

Corporate Religion

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Abstract

In Islamic Sharia, trade between Muslims and non-Muslims is permissible. However, Sharia distinguishes between them in some religious aspects and these have a direct effect on business transactions, namely in terms of money and control. This sheds light on the importance of identifying the religion of the dealing parties in any sort of Islamic business.

Determining an individual's religion or lack of religion is not difficult but traders can be natural or artificial persons such as corporations. This then raises the question of how to ascribe a religion to such a body. This article will show that corporations have a universal right to follow and manifest a religion and be recognised in such a way. It also provides criteria for determining the religion of a corporation.

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.

In a partnership between Muslims and non-Muslims, Sharia highly recommends that Muslims hold and maintain control of a business and keep charge of all financial transactions. Regarding the money, Sharia addresses the matter of prohibited money and differentiates between Muslims and non-Muslims in the way money is treated. In this regard, Sharia accepts the money of non-Muslims but rejects that of Muslims. This illustrates the importance of identifying the religion of the dealing parties in all types of Islamic business, especially given that Sharia is seen as the personal law of Muslims whose rules are applicable to Muslims parties involved at any time.

Determining an individual's religion or lack of religion is not difficult. However, since traders may be artificial persons, the question arises as to how a religion can be ascribed to a corporation. This article will show that corporations have a universal right to follow and manifest a religion and be recognised in such a way. For this to happen, criteria for determining the religion of a corporation need to be defined. Two subjects are addressed to seek to draw from them analogies or conclusions held to be valid in determining a corporation's religion. The first subject is 'state religion' and the second is 'corporate nationality'. In this context, the theories used to establish corporate nationality determination measures are tested on corporate religion. The first theory examines the possibility of determining a company's religion according to its members' religion. The second theory tests the possibility of determining it according to the religion of the country where it is incorporated or where its seat is located.

This article is divided into two main sections. The first addresses the Islamic rules of trade with non-Muslims and the difference in treatment between them and the second examines the subject of a corporation's religion in detail. In short, since determining the trader's religion is an essential element in Islamic business, acknowledging the criteria of defining a corporate's religion would play a significant role in the field of Islamic business.

Sharia Rules of Trade with non-Muslims

Muslims believe that Islamic Sharia is not just a religion but a system that regulates all aspects of life including legal affairs¹. Therefore, defining a person as a 'Muslim' has two meanings; religious and juristic. Accordingly, to say of anyone that he is a 'Muslim' implies from the religious point of view that he follows Islamic devotions, believes and teachings. However, it should also imply from the judicial perspective that his legal capacities are governed by the practical legal rules of Sharia; in other words, Sharia should be regarded as his personal law.

Given the previous understanding, Islamic Sharia reflects a concept of identity similar to nationality where its rules have to be applied whenever a Muslim party is involved. In principle, it does not discriminate between Muslims and non-Muslims in the rules of trade and business as it does not pay much attention to the religion of the dealing parties as long as the Islamic rules are respected in the transaction. In addition, it mostly focuses on the transaction itself and the treatment between its dealing parties more than their personal status².

Evidence from Sunna³ confirms the permissibility of business

¹Muhammad Kamali, *Law and Society* (John Esposito ed, The Oxford History of Islam Oxford University Press 1999) 108.

²For example, Allah says, 'But Allah has permitted trade and has forbidden interest' The Holy Qur'an *Sura Al-Baqara* verse 275. 'And give full measure and weight in justice' The Holy Qur'an *Sura Al-An'am* verse 152. 'Woe to those who give less. Who, when they take a measure from people, take in full. But if they give by measure or by weight to them, they cause loss'. The Holy Qur'an *Sura Al-Mu'afaffin* verse 1-3.

³A term used in the religion of the Muslim to express the custom or matter of life. Hence, the tradition which records either the sayings or doings of Muhammad ... It combines what Prophet Muhammad (PBUH) did, said or what was done or said in his presence and was not forbidden by him.' Thomas Hughes, *A Dictionary of Islam* (Scribner Welford & Co 1885) 622 (emphasis added).

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dealings between Muslims and non-Muslims such as sharecropping⁴ and others in relation to buying and mortgages⁵. 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 *makrūh* (disliked/hateful)⁶. 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 Muslims⁷.

⁴ 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'. Muḥammad Muḥsin Khān (tr), *Ṣaḥīḥ Al-Bukhārī* (v3 the book of cultivation and agriculture 41 ḥadith no 2331, Dārussalām 1997) 299.

