Contents

Foreword xv
Acknowledgements xvii

Introduction 1

Chapter 1 Islamic History 10
1.1 The Quran ........................ 10
1.2 The Five Principles of Islam ................. 11
1.3 The Mosque .......................... 12
1.4 Muhammad and the Origins of Islam .......... 12
1.5 The Spread of Islam ....................... 14
1.6 The Golden Age of Islam .................... 15
1.7 Decline and Fall ........................ 17
1.8 A Revival of Fortunes ....................... 18
1.9 Middle-Eastern Oil ....................... 20
1.10 Islamic Nationhood in the Late Twentieth Century ...................... 21
1.11 The Iranian Revolution and After .......... 22
1.12 Islamic Banking and Islamic Revival .......... 25

Chapter 2 Shari‘ah Law and Islamic Jurisprudence 27
2.1 From the Obligatory to the Forbidden ........ 28
2.2 The Quran, the Sunnah and the Hadith ....... 28
Contents

2.3 The Five Major Schools of Islamic Law ........ 29
2.4 Classical Islamic Jurisprudence and the Processes for Ascertaining the Law ........ 32
2.5 The Concept of Fatwah ....................... 35
2.6 From Revelation to Codification: Scholasticism and the Formulation of Doctrine ........ 36
2.7 Closing of the Door of Ijtihad ............... 38
2.8 Shari‘ah and State Law in the Modern Era .... 39

Chapter 3 Islamic Commercial Law 42

3.1 Islamic vs. Non-Islamic Commercial Transactions ....................... 43
3.2 Principal Requirements of the Shari‘ah in Relation to Commercial Activities ........ 44
3.3 Islam: the Difference between Equity and Debt . . . 46
3.4 Rationale of the Prohibition of Interest ........ 47
3.5 Conventional Banking and the Prohibition of Riba in Islam ................. 49
3.6 Treatment of Deposits with Interest ............... 50
3.7 Profit and Loss Sharing ....................... 51
3.8 Profit-Sharing Enterprises ..................... 51
3.9 Islamic Contract Law ......................... 52
3.10 Types of Contract in Shari‘ah .................. 54
3.11 Islamic Financing in a Contemporary Setting .... 56
3.12 The Problem of Uncertainty (gharar) ........ 56
3.13 Summary ................................ 58

Chapter 4 Islamic Financial Products 62

4.1 The Emergence of Islamic Banking ............. 63
4.2 Different Paths, Same Goal ..................... 67
4.3 What Investment Products are Permissible under Islamic Shari‘ah Law ............... 69
4.4 Shari‘ah Investment Principles .................. 70
4.5  Equity-Financing and Debt-Financing in Pre-Islamic Arab Society ........................................ 71
4.6  Islamic Equity-Financing and Debt-Financing ................................................................. 74
4.7  Equity Securities: Profit-Sharing Contracts ................................................................. 75
4.8  Debt-Financing Contracts ............................................................................................. 77
4.9  Debt Securities .............................................................................................................. 83
4.10 Shari’ah Qualifications in Leasing ........................................................................... 84
4.11 Other Risk-Taking Products ....................................................................................... 85
4.12 Islamic Insurance .......................................................................................................... 85
4.13 Takaful Insurance in a Contemporary Context ........................................................... 87
4.14 Takaful Compared with Conventional Insurance ......................................................... 88
4.15 Summary ....................................................................................................................... 89

Chapter 5  Issues and Challenges of Islamic Banking Today  92

5.1  Obstacles to the Application of Islamic Law to Present Day Banking ................................. 93
5.2  Derivation from Revealed Sources .............................................................................. 94
5.3  Methodological Differences ......................................................................................... 95
5.4  Pluralism of Fatwahs .................................................................................................. 98
5.5  The Problem of Applying Islamic Law in a Western Legal Environment ......................... 99
5.6  Accounting and Corporate Regulatory Practices .......................................................... 101
5.7  Depositors and Regulators ......................................................................................... 104
5.8  Regulators’ Concerns .................................................................................................. 106
5.9  Legal Challenges .......................................................................................................... 110
5.10 Developing an Efficient Regulatory Framework .............................................................. 111
5.11 Special Requirements of Islamic Banking .................................................................... 113
5.12 Assessment and Management of Investment Risks ......................................................... 114
5.13 Proposals for a Regulatory Framework for Islamic Banking ............................................ 117
5.14 Conclusion .................................................................................................................... 118
## Contents

