively unknown to us. Although Islamic banking is only a segment or a "niche" of the overall banking industry and banking market, its significance is rising steadily, and it will play an important role in the near future. Islamic banks, especially in light of the latest economic and political developments in Serbia (Etihad's acquisition of JAT, the project "Belgrade Waterfront", etc.) are not so far away from the Serbian banking system, so it is necessary to understand the basic forbidden categories in it, which is the main topic of this paper. Interest and gharar, which is a category in Islamic banking that is much broader, more comprehensive and more ambiguous than risk or speculation, are discussed in details.

Keywords: Islamic banking, interest, gharar, risk, speculation

JEL: G20, G15, F44

Koncept islamskog bankarstva

Koncept islamskog bankarstva zasniva se na tzv. islamskoj štednji gde je štediša - investitor. On na kraju poslovne godine, dobija profit u procentu na uložena sredstva srazmerno procentu profita banke. (U slučaju da banka ostvari gubitak - i štediša ostvaruje srazmeran procentualni gubitak). Za razliku od konvencionalnog bankarstva, čiji je fokus primarno na ekonomsko-finansijskim aspektima transakcija, tj. profitu, islamsko bankarstvo daje najmanje jednak (ako ne i veći) značaj i etičko-moralnoj, pa i socijalnoj dimenziji unutar religiozno prihvatljive dimenzije u cilju postizanja društveno prihvatljive distribucije bogatstva (odnosno jednakosti), a u duhu solidarnosti. Pravda i pravednost su ugrađeni u temeljne princip islamskog bankarstva, a proklamovani cilj je ostvariti jednakost u društvu, za dobrobit društva kao celine, u duhu učenja islamske religije (kao uostalom i ostalih monoteističkih religija) po kojoj je ostvarivanje „viših ciljeva“ iznad bilo kakve materijalne koristi.

U poslednjih dvadesetak godina, a naročito od početka svetske finansijske krize, veoma raste interesovanje za islamsko bankarstvo. Da bi se u potpunosti razumelo islamsko bankarstvo, mora se znati da je ono bazirano na šerijatskom (islamskom) pravu. Pošto u islamu postoje najstrože zabranjene kategorije - to svim aktivnosti koje se odvijaju preko sistema islamskog bankarstva a imaju veze sa tim zabranama apsolutno nema mesta.

Lista zabranjenih kategorija u islamu, pa time i u islamskom bankarstvu nije duga, ali je veoma striktna:

- Najšire je poznata činjenica da zabranjena *kamata* (arapski: *riba*), što je detaljnije objašnjeno u sledećem potpoglavlju.
- Zabranjen je i *garar* (rizik ili špekulacija). Sve transakcije u sistemu islamskog bankarstva moraju biti oslobođene bilo kakve primese neizvesnosti, rizika i špekulacije, čime se stremi kao jednom od najvažnijih ciljeva koji su postavljeni u islamskoj religiji i filozofiji - zaštititi siromašnih od eksploatacije kao manifestaciji pravde, kao osnovnog principa islamskog bankarstva i islama uopšte, a što se i najviše i postiže podelom rizika (*garar* je detaljnije objašnjen u jednom

od narednih potpoglavlja).

- Treća zabranjena kategorija je *kocka* (*majsar*). Kockanje je zabranjeno jer ne stvara nikakvu dodatu vrednost, već samo vrši transfer vrednosti sa gubitnika na dobitnike. Uz to, u procesu kockanja se „troše“ ljudski resursi, a pošto nema stvaranja nove vrednosti - ne može se smatrati efikasnom aktivnošću. Nema nikakvu društvenu ulogu. Satisfakcija koju obezbeđuje igračima ne premašuje oportunitetne troškove. Poreski prihodi koje donose državi uvećane za zaposlenost onih koji rade u kladionicama, lutrijama i sl. ne mogu se smatrati „prednošću“ sve dok je kockanje društveno neprihvatljivo (Siddici, 2009, str. 5). Iz svega navedenog proizilazi da kod kockanja ono malo pozitivnih ekonomskih efekata koje proizvodi biva višestruko nadmašeno njegovim nedostacima, pa se smatra moralno neprihvatljivim i zbog toga po šerijatskom pravu zabranjenim.
- *Trgovina određenim dobrima* (*baj-al-ina*) je takođe zabranjena (npr. svinjskim mesom, drogom, alkoholom, kao i npr. aktivnosti vezane za pornografiju kao i svakakav ostali nemoral itd.), jer spada u zabranjene aktivnosti (*haram* /greh/). Sve što nije zabranjeno, dozvoljeno je (*halal*), a još bolje je ako je to na opšte dobro (*mašala* /takođe znači i privatno dobro/). Islamsko pravo zabranjuje sve navedeno jer mogu rezultirati akumulacijom bogatstva na račun druge strane.

U bankama koje posluju po principima islamskog bankarstva apsolutno je nepoznata kategorija nenamenskog kredita jer kredit mora imati namenu, a takođe se ni ne daje na raspolaganje u novcu, pa je i mogućnost nenamenskog trošenja gotovo isključena. Najjednostavnije moguće prikazano na primeru iz svakodnevnog poslovanja, navedeni ranije navedeni principi bi izgledali ovako: kada banka koja posluje po principu islamskog bankarstva pozajmi novac - na njega ne plaća (pasivnu) kamatu, niti ta sredstva plasira uz (aktivnu) kamatu, već pozajmljeni novac investira u konkretni projekat, a zajmodavci dobijaju udeo u tom projektu. Tako, osim što se izbegavaju plaćanje i naplata kamate, na relativno zdravim i realnim osnovama pomaže procesu reprodukcije, što je i tradicionalna

Concept of Islamic banking

The concept of Islamic banking is based on the so-called Islamic savings where depositors are investors. At the end of the year, the depositor/investor receives profit as a percentage of the invested funds in proportion to the percentage of the bank's profits. (In case the bank incurs a loss – the depositor/investor will incur loss in the same percentage). Unlike conventional banking, which focuses primarily on the economic and financial aspects of the transaction, i.e. profit, Islamic banking devotes at least equal (if not greater) importance to ethical, moral and social dimensions within the acceptable religious dimensions in order to achieve a socially acceptable distribution of wealth (i.e. equity), in the spirit of solidarity. Righteousness and justice are embedded in the basic principle of Islamic banking, and the objective is to achieve equality in the society for the benefit of the society as a whole, in the spirit of the teachings of the Islamic religion (as well as other monotheistic religions) by which the achievement of more important goals is above any tangible benefits.

In the last twenty years, and especially since the beginning of the global financial crisis, there has been a trend of growing interest in Islamic banking. In order to fully understand Islamic banking, it must be known that it is based on Sharia (Islamic law). Since in Islam there are some strictly prohibited categories – there is no room whatsoever for the activities that take place through the system of Islamic banking and have to do with these prohibitions.