⁵ Narrated by Aisha: 'Allah's messenger PBUH bought food grains from a Jew on credit and mortgaged his armour to him'. Muḥammad Muḥsin Khān (tr), *Ṣaḥīḥ Al-Bukhārī* (v3 the book of sales 34 ḥadith no 2096, Dārussalām 1997) 181.

⁶ This is the approach of early Muslim scholars. Abi Bakr Al-Khallāl, *Aḥkam Ahl Al-Mīlāt min Al-Jamī' li Masā'il Al-Imām Aḥmad Bin Ḥanbal* (Dār Al-Kutub Al-'Ilmiyya 1994) 106-109. Ibn Qayyim Al-Jawziyya, *Aḥkām Ahl Al-dhimma* (Ramadi Publishing 1997) 552.

⁷ Allah says in Sura Al-Baqarah verse 275 'But Allah has permitted trade and has forbidden usury'.

Prophet Muḥammad PBUH said: 'Avoid the seven destructive things.' It was asked: (by those present): 'What are they, O Messenger of Allah? He replied, , eating of usury ...'. Imām Muslim Ibn Al-ḥajjaj, *Ṣaḥīḥ Muslim* (Nassiruddin al-Khahāb (tr) v1 the book of faith 1 ḥadith no 262, Dārussalām 2007) 177. Muḥammad Muḥsin Khān (tr), *Ṣaḥīḥ Al-Bukhārī* (v4 the book of wills and testaments 55 ḥadith no 2766, Dārussalām 1997) 34. The International Islamic Fiqh Academy confirms that any interest above the debt is a type of usury that is prohibited in Sharia and that the alternative is dealing in accordance with Islamic Sharia rules. Organisation of Islamic Co-operation, 'Decisions and recommendations of International Islamic Fiqh Academy 1988-2009' Decision no (10/2) 22. See also The Permanent Committee, 'The Portal of General Residency of Scholarly Research and Ifta' Fatwa no 16645 <www.alifta.net/Fatawa/FatawaSubjects.aspx?language=e n&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=1724&PageID=4942&SectionID=7&SubjectPageTitlesID=4996&Markindex=3&0#WhatistheIslamicpositionon> accessed 22 October 2015. In addition, the International Islamic Fiqh Academy prohibited buying shares in any company deals with usury. See Organisation of Islamic Co-operation, 'Decisions and recommendations of International Islamic Fiqh Academy 1988-2009' Decision no (17) 118.

It is worth noting that *makrūh* in Sharia means 'that which is hateful and unbecoming. A term used in the religious, civil and ceremonial law of Islam for any act of the unlawfulness of which is not absolutely certain, but which is considered improper and unbecoming'⁸. It is one of the five main ruling classifications in Islamic Sharia. The other four are *farḍ/wājib* (obligatory), *mandūb/mustaḥab* (recommended), *mubāḥ/ḥalāl* (allowed) and *ḥarām* (prohibited)⁹.

There are levels of hatefulness with regard to the disliked matters in Sharia. Al-ḥanafī school of jurisprudence sets two levels: (1) disliked for the purpose of transcendence, which is closer in ruling to permissible and the person who abstain from doing it will be slightly rewarded and who does it will not be punished; and (2) prohibitive disliked, which is closer to prohibition, i.e., it is connected to a prohibited matter that will not require a severe punishment hereafter¹⁰. Muslims, therefore, are strongly encouraged to avoid doing any *makrūh* act as much as they can, including being partners with a non-Muslim where the latter holds control over the money. Nevertheless, it should be noted that the level of hatefulness in this matter is not agreed upon Muslim scholars, and while some severely dislike it, others merely dislike it¹¹.

In terms of money

Sharia also differentiates between Muslims and non-Muslims in terms of their property. However, to address this matter it is important to give a brief introduction to *al-māl al-ḥarām* (prohibited money) in Sharia first.

Prohibited money in Sharia: Prohibited money in Sharia is divided into two categories:¹² (1) prohibited as itself such as alcoholic beverages, swine or stolen money; and (2) prohibited for a reason where the money itself is not prohibited but the prohibition happens because an external matter contaminates the money. In the second category, the money may be gained through a prohibited or corrupted agreement, for example, through usury, gambling or prostitution.

