



The impact of the Islamic finance wave in Italy



Stefano Loconte is the managing partner at Loconte & Partners. He can be contacted at stefano.loconte@studioloconte.it.

There are more than 1.4 million Muslims in Italy – almost 3% of the Italian population – with savings for US\$6 billion approximately. Thanks to its strategic geographical position, Italy represents an invaluable link between European and Islamic countries. This helps explain the reason why lots of Muslims are interested in investing and moving here.

Just a few examples: the Abu Dhabi-based fund AABAR owns 5.04% of Unicredit; the Abu Dhabi-based fund Mubadala acquired 100% of Piaggio; and the Bahrain sovereign fund Mumtalakat invested in KOS, a leading Italian company specialized in health and social care. Moreover, in the last years, Qatar has also been very active in Italy with investments in the real estate, hotels, transportation and fashion sectors. To this last regard, it is worth mentioning the acquisition of Valentino by the Emir of Qatar.

Given the strong ties between Italy and Islamic countries, can Islamic finance be an opportunity to enrich Italy's economic, financial and cultural heritage? What has been done so far to catch this chance?

Broadly speaking, one of the first steps to be taken to attract Islamic investors is to allow them to invest in Shariah compliant products.

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The offering of such products in Italy does not require the adoption of new rules from a strictly civil law perspective. In 2014, in a study named 'The Islamic finance in the legal and economic Italian context,' CONSOB, the Italian supervisory authority for the financial product market, stated that Islamic finance does not conflict with Italian financial principles, being that the latter is not characterized by an ethical or religious connotation. The most widespread Islamic financial instruments can fall in the categories of "transferable securities" pursuant to Article 1, paragraph 1-bis, and "EU financial instruments" pursuant to Article 93-bis of the Italian Consolidated Financial Act.

Again from a civil law point of view, Islamic finance-related contracts may also be deemed admitted in Italy pursuant to Article 1322 of the Italian Civil Code, which allows atypical contracts (contracts without a specifically tailored regulation), provided that they are aimed at pursuing interests worthy of protection pursuant to the law. In fact, the main principles of Islamic finance, namely the prohibition of Riba, the prohibition of Haram activities, the prohibition of Maysir and Gharar, are not in conflict with Italian general civil law principles.



As further pointed out by CONSOB, a critical issue in the spreading of Islamic finance in the Italian legal system (both in terms of financial instruments and Islam-related contracts) is rather represented by the tendentious lack of univocal interpretation of certain Shariah principles and, as a consequence, by a margin of uncertainty in the configuration of Shariah-based legal notions and instruments. In fact, there are some financial products, services and instruments that are considered to be Shariah compliant only by some commentators and not by others.

Such an uncertainty is a significant deterrent to the implementation of Islamic finance in Italy. This is the reason why support from the two main international Islamic authorities appointed to provide guiding principles for Islamic financial institutions and industries (AAOIFI and the Islamic Financial Services Board) would be opportune to help other States adopt Islamic finance-related products in their own legal system.

The above having been said, an obstacle to the implementation of certain Islam-related contractual structures, such as, Murabahah, Ijarah and Istisnah, arises from a tax perspective and lies in the issue of double taxation.

All of such contracts are made up of two underlying agreements:

- Murabahah and Istisnah consist of two sale and purchase agreements, one between the bank and the supplier, whereby the bank purchases the good from the supplier at an agreed price, and the other between the bank and the client, whereby the bank sells the good to the client at a price higher than the one paid to the supplier;
- Ijarah is made up of a sale and purchase agreement between the bank and the supplier, whereby the bank purchases the good (the client needs) from the supplier, and a lease agreement between the bank and the client, whereby the bank makes available the good to the client at a periodic fee higher than the price paid to the supplier.

Under the Italian law, the individual agreements making up each of the above contractual structures would be considered separate contracts, as such taxed on an individual basis. In 2017, the VI Finance Committee of the Chamber of Deputies of the Italian Parliament, chaired by Maurizio Bernardo and supported by a

working group of tax experts, introduced a draft law into Parliament to regulate the tax treatment of Murabahah, Ijarah and Istisnah.