The list of prohibited categories in Islam, and thus in the Islamic banking system, is not long but is very strict:

- The most widely known is the fact that *interest* is prohibited (in Arabic: *riba*), which is explained in more detail in the following subsection.
- *Gharar* (risk or speculation) is also forbidden. All transactions in the Islamic banking system must be free of any hint of uncertainty, risk and speculation, which is the universal goal and target in Islamic religion and philosophy – to protect the poor from exploitation as manifestation of justice is the main pillar of Islamic banking and

Islam in general. The best way to achieve this is through division of risk (*gharar* is explained in more detail in one of the subsequent subchapters).

- The third forbidden category is *gambling* (*maysar*). What is wrong with gambling? First, gambling does not create additional wealth. Games of chance only transfer wealth from its (losing) owners to the new (winning) ones. Considering the human resources consumed in the process, without generating new value, wealth transfers through games of chance cannot be considered to be efficient. They do not serve any social purpose. The satisfaction and thrill they provide to the players do not justify the opportunity costs involved. Other exonerating circumstances like the state revenue in the form of taxes or employment generated by casinos, lotteries, etc. cannot be considered as 'advantages' until the acceptability of gambling itself is established (Siddici, 2009, p. 5).
- *Trade in particular goods* (*bay-al-inah*) is also prohibited (e.g. pork, drugs, alcohol, as well as activities related to pornography and other sorts of immoral doings, etc.) because it is among the prohibited activities (*haram* /*sin*/). Everything that is not forbidden is permitted (*halal*) and even better if it is for the common good (*mashallah* /also means a private good/). Islamic law prohibits the above stated because it can result in the accumulation of wealth at the expense of another.

In the banks that operate according to the principles of Islamic banking personal loans is an absolutely unknown category, due to the fact that the loan must have a purpose. Also, loans are not granted in cash, hence the possibility of one loan being misused is virtually excluded. The simplest possible illustration is an example from everyday business, in which the previously mentioned principles would look like this: if a bank that operates on the principle of Islamic banking borrows money – it does not pay the (passive) interest, nor are these funds lent with the (active) interest. Instead, the borrowed money is invested in a particular project, and the lenders receive a share in the project. Thus, in addition to avoiding the payment and collection of interest, this is a relatively

uloga novca, koji ne postoji sam zbog sebe već da bi se olakšala i ubrzala razmena. To je ujedno i jedna od najstarijih ekonomskih istina, a i jedan od principa na kojima islamsko bankarstvo principijelno istrajava.

Istaknute karakteristike koncepta islamskog bankarstva su sledeće (Ali, 2011, str. 150):

- pozajmljivanje i davanje na zajam sa kamatom, kao i „kockarski“ oblici transakcija, kao i neetička dobra i usluge su zabranjene po Islamu;
- depoziti se mogu bazirati ili na beskamatom, ali od strane principala zaštićenom kreditu (qard) ili na principu podele profita i gubitka;
- finansijski inženjering novih proizvoda i instrumenti moraju biti u skladu sa Šerijatom;
- dugovima se ne sme trgovati uz kamatu niti se smeju se restrukturirati uz kamatu. Dug, međutim, može biti zamenjen za robu ili usluge;
- privatno vlasništvo i slobodno tržište su osnove ekonomskog sistema.

Mnoge od specifičnosti po kojima se koncept islamskog bankarstva razlikuje od konvencionalnog bankarstva predstavljene su u tabeli 1. Ono čega nema u tabeli je da kod konvencionalnih banaka to da li će kredit biti odobren ili ne zavisi od kreditne sposobnosti klijenta. Za razliku od toga, kod islamskog bankarstva se teži idealu da se finansiraju one ekonomske transakcije koje su izgledne, a ne da kriterijum bude kreditna sposobnost dužnika. Osim toga, činjenica je da je konvencionalno bankarstvo zasnovano na sistemu delimičnih rezervi položenih na račun kod centralne banke, što je sistem koji omogućuje bankama da generišu izvore finansiranja koji mnogostruko nadmašuju potrebe za finansiranjem realne ekonomije. Inicijalno odobreni kredit koji neretko odobravaju konvencionalne banke, a koji nije vezan za realnu ekonomiju može da „izrodi“ u sledećim iteracijama nemerljiv posledični broj kredita koji su takođe nevezani za realnu ekonomiju. Kao rezultat toga imamo situaciju (sadašnje stanje u svetu) da finansijski sektor mnogostruko namašuje realni sektor, što

Tabela 1: Glavne razlike između konvencionalnog i islamskog bankarstva

Konvencionalno (kamatno) bankarstvo	Islamsko (beskamato) bankarstvo
<i>Ono što dominantno privlači klijente</i>	
Novac	Život, kao što je Bog odredio u svim monoteističkim religijama (Judeo-Hrišćansko-Islamskim)
<i>Ono što definiše suštinu</i>	
Korišćenje novca da bi se stvorio novac za one i od strane onih koji novac poseduju	Angažuje sve raspoložive resurse da bi se zadovoljile potrebe svih, bez izuzetaka
<i>Veličina banke</i>	
Velike (npr. mega-banke)	Male i srednje
<i>Vlasništvo</i>	
Depersonalizovano, uz odsustvo uloge akcionara u većini slučajeva	Personalizovano, sa važnom ulogom akcionara
<i>Finansijski kapital</i>	
Globalni	Lokalni/nacionalni - reinvestiranje unutar granica
<i>Svrha investiranja</i>	
Da bi se maksimirao privatni profit i blagostanje	Da bi se povećao output i blagostanje zajednice
<i>Koordinacioni mehanizam</i>	
Centralno planiranje od strane mega-korporacija	Samoorganizovano tržište unutar mreže zajednice
<i>Saradnja</i>	
Između konkurenata, da bi se izbegla disciplina konkurencije, a ponekad i regulacija	Između ljudi i među zajednicom, u cilju unapređenja opšteg dobra za sve
<i>Svrha konkurencije</i>	
Da eliminiše nespremlne sa tržišta i zauzme ga	Da stimuliše efikasnost i inovativnost
<i>Uloga države</i>	
Da zaštititi imovinu vlasnicima	Da zaštititi interes ljudi
<i>Trgovina</i>	
Slobodna, ali u korist mega-korporacija	Slobodna, fer i uravnotežena
<i>Politička orijentacija</i>	
Elitistička, demokratija novca („pohlepa je dobra“)	Populistička, demokratija ljudi

Izvor: prilagođeno na osnovu Korten, 2010, str. 201-202

healthy and realistic way to help the process of reproduction. That is the traditional role of money, which does not exist for itself but to facilitate and accelerate the exchange. It is also one of the oldest economic truths, and one of the principles upon which the Islamic banking principle stands and persists.