When money is considered as prohibited in Sharia, Muslims accordingly are not allowed to benefit from it and should get rid of it, such as by giving it back to its owner or to the poor if the owner is unknown¹³. Prohibited money does not enter into a Muslim person's ownership from the beginning, and consequently he cannot use or benefit from it¹⁴. Al-Qurtubī states that repentance requires the holder of forbidden money to return it to its owner. If the owner cannot be found, then he should give it to the poor for the owner's sake¹⁵. It is worth noting that this is a way of getting rid of the money and it is not considered as *ṣadaqa* (charity) but rather redemption and Muslims will not be rewarded on this giving¹⁶.

⁸ Hughes (n 3) 311

⁹ Abdulla Al-Baiḥawī, *Minhaj Al-Wusūl ala 'Ilm Al-'usūl* (Risala Publishers 2006) 18.

¹⁰ *Al-Mawsū'a Al-fiqhiyya* (1998) v 38, 373.

¹¹ Imām Aḥmad Bin ḥanbal is one of those who severely disliked it and Imām Muḥammad Al-Shāfi'i merely disliked it. Al-Khallāl (n 6) 106 and Al-Jawziyya (n 6) 559.

¹² Aḥmad Bin Taymiya, *Majmū' Al-Fatawā* (v29, King Fahad Complex for Printing the Holy Qur'ān 2004) 320. Abo ḥamid Al-Ghazālī, *'Iḥyā' 'Ulūm Al-dīn* (Dār Ibn ḥazm Publishers 2005) 539-540. Abbās Al-Bāz' *Aḥkām Al-Māl Al-Ḥarām* (Dār Al-Nafā'is 1998) 40-43.

¹³ Ibid Al-Ghazālī 580.

¹⁴ There is a disagreement between the main four Imams of Muslims regarding the ownership of the money earned from a corrupted contract such as usury or gambling. Abo ḥanīfa allowed the ownership, Al-Shāfi'i and Aḥmad did not allow the ownership and Mālik allowed it only if it is not possible to return it to its owner. Bin Taymiya (n 12) 327-328.

¹⁵ Muḥammad Al-Qutrubī, *Tafsīr Al-Qurtubī* (Dār Al-Kutub Al-Mahriyya 1936) 366.

¹⁶ Al-Ghazālī (n 12) 582.

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 religion¹⁷.

Prophet Muhammad peace be upon him (PBUH) and his companions on many occasions accepted the money of non-Muslims as *jizya* (tax)¹⁸. Also, it has been proven that 'Umar Bin Al-Khaṭāb, the second caliph in Islam, accepted the money of wine and swine from non-Muslims to pay tax¹⁹. Ibn Al-Qayyim states that if non-Muslims in an Islamic state (people of *dhimma*) pay taxes, debts and compensation using money from a forbidden source in Sharia, and they do not believe in its forbiddance, such as alcohol and swine, it is permissible to accept it from them; this is the doctrine of Imām Aḥmad Bin Ḥanbal and other early Muslim scholars²⁰. This means that Muslims are allowed to take and benefit from the money of non-Muslims even if they know that the money comes from a prohibited source in Sharia.

B. Money of Muslims: the rule is different if the one who earns the prohibited money is a Muslim. There is no doubt that it is forbidden for Muslims to earn prohibited money (either as itself or for a reason) and the person who knowingly earns it is a sinner according to Islamic Sharia²¹. This money is malignant and Muslims should get rid of it as explained above. Sharia not only bans Muslims from earning and benefiting from prohibited money but also from taking this money with its owner's permission²². This rule, however, is applied if the person taking the money knows for certain that it is prohibited²³.

In this case, the one who earns the money and the one who deals with him are both sinners under Sharia rules²⁴. Ibn Rushd goes further and prohibits people from borrowing money, mixing with or eating with a Muslim who is known to be a usurer or sells alcohol as these acts could be accepted from non-Muslims but not Muslims²⁵. In addition, Muslims should not take and invest prohibited money in compliance with Allah's command to not cooperate in sin and aggression²⁶.

This provision is not invalidated with the saying that the money will be used in permissible ways, as Sufyān Al-Thawrī states, 'whoever spends prohibited money in obedience to Allah is like the one who cleans dirty clothes with urine'²⁷. However, few Muslim scholars disagree as they still believe in the permissibility for Muslims to take

and utilize this money in permissible ways because the prohibition is connected to the act and the person who committed it and not to the money unless the money itself is prohibited²⁸. Hence, according to this opinion the money gets purified with the transition from the owner to someone else in a lawful way.