### Chapter 6 Islam in South-east Asia 122

6.1 The Coming of Islam to South-east Asia 122
6.2 European Rivalries and Colonisation 124
6.3 The Road to Independence 126
6.4 Post-Independence: A New World Order 128
6.5 The Philippines 129
6.6 Indonesia 130
6.7 Malaysia 132
6.8 Brunei 135
6.9 Islam in South-east Asia Today 137

### Chapter 7 Colonial Legacies: Islam and State Law in South-east Asia 138

7.1 Shari’ah vs. State Law 139
7.2 British Malaya 140
7.3 The Introduction of English Common Law to Malaya 143
7.4 Out of India 143
7.5 Muslim Law in Malaysia 146
7.6 Conflict between Muslim Law and English Common Law 147
7.7 Maria Hertogh: A Case in Point 148
7.8 Post-Independence 151

### Chapter 8 Islamic Banking in Malaysia 154

8.1 Origins of Islamic Banking in Malaysia 156
8.2 Bank Negara Guidelines on Islamic Banking 158
8.3 The Shari’ah Supervisory Council 158
8.4 Making Islamic Banking Compatible with Conventional Banking 159
8.5 Some Observations on the Malaysian Legal Framework 161
8.6 Islamic Financial Products in Malaysia:  
The Concept of an Islamic Window .................. 162
8.7 The Malaysian Government Investment  
Certificate ............................................. 163
8.8 Debt Securities .................................. 164
8.9 Islamic Accepted Bills ............................ 165
8.10 Takaful Insurance in Malaysia ............... 166
8.11 Conclusion ....................................... 168

Chapter 9 Islamic Banking in Indonesia 172
9.1 Islam and Government in Indonesia ............ 173
9.2 Traditional Islamic Financial Institutions in  
Indonesia .............................................. 176
9.3 Introduction of Measures to Permit Islamic  
Banking in Indonesia ............................... 177
9.4 Contemporary Indonesian Islamic Financial  
Institutions .......................................... 178
9.5 The Introduction of Standard Accounting  
Procedures .......................................... 179
9.6 Forms of Lending and Borrowing in Indonesia . . 181
9.6.1 Lending Forms ................................ 181
9.6.2 Profit-Sharing Forms ......................... 182
9.6.3 Borrowing Forms ............................. 183
9.7 Conclusion ....................................... 184

Chapter 10 Labuan: A Niche in the Islamic  
Money Market 186
10.1 Role of Labuan Financial Services Authority . . 187
10.2 Labuan Offshore Companies ..................... 188
10.3 Currency and Exchange Control ................ 188
10.4 Tax Incentives .................................. 189
10.5 Labuan International Financial Exchange ........ 189
xii  Contents

10.6  Moving Forward with Islamic Banking ................. 190
10.7  Conclusion ........................................ 191

Chapter 11  Islamic Banking in Brunei 193
11.1  Introduction ...................................... 193
11.2  Brunei International Financial Corporation (BIFC) .... 195
11.3  The Exclusion of Money Laundering a First Priority .......... 196
11.4  Parallel Jurisdictions ............................ 197
11.5  Islamic Banking in Brunei ...................... 197
11.6  Takaful in Brunei ................................ 200
11.7  Latest Developments ............................ 201
11.8  Conclusion ........................................ 202

Chapter 12  Banking in Singapore 204
12.1  Introduction ...................................... 204
12.2  Legal Framework: Legislation Enacted by the Parliament of Singapore .......... 209
12.3  English Common Law and Statutes .............. 210
12.4  Singapore: An Alternative to Switzerland ........ 211
12.5  Singapore: Financial System Stability Assessment .......... 212
12.6  Singapore’s Role as a Financial Centre ........... 213
12.7  Islamic Banking in Singapore .................. 214
12.8  Conclusion ........................................ 216

Chapter 13  Conclusion 218
13.1  Introduction ...................................... 218
13.2  Conversion Project Plan ........................... 220
13.3  Moral Hazard and the Risk of Fraud .............. 221
13.4  The Problem of Delays in Payment and Insolvency .......... 222
13.5  Problems with Futures Contracts ................. 223