The distinctive features of Islamic banking are the following (Ali, 2011, str. 150):

- Lending and borrowing with interest, „gambling“ types of transactions, as well as unethical goods and services, are forbidden in Islam;
- Deposits can be based either on interest-free, but by the principal protected loan (qard), or on the profit and loss share;
- Financial engineering of new products and services must be Sharia-based;
- Debt cannot be traded, nor can be restructured with interest. Debt, however, can be traded for goods or services;
- Private property and free market are the foundations of the economic system

Many of the specifics in respect of which the concept of Islamic banking differs from conventional banking are presented in Table 1. The table does not show that whether the loan will be approved or not in conventional banking depends on the creditworthiness of the borrower. In contrast, Islamic banking aspires to the ideal of financing those economic transactions which are feasible, without the criterion being the borrowers' creditworthiness. In addition, the fact is that the conventional banking system is based on fractional reserve deposit on the account at the central bank, which is a system that allows banks to generate multiple sources of funding that exceed the financing needs of the real economy. Initially approved loans often granted by conventional banks, which is not linked to the real economy may "generate" in the following iterations an immeasurable number of loans that are also unrelated to the real economy. As a result, we have a situation (the current global situation) that the financial sector in many ways surpasses

Table 1: The main differences between conventional and Islamic banking

Conventional (interest-based) banking	Islamic (interest-free) banking
<i>Dominant attractor</i>	
Money	Life as prescribed by God in all monotheistic religions, as ordained in the Judeo-Christian-Islamic value system and way of life
<i>Defining purpose</i>	
Use money to make money for those who have money	Employs available resources within its means to meet the basic needs of everyone without extravagance
<i>Bank size</i>	
Very large (e.g., mega-banks)	Small and medium-sized
<i>Ownership</i>	
Impersonal, with shareholders having no role in most cases	Personal, with shareholders playing an active role in bank management and procedures
<i>Financial capital</i>	
Global, with no borders	Local/national, with clear community reinvestment borders and assessment areas
<i>Purpose of investment</i>	
Maximize private profit and wealth	Increase beneficial output to the community to make it prosper
<i>Coordinating mechanisms</i>	
Centrally planned by mega-corporations	Self-organizing markets and networks of communities around temples, synagogues, churches, masajid, and other social congregations and networks
<i>Cooperation</i>	
Among competitors, to escape the discipline of competition and in some cases to avoid regulations	Among people and communities to advance the common good for all
<i>Purpose of competition</i>	
Eliminate the unfit and capture the markets	Stimulate efficiency and innovation
<i>Government's role</i>	
Protect the interests of property	Advance the human interest, as revealed in all God's messages
<i>Trade</i>	
Free, but for the benefit of mega-corporations	Free, but fair and balanced
<i>Political orientation</i>	
Elitist, democracy of the money (greed is good!)	Populist, democracy of persons

Source: based on Kortzen, 2010, pp. 201-202

je veliki paradoks i vodi nestabilnosti i izbijanju finansijskih i realnih ekonomskih kriza.

Islamska ekonomija ne ostaje samo u sferi teoretskog razmatranja i istraživanja. Moglo bi se sa pravom reći da osnove, principi i modeli islamske ekonomije nalaze široku praktičnu primenu u oblasti finansija. Ciljevi finansijskog sistema identični su ciljevima koje imaju tradicionalni finansijski sistemi. Oni se ogledaju u mobilizaciji i alokaciji finansijskih resursa neophodnih za finansiranje razvoja nacionalne i regionalne ekonomije. Navedeni ciljevi se realizuju u okviru finansijskih institucija, a posredstvom finansijskih instrumenata i mehanizama. Međutim, iako imaju identične ciljeve, principi na kojima počiva, institucije, instrumenti i mehanizmi realizacije ciljeva islamskih finansija značajno se razlikuju od konvencionalnih (Štulanović i Hadžić, 2007, str. 221).

Islamsko bankarstvo i kamata

Islamsko bankarstvo, koje je utemeljeno na postavkama i principima islamskog prava u potpunosti zabranjuje svaku vrstu poslovnih aktivnosti koje uključuju bilo kakav vid kamate. Kako se sama ideja i principi konvencionalnog bankarstva zasnivaju upravo na kamati kao ključnom faktoru profita banaka, nameće se otvoreno pitanje: Ako je kamata kao instrument zabranjena, kako onda funkcioniše islamsko bankarstvo? Islamsko bankarstvo proizlazi iz islamske ekonomije i funkcioniše u granicama koje ona određuje u svim svojim aktivnostima. Islamsko bankarstvo ne prihvata i strogo zabranjuje kamatu kao siguran, unapred određen i fiksiran prihod i bazira se na poslovnim aktivnostima koje podrazumevaju učestvovanje u raspodeli dobiti ili gubitka između poslovnih partnera, odnosno banke i klijenta. To u suštini znači da nije prihvatljivo stvaranje „novca od novca“ jer fiducijarni novac ne predstavlja nikakvu stvarnu vrednost, tj. uglavnom je predstavljen samo brojevima u knjigovodstvenim računima. Po islamu, novac je samo potencijalni kapital sve dotle dok nije investiran i udružen s ljudskim radom kroz poslovne aktivnosti proizvodnje, usluga i trgovine koje moraju biti utemeljene na moralnim, etičkim i vjerskim principima u granicama Šerijata. Nepostojanje kamata ne

znači da je zabranjeno ulagati ili pozajmljivati novac radi ostvarivanja profita, ali se transakcije temelje na podjeli rizika u ostvarivanju dobiti ili gubitka. Islam zabranjuje kamatu („kamatna stopa“), ali dopušta i podstiče trgovinu i trgovačke transakcije („stopa povraćaja“) što je velika razlika. U beskamatnom sistemu islamskog bankarstva oni koji daju novac na zajam mogu zaraditi „stopu povraćaja“ na svoj novac samo ako učestvuju u riziku stvaranja profita (Čočić, 2012, str. 214-215).

S obzirom na to što u Severnoj Americi i Evropi postoji psihološka odbojnost prema islamskom svetu, i na islamsko bankarstvo dugo se gledalo s odbojnošću. Glavni razlog je uprošćeno gledanje na cenu zajmovnog kapitala. Naime, islamsko učenje kamatu smatra nemoralnom, pa se zajmovi ne mogu davati uz kamatu. U Evropi je stoga uprošćeno uzimano kao da zajmovni kapital u islamskom bankarstvu ne donosi nikakav prihod, pa i nema cenu. Međutim, to nije tačno. Zajmovni kapital i ovde donosi prihod, ali ne u vidu kamate, nego u vidu učešća u profitu ostvarenom ulaganjem uzajmljenog kapitala. Stoga je islamskom svetu zajam vezan za realno privređivanje, što je, u stvari, zdrava ekonomska logika. Stoga je ovo bankarstvo dosta razvijeno u islamskom svetu, a zasniva se i u evropskim zemljama uključujući Luksemburg, kao i Veliku Britaniju, kao jedno od najvećih bankarskih tržišta u svetu.

Verovatno je najupečatljivija zabrana izvedena iz islama (isto je, zapravo, i u izvornom hrišćanstvu, kao i u judaizmu i hinduizmu) koja daje dominantnu karakteristiku islamskom bankarstvu, ona po kojoj je neprihvatljivo da se „novcem stvara novac“, tj. ako neko nekome pozajmi novac, smatra se nemoralnim da se traži više novca za otplatu takvog zajma nego što je pozajmljeno. Pozajmiti nekome novac se u islamu smatra činom milosrđa, bez obzira da li je reč o običnom privatnom licu ili preduzetniku. Ako neko uzajmljuje novac - onda je, računa se, verovatno prinuđen to da radi, pa bi bilo neetički zarađivati na tuđoj nevolji. Pozajmljeni novac se može po islamskoj etici vratiti isključivo kao glavnica. Dakle, kategorija *kamate* nije spojiva sa islamskim bankarstvom. Preciznije rečeno, pošto se u islamu smatra da je kamata - greh, njena naplata je u bankama koje posluju po principu islamskog bankarstva nije dopuštena.

the real sector, which is a great paradox leading to instability and the outbreak of the financial and real economic crisis.