Based on the so-called “substance over form principle” which, applied in the instant case, allowed to consider the two underlying contracts forming Murabahah, Ijarah and Istisnah as one single contract due to the connection existing between them, the draft law stated that persons who enter into Murabahah, Ijarah and Istisnah would have been subject to substitute tax only, as per Article 17 of Presidential Decree no. 601 of the 29th September 1973 (Article 3, paragraph 12, of the draft law).

The draft law regulated the issuance by the Italian government of Sukuk. Article 4, paragraph 1 of the draft law defined Sukuk – just for tax purposes – as “financial instruments” to be assimilated to Italian bonds (therefore subject to the ordinary taxation as per Article 26 of Presidential Decree no. 917 of the 22nd December 1988), and further stated that their issuance – the publication of the offering prospectus – had to comply with the requirements set forth by Articles 94 and 98-bis of Legislative Decree no. 58 of the 24th February 1998 in relation to the offering to the public of financial instruments and financial products.

Although formally assimilated to Italian bonds, it is important to note that Sukuk are not fully equivalent to Italian conventional bonds. In fact, as stated by AAOIFI in 2008, Sukuk are asset-based instruments and, specifically, “certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity”. On the contrary, Italian conventional bonds are debt instruments, which entitle the owner to receive the money back, without conferring a right on any underlying asset. Although introduced to Parliament, the draft law was never discussed due to a political turnover further to elections.

Another idea recently discussed, particularly in the Municipality of Turin, which has not been implemented yet, is the setting up of an Islamic bank in Italy. The Bank of Italy does not seem to have a hostile approach to the idea, but a lot of concerns are still open.

An Islamic bank can be set up in three alternative ways:

- 1) By creating a fully-fledged Islamic bank in the territory
- 2) By creating a branch of an Italian bank, with a focus on Shariah compliant products
- 3) By creating an Islamic window within an Italian bank

Generally speaking, the most significant issue related to the creation of an Islamic bank in Italy is represented by the different notion of banking activity in Islamic finance.

The Islamic banking system is built on Shariah principles and, more specifically, on the profit and loss sharing principle, pursuant to which the profits and, sometimes, the losses associated with each individual investment are shared between the bank and the client as indicated in the relevant underlying contract.



At the end of the agreed period, if profits have accrued, the client is entitled to receive the amount of the investment back plus a share of the profits generated by the investment. If the investment has generated losses, depending on the nature of the underlying contract, losses are borne by the client (Mudarabah) or by both the bank and the client (Musharakah).

Other niche areas, such as food, tourism and fashion, have also been recently touched by Islamic influence, also due to Italy’s strategic geographic position and well-established cultural and political ties to Islamic countries.

Let’s think of Halal Italia, which, together with CO.RE.IS. (Islamic Religious Committee in Italy), is responsible for granting Halal certifications to products that comply with Shariah requirements, and of Modest Fashion, a concept which landed in Italy during the Turin Fashion Week.

Another niche example of Islamic impact on the Italian industry and culture is art. Italy is one of the countries with the highest number Islamic artworks in the world and only recently new initiatives emerged to enhance the Islamic art through exhibitions and cultural events.

To conclude: one of the major obstacles to the development of Islamic finance in Italy is the little information and knowledge about actual Islamic culture. The degree of penetration of Islamic finance in Italy also depends on an improved understanding of Islamic cultural world and traditions.

Understanding Islamic culture is a chance to elaborate on new financial instruments, which can increase the number of exchanges and investment between Italy and Islamic countries, and an occasion to face new perspectives. ☺



On behalf of IFAAS, I would like to avail this opportunity to congratulate you on the 15th Anniversary of excellence at IFN, you have been doing a great job and we wish you all the best in the years to come.

Keep up the good work!

Najib Al Aswad, Director, IFAAS