Therefore, following the majority opinion, a Muslim has an obligation not to accept the money of another Muslim if it falls under the category of prohibited money in Sharia.

The admixture of prohibited and permissible money: The other matter related to money is the case of intermingled prohibited and permissible money in a way that makes it difficult to separate them and whether this contaminates the whole amount of money or not.

Sharia addresses this matter under the subject of 'the admixture of prohibited and permissible money'. Under this situation, it is important to look at the amount of this admixture where the percentage of the amount of prohibited money is relevant. If the prohibited money constitutes the majority of the whole amount of money then it is all contaminated and therefore it is regarded as prohibited money. This means that if a Muslim trader enters in a partnership with another Muslim using his prohibited money, the partnership money is not contaminated unless his participation forms the majority of the money and in the latter case the partnership will be investing in prohibited money in its business which contradicts Islamic Sharia rules. Ibn Taymiya said, 'if the permissible is the majority it is not prohibited then'²⁹. Al-Ghazali shared the same opinion and added, 'it is of piety to leave it'³⁰.

If it is impossible to know the percentage of the prohibited share in the whole amount of money then, according to Imām Aḥmad Bin Ḥanbal, dealing with the money should be avoided as it is disliked³¹. This is based on the Islamic rule on dealing with suspect situations as set out by Prophet Muhammad PBUH. He said:

Leave what makes you in doubt for what does not make you in doubt. The truth brings tranquillity while falsehood sows doubt³² and 'the lawful is clear and the unlawful is clear, and between that are matters that are doubtful (not clear); many of the people do not know whether it is lawful or unlawful. So whoever leaves it to protect his religion and his honor, then he will be safe, and whoever falls into something from them, then he soon will have fallen into the unlawful'³³.

Summary and findings

- Business between Muslims and non-Muslims is permissible in Sharia and the trader's personal status or religion are irrelevant as long as the rules of Islamic business transactions are respected.
- Sharia rules are enforced whenever there is a Muslim party in a business transaction.

¹⁷ Al-Jawziyya (n 6) 187. See also Al-Bāz (n 12) 126.

¹⁸ Abo O'Ubayd Al-Qāsim Bin Sallām, *Al-Amwāl* (Dār Al-Shurūq 1989) 99-104.

¹⁹ Bin Taymiya (n 12) 319.

²⁰ Al-Jawziyya (n 6) 183.

²¹ Prophet Muḥammad PBUH said: 'There is no flesh raised that sprouts from the unlawful except that the fire is more appropriate for it' Imām Hāfiẓ Al-Tirmidhī, *Jāmi' At-Tirmidhī* (Abū Khalīl (tr) v2 the chapters on travelling hadith no 614, Dārussalām 2007) 73.

²² Al-Bāz (n 12) 62. Abdulla Bin Aḥmad Al-ḥanbalī, *Al-Mughnī* (v6 3rd edn, Dar Al-ilm Al-Kutub Publishers 1997) 372.

²³ Al-Bāz (n 12) 62-63. Ibid Al-ḥanbalī 372.

²⁴ Al-Bāz (n 12) 62.

²⁵ Ibn Rushd Al-Qurtubī, *Al-Bayān wa At-Taḥṣīl* (v18 2nd edn, Dār Al-Gharb Al-Islāmī 1988) 514.

²⁶ Allah says: 'And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty'. The Holy Qur'an, *Sura Al-Mā'ida* verse 2.

²⁷ Al-Ghazālī (n 12) 538.

²⁸ Of those Ibn Mas'ūd 'when a man came to him and said I have a neighbour who deals with usury and he invited us to dine with him, are we allowed to go? He replied yes, he gets the sin and you get the bliss'. Al-Ghazālī (n 12) 572.

²⁹ Bin Taymiya (n 12) 151.

³⁰ Al-Ghazālī (n 12) 553.

³¹ Al-ḥanbalī (n 22) 372.

³² Imām Hāfiẓ Al-Tirmidhī, *Jāmi' At-Tirmidhī* (Abū Khalīl (tr) v4 the chapter on description of judgment day hadith no 2518, Dārussalām 2007) 510.

³³ Imām Hāfiẓ Al-Tirmidhī, *Jāmi' At-Tirmidhī* (Abū Khalīl (tr) v3 the chapters on business hadith no 1205, Dārussalām 2007) 21.