Islamic economics does not remain only in the sphere of theoretical considerations and research. One could rightfully say that the fundamentals, principles and models of Islamic economics have a broad practical application in the field of finance. The objectives of the financial system are identical to the goals of the traditional financial systems. They are reflected in the mobilization and allocation of financial resources necessary to fund the development of national and regional economies. These objectives are realized in the context of financial institutions, by means of financial instruments and mechanisms. However, although they have identical objectives, the principles of the institutions, instruments and mechanisms of realization of the Islamic finance goals are significantly different from the conventional ones (Štulanović and Hadžić, 2007, p. 221).

Islamic banking and interest

Islamic banking, which is based on the assumptions and principles of the Islamic law, completely prohibits all business activities that involve any kind of interest. Given that the very idea and principles of conventional banking are based precisely on the interest as a key factor of the banks' profit, the following question imposes itself: if the interest rate as an instrument is prohibited, how does Islamic banking function? Islamic banking derives from Islamic economics and works within the limits which have been determined in all its activities. Islamic banking does not accept and strictly forbids interest as a safe, predetermined and fixed income and is based on the business activities which include participation in the distribution of profit or loss from business partners, i.e. the bank and the client. This essentially means that it is not acceptable to create "money from money" because fiduciary money does not represent any real value, i.e. it is mainly represented only by the figures in the bookkeeping accounts. According to Islam, money is only potential capital as long as it is not invested and associated with human labor through the business activities of production, trade and services, which must be based on

moral, ethical and religious principles within the Sharia. The lack of interest does not mean that it is forbidden to invest or borrow money for profit, or to conduct transactions based on risk sharing in the realization of profit or loss. Islam forbids interest ("interest rate"), but allows and encourages trade and commercial transactions ("rate of return"), which is a big difference. In the interest-free Islamic banking system, those who lend money can earn a "rate of return" on their money only if they take part in the risk of generating profit (Čočić, 2012, pp. 214-215).

Given the fact that in North America and Europe there is a psychological aversion to the Islamic world, Islamic banking has also been regarded with revulsion for a long time. The main reason is the simplified perception of the price of loan capital. The Islamic teaching considers interest as immoral, which is why loans cannot be granted with interest. In Europe there is, therefore, a simplified view that loan capital brings no profit to the Islamic banking and, thus, has no price. However, this is not true. Loan capital generates returns, although not in the form of interest, but in the form of a share in the profit achieved by investing the borrowed capital. Therefore, in the Islamic world loans are related to real economic activity, which is, in fact, the healthy economic logic. Consequently, this type of banking is quite developed in the Islamic world, and is also based in the European countries including Luxembourg, as well as UK, as one of the major banking markets in the world.

Probably the most striking prohibition derived from Islam (the same is, in fact, in the original Christianity as well as in Judaism and in Hinduism), which is the dominant feature of Islamic banking, is that it is unacceptable "to make money from money", i.e. if someone lends money to someone, it is considered immoral to seek more money for the repayment of such a loan than it was borrowed. To lend money to somebody in Islam is considered an act of mercy, regardless of whether it is an ordinary private individual or an entrepreneur. If someone is borrowing money, then he or she is probably forced to do it. Therefore, it would be unethical to make money on someone else's misfortune. The borrowed money, according to the Islamic ethics, can be repaid solely as principal. Thus,

Umesto toga, dozvoljeno je plaćanje, odnosno naplata izvesnih provizija.

Jedan od fundamentalnih principa islamskih finansija i ono što predstavlja najveću razliku između islamskih u odnosu na tradicionalne finansije sadržano je u islamskom odnosu prema lihvi (stari naziv za kamatu; engl. - usury), lihvarstvu odnosno kamati. Kamata je plaćanje učinjeno od dužnika prema kreditoru u toku određenog perioda u zamenu za korišćenje kapitala. *Riba* je arapska reč koja se spominje u Kur'anu i označava višak koji dužnik plaća poveriocu po osnovu primljenog kredita. Islamski pristup kamati sličan je pristupu koji su imali antički filozofi i klasični ekonomisti, pa i Kejnz kao istaknuti predstavnik moderne ekonomije. Islamska učenja ukazuju da primanje kamate obeshrabruje ljude da se bave proizvodnjom i međusobnom razmenom proizvedenih dobara. Ako je kamata zabranjena, ljudi će pozajmljivati jedni drugima sa zadovoljstvom i time će činiti dobra dela ne samo drugome, nego i sebi jer će za takav svoj postupak biti nagrađeni od Onoga koji jedino može nagradu dati. Kamata usporava proces investiranja, a time i privredni i ukupni društveni razvoj. Mnogi se zbog očekivane i obećane kamate odlučuju na štednju kapitala, povlačeći ga iz procesa investiranja, što je društveno štetna aktivnost. S druge strane, u tradicionalnom bankarstvu banke se pomoću kamate i različitih instrumenata povraćaja kredita štite od rizika plasmana sredstava koje su plasirali. One time celokupni rizik prenose na korisnika kredita i postaju nedovoljno zainteresovane za uspešnost njegovog posla. U islamskom bankarstvu rizik se pokušava podeliti između banke i korisnika kapitala. Banka će biti neposredno zainteresovana za uspešnost klijenta i aktivno učestvovati u upravljanju budućom firmom. Takvim plasmanom sredstava ona može ostvariti veću dobit u poslu od prihoda po osnovu kamate, ali je izložena većem riziku (Štulanović i Hadžić, 2007, str. 227).

Jednostavna definicija ribe mogla bi biti da je to "praksa zaračunavanja finansijske kamate ili premije koja premašuje glavnice zajma". Arapski izraz *riba* doslovno se odnosi na prekoračenje, dodavanje ili višak, dok povezani glagol upućuje na "povećati se, umnožiti, prekoračiti, iznuditi više od duga ili lihvariti". *Riba* se tehnički odnosi na "premiju"

koju dužnik mora platiti poveriocu zajedno sa iznosom glavnice kao uslov za zajam ili produženje trajanja zajma. Najmanje četiri obeležja definišu zabranjenu kamatnu stopu (Iqbal i Mirakhor, 2009, str. 50 i 52):

- pozitivna je i fiksirana ex ante;
- vezana je za vremensko razdoblje i iznos zajma;
- njeno plaćanje garantuje se nezavisno o ishodu ili nameni zbog koje se pozajmljuje glavnica;
- državni organi odobravaju i sprovode njeno ubiranje.

Teoretski, Kejnz smatra da štednja nije, u stvari, funkcija kamate, nego funkcija dohotka, koja je određena agregatnom tražnjom, uključujući investicije, koje su obrnuta funkcija kamate. To znači da kamata direktno ne podstiče štednju; pre bi se moglo reći da je ona indirektno smanjuje, utičući na komponente agregatne tražnje koje su osetljive na kamatu, uključujući investicije, potražnju za trajnim potrošnim dobrima itd. Visoke kamatne stope smanjiće agregatnu tražnju što će uticati na dohodak i zaposlenost. To će, opet, smanjiti štednju. Na osnovu toga štednja bi se mogla smatrati obrnutom funkcijom kamate preko varijabli dohotka. Prema tome, eliminisanje kamate trebalo bi da ima pozitivan uticaj na štednju u islamskoj ekonomiji. Osim toga eliminisanje kamate dovešće do većeg investiranja, koje predstavlja ključ ekonomskog razvoja (Sadeq i Ghaazali, 1996, str. 28).

Rodni Vilson (Rodney Wilson), profesor ekonomije na Univerzitetu Duram (Durham University) u Škotskoj, autor brojnih dela iz oblasti etike u ekonomiji, koji se duži niz godina bavi istraživanjima islamske ekonomije, u svojoj jednoj studiji (Wilson, R., 1997, Islamic Finance, Pearson Professional Limited, London, 1997, str. 5-7, citirano prema: Štulanović i Hadžić, 2007, str. 229) objašnjava suštinu konvencionalnog i islamskog pristupa kamati. Kamata, prema shvatanju ekonomista, sadrži tri elementa koji opravdavaju plaćanje naknade štediši:

- *Faktor vreme*. Štediša je žrtvovao sadašnju potrošnju i, prema tome, zaslužuje da bude obeštećen;
- *Oportunitetni trošak*. Štediša na taj način žrtvuje likvidnost. Taj gubitak likvidnosti i transakcijska inkomodacija trebalo bi da

the category of *interest* is incompatible with Islamic banking. More precisely, since Islam considers the interest as a sin, its collection is forbidden in the banks that operate according to the principle of Islamic banking. It is allowed to pay or charge certain commissions instead.

One of the fundamental principles of Islamic finance, representing the biggest difference between Islamic finance and traditional finance, is contained in the Islamic attitude towards usury (the old name for interest). Interest is the payment of a debtor to a creditor during a specified period in exchange for the use of capital. *Riba* is an Arabic word that is mentioned in the Qur'an, referring to the surplus money that the borrower pays to the lender in respect of a loan. Islamic understanding of interest is similar to that of the ancient philosophers and classic economists, even Keynes as a prominent representative of the modern economy. Islamic teachings indicate that interest discourages people from being engaged in the production and exchange of the manufactured goods. If the interest is forbidden, people will lend to each other with pleasure and their good deeds will be rewarded by Him-who-only-can-reward. Interest slows down the process of investment and thus the overall economic and social development. Many decide to save due to the expected and promised interest, withdrawing it from the investment process, which is a socially harmful activity. On the other hand, in traditional banking banks are using interest and other instruments of ensuring loan repayment to hedge themselves against the risk. Thus, banks transfer the entire risk on the borrower and become insufficiently interested in the successfulness of his business. In Islamic banking risk is divided between the bank and the user of capital. The bank is directly interested in the effect of the client's business and actively participates in the management of the future company. Such placement of funds means that the bank can achieve larger profit in comparison to interest, but it is exposed to a greater risk (Štulanović and Hadžić, 2007, p. 227).

A simple definition of *riba* could be that this is the "practice of charging financial interest or premium that exceeds the principal of the loan". The Arabic word *riba* literally refers to overrun, addition or excess, while the associated verb means "to increase, multiply, exceed, extort more

than the debt, or perform usury". Technically, *riba* is the "'premium' that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in the duration of the loan". At least four characteristics define the prohibited interest rate (Iqbal and Mirakhor, 2009, p. 50 and 52):

- it is positive and fixed *ex ante*;
- it is tied to the time period and the amount of loan;
- its payment is guaranteed regardless of the outcome or the purposes for which the principal was borrowed;
- the state apparatus sanctions and enforces its collection.

In theory, Keynes believes that saving is actually not the function of interest, but rather a function of income, which is determined by aggregate demand, including investments, which are the reverse function of interest. This means that interest does not directly encourage savings; it could be said that it is indirectly reduced, affecting aggregate demand components that are sensitive to interest rate, including investments, demand for durable goods, etc. High interest rates will reduce aggregate demand, which will affect the income and employment. This, in turn, will reduce the savings. Based on that, savings could be considered a reverse function via variable interest income. Thus, the elimination of interest should have a positive impact on savings in Islamic economy. Eliminating interest rates will, in addition, cause more investments, which is a keystone of economic development (Sadeq and Ghaazali, 1996, p. 28).

Rodney Wilson, Professor of Economics at Durham University in Scotland, the author of numerous papers in the field of ethics in the economy, which for many years engaged in the research of Islamic economics, in one of his papers (Wilson, R., 1997, "Islamic Finance", Pearson Professional Limited, London, 1997, p. 5-7, quoted from: Štulanović and Hadžić, 2007, p. 229) explains the essence of the conventional and Islamic understanding of interest. Interest, in the view of economists, contains three elements justifying the payment of a fee to the depositor:

- *Time factor*. Depositor sacrificed his current consumption and therefore deserves compensation;

bude prepoznata i, prema tome, plaćena štediši;

- *Element rizika.* Štediša se suočava sa potencijalnim rizikom bankarskih propusta ili neanticipiranih promena ekonomskih okolnosti, kao što je npr. rast stope inflacije.

Često se pogrešno tumači da zabranom kamate na zajmove islam osporava koncepciju vremenske vrednosti novca. Islamski stručnjaci uvek su priznavali vremensku vrednost novca, ali su istovremeno smatrali da naknada za takvu vrednost ima svoja ograničenja. Poznavanje sporedne ekonomske vrednosti vremena ne znači nužno prihvatanje bilo kakvog prava na ekvivalentnu materijalnu naknadu za tu vrednost u svim slučajevima. Prema šerijatu, naknada za vrednost vremena u ugovorima o prodaji priznaje se, ali je u slučaju pozajmljivanja zabranjen porast (kamata) kao sredstvo materijalne naknade za vreme. Islamski pojam oportunitetnog troška kapitala i vremenske vrednosti novca može se rednostavno razumeti razmotri li se razlika između ulaganja i pozajmljivanja. Vreme samo po sebi ne nosi prinos, ali ono može pridoneti stvaranju vrednosti kada se obavlja neka ekonomska aktivnost. Određeni iznos novca može se uložiti u neki posao ili se može pozajmiti na određeno vreme. U slučaju ulaganja, ulagaču će biti nadoknađena bilo koja dobit ili gubitak koji ostvari tokom tog vremena, a islam u potpunosti priznaje taj povrat na ulaganje kao rezultat ekonomske aktivnosti. S druge strane, ako je novac u obliku zajma, to je čin milosrđa gde se višak sredstava produktivno koristi za podsticanje ekonomskog razvoja i društvenog blagostanja. Kao odgovor na savremeno tumačenje da je kamata na zajam nagrada za oportunitetni trošak zajmodavca, islamski stručnjaci smatraju da je kamata fiksirana *ex ante* sigurna, dok dobit i gubitak nisu, i uzimanje *sigurnog* kao naknada za *nesigurno* jednako je upuštanju u ribu i stoga nezakonito. Element nesigurnosti vremenom se smanjuje i ostvaruje se posledični povrat na ulaganja umesto da povrat raste samo zbog protoka vremena. Ukratko, islamsko stanovište o vremenskoj vrednosti novca jednostavno je i jasno: novac je sredstvo razmene; vreme olakšava dovršanje ekonomske aktivnosti, a vlasniku kapitala treba da se nadoknadi

bilo koji povrat koji proizilazi iz ekonomske aktivnosti. Pozajmljivanje bi trebalo da bude čin milosrđa bez bilo kakvog očekivanja novčane koristi (Iqbal i Mirakhor, 2009, str. 57).

Većina savremenih ekonomista ne dovodi u pitanje praksu kamate i prihvata instituciju kamate kao bitan sastavni deo savremenog ekonomskog sistema. U novije vreme osporavanja potiču od islamskih stručnjaka. Šeik (Shaikh) Mahmud Ahmad proučavao je nekoliko teorija kamata razvijenih posle Adama Smita (Smith) kako bi pokazao da nema zadovoljavajućeg objašnjenja za postojanje fiksne i unapred utvrđene stope povraćaja na finansijsku imovinu. Zatim je analizirao i radove Kejnza (Keynes), Bem Beverka (Böhm Bówerk), Kasla (Cassel) i Semjuelsona (Samuelson), tvrdeći da objektivna ocena njihovih radova upućuje na stanovište da su svi oni bili prilično uvereni da je postojanje fiksne i unapred utvrđene kamatne stope prepreka procesu ekonomskog rasta i razvoja. Do sredine osamdesetih godina XX veka ekonomska i finansijska teorija pokazala je da ugovori sa fiksno utvrđenim plaćanjem, koji su dominantni u bankarstvu temeljenom na kamati, imaju određene nedostatke. Naime, vezano za ugovore sa fiksno utvrđenim plaćanjem zaključeno je da (Iqbal i Mirakhor, 2009, str. 70):

1. ovi ugovori dovode do neispunjavanja finansijskih obaveza ili nenaplativosti imovine;
2. kada postoje asimetrične informacije, dužnički ugovori pate od nepovoljnog odabira i moralnog hazarda;
3. u ugovorima sa fiksnom naknadom suprostavljaju se interesi dužnika i poverioca;
4. sektori sa niskom proizvodnošću neće dobiti finansijska sredstva, npr. novi preduzetnici sa dobrim projektima možda neće dobiti potrebna finansijska sredstva ako ne raspolažu potrebnim osiguranjem.

U pokušaju „pomirenja“ ostvarivanja zarade sa islamskim zakonom - bez naplate kamata, banke koje posluju po sistemu islamskog bankarstva polaze od podele profita ili pomoću drugih dopuštenih oblika na bazi transakcionih i investicionih depozita. *Transakcioni depoziti* imaju fiksnu nominalnu vrednost, ne ukamaćuju se, a banke mogu zaračunavati naknadu za obavljanje transfera. *Investicioni depoziti* nemaju

- *Opportunity cost.* Depositor thus sacrifices liquidity. This loss of liquidity and transaction incommodation should be recognized and compensated to the depositor;
- *Risk element.* Depositor is faced with a potential risk of bank failures or unanticipated changes in economic circumstances, such as the growth of inflation rate.

It is often wrongly interpreted that, by prohibiting interest on loans, Islam challenges the concept of time value of money. Islamic experts have always recognized the time value of money, but they also consider that compensation for such value has its limitations. Knowing the supporting economic value of time does not necessarily imply the acceptance of any right to the equivalent material compensation for the value in all cases. According to Sharia, the compensation for the value of time in sale contracts is recognized, but it is forbidden to charge more as material compensation for the time. The Islamic concept of opportunity cost of capital and the time value of money can be simply understood if we consider the difference between investing and borrowing. Time *per se* cannot generate any income, but it can contribute to the creation of value when economic activity occurs. A certain amount of money can be invested in a business or can be borrowed for a specified period of time. In case of investment, investors will be compensated for any gain or loss realized during that time. Islam fully recognizes the return on investment as a result of economic activity. On the other hand, if the money is borrowed in the form of a loan, it is an act of mercy, where the excess of money is used to promote economic development and social welfare. In response to the modern interpretation that the interest on the loan is an award for the opportunity cost of the lender, Islamic experts believe that the fixed *ex ante* interest rate is safe, while gains and losses are not, and taking something *certain* as compensation for the *uncertain* is the same as getting into *riba* and, therefore, illegal. The element of uncertainty is gradually reduced and eventually the resulting return on investment is achieved instead of the refund growing only because of the passage of time. In short, the Islamic viewpoint on the time

value of money is simple and clear: money is a medium of exchange; time makes completion of economic activity easier. Capital owner should be compensated for any income rising from economic activity. Lending should be an act of mercy without any expectation of monetary benefits (Iqbal and Mirakhor, 2009, p. 57).

The majority of modern economists accept the institution of interest as an essential ingredient of the modern economic system. However, from time to time, the notion of charging interest on money is being challenged. The challenge has come mainly from Islamic scholars. Sheikh Mahmud Ahmad, for example, studied several theories of interest, developed since the time of Adam Smith, to show that there has been no satisfactory explanation of the existing of fixed and predetermined rate of return on financial assets. His analysis of the writings of economists such as Keynes, Böhm Bówerk, Cassel and Samuelson led him to argue that an objective assessment of these writings would lead to the belief that all of these writers held a reasonable strong conviction that the existence of a fixed and predetermined rate of interest was an impediment to the process of economic growth and development. By the mid-1980s, economic and financial theory demonstrated that there were disadvantages in the fixed payoff contracts that dominated interest-based banking. It was shown that (Iqbal and Mirakhor, 2009, p. 70):

1. such contracts create inefficient defaults on financial obligations or non-performing assets;
2. in the presence of asymmetric information, debt contracts also suffer from the effects of adverse selection and moral hazard;
3. fixed fee contracts create a fundamental conflict between the interests of borrowers and the lenders;
4. socially desirable sectors with low profitability will not get finance; moreover, new entrepreneurs with good projects may not be able to obtain finance in the absence of the security required.

In an attempt to "reconcile" earning with the Islamic law – i.e. without charging interest, Islamic banks start either from profit-sharing, or from other permitted forms based on transaction deposits and investment deposits. *Transaction deposits* have fixed nominal value, are not

fiksnu nominalnu vrednost i slični su vlasništvu u firmi. Pri otvaranju investicionog depozita sa bankom se ugovara udeo u profitu banke, koji se ne može promeniti (osim uz dogovor) pre roka dospeća depozita. Na strani aktive u bilansu banke su krediti koji banci donose udeo u profitu kompanije i drugi dopušteni finansijski instrumenti. Postoje krediti koji banci daju pravo upravljanja kompanijom i krediti bez takvog prava. Od drugih finansijskih instrumenata najvažniji su odložena plaćanja, marža na prodajne cene firme, lizing i krediti s nultom kamatnom stopom ali uz naknadu.

Garar (Gharar)

Garar se najuopštenije definiše kao rizik ili špekulacija. Međutim, da bi se bolje razumeo pojam *garara* i to zašto je on mnogo svobuhvatniji pojam od špekulacije (pa i rizika), dobro bi bilo najpre šire razmotriti aspekte špekulacija. Postoji više definicija špekulacije (Al-Masri, 2009, str. 45-46):

- špekulacija je predviđanje prilike za profit od koje ima koristi, odnosno verovatnoće gubitka koju treba izbegavati;
- špekulacija je korist od pozitivne cenovne razlike koja proizilazi iz očekivane promene cena hartija od vrednosti;
- špekulacija je kupoprodaja sa ciljem povećanja kapitalne dobiti koja proizilazi pre iz „prirodne“ razlike u ceni nego od profita koji nastaje redovnom aktivnošću od prihoda;
- špekulacija je kupovina ili prodaja kojoj sledi suprotna transakcija (prodaja ili kupovina) sa ciljem sticanja „prirodne“ razlike u ceni;
- špekulacija je kupovina ili prodaja u sadašnjosti kojoj sledi suprotna transakcija (prodaja ili kupovina) u budućnosti, kada dođe do promene cena;
- špekulacija je kupovina sa ciljem prodaje po većoj ceni, ili prodaja onoga što je ranije kupljeno po nižoj ceni;
- špekulacija je lažna kupovina ili prodaja, ne sa ciljem investiranja, već sa ciljem koristi od razlike u ceni u vrlo kratkom vremenskom periodu na tržištu hartija od vrednosti. Do ovoga dolazi kada dođe do razlike u ceni između *tržišne cene*, sa jedne strane, i *realne vrednosti*, sa druge strane.

- špekulacija je kupovina ili prodaja koju vrše tržišni stručnjaci u cilju zarade od razlike u ceni.

Priroda špekulacije najbolje se može razumeti ako se uporedi sa investicijama, koje su po mnogo čemu dijametralno suprotne špekulacijama. Tako *investitor* koji kupuje akcije to čini radi očekivane zarade koja se manifestuje kroz dividendu. On doduše može prodati svoju akciju i time „zaraditi“ kapitalnu dobit (ako je prodajna cena veća od kupovne), ali to nije najčešći slučaj. S druge strane, *špekulant* kupuje akcije da bi ih prodao na kratak rok i tako došao do brze zarade preko velikog kapitalnog dobitka. Stoga, investicije su dugoročna ulaganja uz relativno nizak rizik koji je sigurniji nego kod špekulacije jer niži rizik istovremeno znači i niži očekivani prinos. Dakle, špekulacije se razlikuju od investicija po tri bitna obeležja: po trajanju, nivou rizika i očekivanom prinosu. Špekulacije su usmerene na kratak rok, rizičnije su od ulaganja, ali je i očekivani prinos veći. Dok investitor primarno očekuje zaradu od ulaganja u deonice od dividende, a samo sekundarno - od kapitalnog dobitka usled pozitivne cenovne razlike na tržištu, dotle špekulant upravo ide na razliku u ceni kao primarni motiv za njegovo „ulaganje“ (reč „ulaganje“ je stavljena pod navodnike zato što nije reč o ulaganju, već o kratkoročnim špekulativnim sredstvima. Opširnije videti: Al-Masri, 2009, str. 47).

Garar je posle *ribe* najvažniji element finansijskih ugovora. Jednostavno rečeno, *garar* proizilazi iz problema sa informacijama (informacione asimetrije), a odnosi se na nesigurnost stvorenu zbog manjka informacija ili kontrole u ugovoru. *Garar* se može opisati kao neupućenost u bitne elemente transakcije, kao što su tačna prodajna cena ili sposobnost prodavca da zaista isporuči ono što je prodao itd. Postojanje *garara* čini ugovor ništavnim (nevažećim). *Garar* se može definisati i kao situacija gde jedna strana raspolaže nekom informacijom vezanom za ugovor, ali je uskraćuje drugoj strani i/ili je predmet ugovora nešto nad čime ni jedna od ugovornih strana nema kontrolu. Klasični primer bi bio još neulovljena riba. Savremeniji primeri su transakcije gde predmet ne poseduje nijedna od ugovornih strana, a nesigurno je čak i njegovo posedovanje u budućnosti. Imajući

interest-increased, and banks are not allowed to charge a fee from the clients. *Investment deposits* have a fixed nominal value, and are similar to the company's property. In the process of opening the investment deposit with a bank, the share of the bank's profit is negotiated, which cannot be changed (except by agreement) prior to maturity of the deposit. On the asset side of the bank's balance sheet are loans that bring banks a share in the profits of the company, as well as other permitted financial instruments. There are such bank loans that give the right to manage the company and loans without such right. Among other financial instruments, the most important are deferred payments, margin on the sales price of the company, leasing and loans with zero interest rate but with a fee.

Garar (Gharar)

Gharar is most generally defined as risk or speculation. However, in order to better understand the concept of gharar, and why it is much more comprehensive than the concept of speculation (as well as risk), it would be helpful first to consider the wider aspects of speculation. There are several definitions of speculation (Al-Masri, 2009, p. 45-46):

- speculation is the prediction of a profit opportunity to benefit from, and of a loss probability to avoid;
- speculation is the benefit from price differentials resulting from the expected change in the stock values;
- speculation is to buy or sell with the aim of increasing capital gains from the "natural" price differences rather than obtaining regular revenue profits.
- speculation is a buying or selling process followed by a reverse transaction (purchase or sale), aimed at benefiting from the "natural" difference in prices.
- speculation is buying or selling in the present, with the hope of a reverse transaction (purchase or sale) in the future when a change in prices occurs.
- speculation is to buy, with a view to selling at a higher price or selling to compensate for what was sold at a lower price.
- speculation is a fake buying or selling, not with the aim of investment, but rather with

the aim of benefiting from the changes in the very short-term of the stock market value. This occurs when a big difference takes place between the stock *market price* on one side and the nominal or book-value (the *real value*) on the other.

- speculation is a buying or selling process carried out by market experts to benefit from price changes.

The nature of speculation can be best understood when compared with investments, which are in many ways diametrically opposed to speculations. Thus *the investor* purchases stocks because of the expected profit in the form of dividends. He could, however, sell stocks and "earn" a capital gain (if the selling price of stocks is bigger than their purchasing price), but it is not the most common case. On the other hand, *the speculator* buys stocks in order to sell them in the short term to make quick profits over a large capital gain. Therefore, investments are long-term, with a relatively low risk which is safer than in case of speculation, as lower risk also means lower expected profit. Thus, speculation differs from investment in three main characteristics: its duration, the level of risk and expected profit. Speculations are focused on the short term, are riskier than investments, but the expected profit is higher. Investors primarily expect earnings from investments in shares (dividends), and only secondarily - from capital gains due to positive price differences on the market. A speculator is just seeking a price-difference, as the primary motive for his "investment". (The word "investment" is under quotes because it does not refer to real investing, but rather to short-term speculative funds. See for more details: Al-Masri, 2009, p. 47).

After *riba*, *gharar* is the most important element in financial contracts. In simple terms, *gharar* stems from information-related problems (information asymmetry) and refers to uncertainty created by the lack of information or control in a contract. It can be thought of as ignorance regarding an essential element in a transaction, such as the exact sale price, or the ability of the seller to actually deliver what is sold. The existence of *gharar* in a contract makes it null and void. *Gharar* can be defined as a situation when either contractual party has information regarding some element of

na umu pojam pravednosti u svim islamskim poslovnim transakcijama, šerijat smatra bilo kakvu nesigurnost oko količine, kvaliteta, naplativosti ili postojanja predmeta ugovora - postojanjem elementa *garara* (Iqbal i Mirakhor, 2009, str. 62). Tipičan primer *garara* bili bi npr. fjučersi na žito. Teško je zamislivo u islamskim finansijama kupovati ili prodavati nešto što ne postoji u trenutku prodaje.

Iz *garara*, kao zabrane nejasnih ugovornih odredbi kako bi se izbegli rizici od neuspeha i ustanovilo obostrano snošenje rizika, proističe i zabrana kockanja i svih špekulativnih poslova sa vrednosnim papirima. Tim pre je i hedžing nemoguć. Zbog ove odredbe u islamu se krediti ne mogu garantovati hipotekom dužnika, jer bi ona celokupni rizik poslovanja svalila na dužničku stranu, a banku lišila odgovornosti za ishod kreditiranja. Osiguravanja kredita bankarskim garancijama takođe je nepoželjno (Veselinov, 2009, str. 24).

Prepušteno je pravnicima da utvrde stepen *garara* u transakciji, a onda se, zavisno od okolnosti, ugovor može (ali ne mora) poništiti. Zabranjujući *garar* šerijat je zabranio mnoge predislamske ugovore o razmeni smatrajući da su podložni prekomernoj nesigurnosti ili da su jedna ili obe ugovorne strane nedovoljno upoznate sa njime, što je stvaralo nepotrebne sporove i nepravdu. U mnogim slučajevima *garar* se iz ugovora može otkloniti pažljivim izražavanjem predmeta prodaje i cene kako bi se otklonile nepotrebne dvoznačnosti. Dobro dokumentovani ugovor takođe će ukloniti *garar*. Neki autori tvrde da je zabrana *garara* jedan od načina upravljanja rizicima u islamu koja prisiljava ugovorne strane da izbegavaju ugovore sa visokim stepenom informacione asimetrije i ekstremnim isplatama, te ih čini odgovornijim. Pošto se smatra rizikom, zabranjujući *garar* šerijat zabranjuje i trgovanje njime, što se smatra zabranom rizičnih ili izvedenih instrumenata na današnjim finansijskim tržištima, koji su osmišljeni da se izvrši transfer rizika sa jedne strane na drugu. Jedna od posledica zabrane *garara* je i zabrana čisto špekulativnih i kladioničarskih aktivnosti koje sadrže asimetrične informacije, prekomernu nesigurnost, rizik i manjak kontrole. Iako je ranije

bilo bojazni da li je trgovanje na tržištima deonica dozvoljeno, jer se smatralo da ono uključuje špekulaciju, ovo pitanje je rešeno tumačenjem da se trgovanje deonicama temelji na nekoj fundamentalnijoj analizi ekonomskih varijabli te je podložno prihvatljivom nivou nesigurnosti, a ne čistoj špekulaciji. Zabrana *garara* je dovela u pitanje još jedno područje savremenih finansijskih transakcija, a to je osiguranje. Neki autori tvrde da sklapanje ugovora o životnom osiguranju ulazi u domen *garara* pa, prema tome, taj ugovor nije valjan. Ovo pitanje se i dalje razmatra i nije u potpunosti rešeno (Iqbal i Mirakhor, 2009, str. 62-63).

Zaključak

Posle uvodnog dela, u kojem su objašnjene specifičnosti islamskog bankarstva u odnosu na konvencionalno, u nastavku rada naročito ukazano na kamatu i garar, kao zabranjene kategorije u islamskom bankarstvu. One su detaljno elaborirane, i to kako njihove teorijske konsideracije, tako i odustvo tih kategorija iz banaka koje rade po islamskom principu, šerijatskom pravu i pravilima.

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the contract, which is withheld from the other party. A classic example includes transactions involving fish not yet caught. More modern examples include transactions where none of the parties is in the possession of the subject and it is uncertain even whether they will possess it in the future. Keeping in mind the notion of fairness in all Islamic commercial transactions, the Sharia considers any uncertainty as to the quantity, quality, recoverability, or existence of the subject matter of a contract as pointing to the element of *gharar* (Iqbal and Mirakhor, 2009, p. 62). A typical example of *gharar* would be futures on wheat. It is hard to imagine in Islamic finance buying or selling something that does not exist at the point of transaction.

Based on *gharar*, as a prohibition of unclear contractual provisions in order to avoid risks of failure and establish mutual bearing of risk, there are bans on gambling and all speculations with securities. As a result, hedging is impossible. Because of this provision in Islam, the loans are not guaranteed by mortgage, because it would shift the entire business risk to the debtor, while the bank would be risk-free. Securing a loan with bank guarantees is also undesirable (Veselinov, 2009, p. 24).

It has been left to the jurists to determine the extent of *gharar* in a transaction and, depending on the circumstances, the contract may be (but does not have to be) annulled. By prohibiting *gharar*, the Sharia prohibited many pre-Islamic contracts of exchange on the grounds that were either subject to excessive uncertainty or were not known to one or both parties to the contract, causing unnecessary disputes and injustice. In many cases, *gharar* can be eliminated from contracts by carefully stating the objectives of the sale and the price in order to remove unnecessary ambiguities. A well-documented contract will eliminate *gharar* as well. Some argue that prohibiting *gharar* is one way of managing risk in Islam, as prohibition would force parties to avoid contracts with a high degree of information asymmetry and extreme payoffs, and would make them more responsible and accountable. By prohibiting *gharar*, the Sharia is also prohibiting trading of it, thus also prohibiting the use of derivative instruments designed to transfer risk from one party to another. The prohibition of *gharar* by implication includes the prohibition of pure speculation and gambling activities, which involve asymmetric information, excessive uncertainty, risk and lack of control. Although some of the earlier researchers raised concerns about the permissibility of trading in stock markets on the ground that it amounted to speculation, the stock market is based on some fundamental analysis of economic variables and is subject to reasonable level of uncertainty rather than pure speculation. The prohibition of *gharara* has also raised concerns in the area of insurance. Some argue that writing an insurance contract on the life of a person falls within the domain of *gharar* and thus invalidates the contract. This issue is still under review and has yet to be fully resolved (Iqbal nad Mirakhor, 2009, p. 62-63).

Conclusion

After the introductory chapter, explaining the specifics of Islamic banking compared to the conventional banking, the rest of the paper focuses on interest and *gharar* as the prohibited categories in Islamic banking. The paper elaborates into detail both on their theoretical considerations, and the absence of these categories from the banks operating under Islamic principles, Sharia law and rules.

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