- 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 persons³⁴. 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 religion³⁵. It is worth mentioning that, although the ECHR, under Article 34, has limited the

³⁴ 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 Clara County v. Southern Pacific Railroad Company* 118 US 394 (1886).

³⁵ '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 Church of Scientology and 128 members v Sweden* (1978) 16 DR 68 (Commission Decision 8282/78) [11].

right to litigate for violation of the Convention rights to any person, non-governmental organisations and groups of individuals, this does not mean that the right of religion is limited to them. It is evidently proven that countries are also capable of having and manifesting a religion as will be shown later in this section.

However, determining that corporations can have a religion is insufficient in Islamic business. Further clarification is still needed. Muslims need to identify the religion or lack of religion of the party they are dealing with. This might be possible for individuals but it is less clear how this can be done for corporations. In other words, how to determine a corporation's religion?

Determining corporate religion criteria in Islamic business

In an attempt to answer the above question, two subjects are addressed to seek to draw from them analogies or conclusions held to be valid in determining a corporation's religion. The first is 'state religion' and the second is 'corporate nationality'.

State religion: Countries as legal persons are capable of having a religion. However, the factors for determining the state religion are clearer in some cases than in others [1]³⁶. The most obvious measure is the acknowledgment of a state official religion in the country's constitution. Barro states that, 'in many situations, the constitution designates an official state religion and restricts or prohibits other forms'³⁷. Most Islamic jurisdictions recognize Islam as the country's official religion in their constitution. For example, Article 1 of Saudi Arabia constitution states: 'The Kingdom of Saudi Arabia is an Arab Islamic State, having full sovereignty; its religion is Islam ...' and Article 2 of Kuwait constitution 'The religion of the State is Islam ...'.

There are other factors and indications that determine the religion of countries even though they do not officially declare a state religion. For example, the religion followed by the majority of the population, the religion that is taught compulsorily in public schools or the religion favoured through subsidies and tax collection³⁸.

By analogy, it can be said that the most obvious factor that determines a corporation's religion is its explicit acknowledgment and endorsement of a religion in any way, for example in its memorandum of association. This religion should also be reflected in the company's business practices by adhering to the religion's rules and principles in its business and transactions. There are many institutions around the world from different faith backgrounds that declare and manifest their religion and adhere to its rules in their practice. Some are merely religious and others are commercial. A striking example of the latter is the Islamic institutions that acknowledge Sharia as their reference in the memorandum of association and comply with its rules in their business. As an illustration, Article 5 of the memorandum of association of Kuwait Finance House states that the company practices all its business in compliance with Islamic Shariah rules which provides that this company is Islamic.

Other religious institutions from different faiths also exist around

³⁶ Robert J Barro and Rachel M McCleary, 'Which Countries Have State Religions?' [2005] *The Quarterly Journal of Economics* 1331.

³⁷ *Ibid*.

³⁸ *Ibid*. For more details see World Christian encyclopedia which provides information on countries' religions around the world. *World Christian Encyclopedia; A comparative study of churches and religions in the modern world AD 1900-2000* (1982).

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 website³⁹. Other factors also can give indications on the faith background of a company. For example, Forever 21 Clothing, a family owned company, prints the biblical verse “John 3:16” on each of its shopping bags. Similarly, In-N-Out Burger prints the same biblical verse on its cups, containers and wrappers.

The right of organisations to have and exercise a religion is recognised in many jurisdictions⁴⁰, and this recognition has an effect on their national laws. For example, in the UK religious slaughterhouses are exempted from the rules of animal slaughter under the Welfare of Animals Regulations 1995⁴¹. Also, in the US, religious organisations are exempted from the rules of Employment Non-Discrimination Act (ENDA) of 2013⁴². In addition, under Kuwaiti law, recognizing the Islamic nature of a company comes with several results, such as the legal obligation to employ a Sharia supervisory board⁴³ and to be under the supervision of the authority in terms of Sharia compliance⁴⁴.

Self-determination cannot be the sole factor to determine corporate religion because there are some corporations that do not expressly follow and manifest a religion. Therefore, other measures should be sought to implement on this case.

First, it is important to highlight that, due to the principle of freedom of religion, following a religion is an optional matter. Therefore, one person, natural or artificial, might decide to follow a religion and another does not. In other words, if it is possible to acknowledge that a company can be ascribed a religion, this is not applicable to all cases. It is therefore important in Islamic business transactions to know the religion of the dealing party because, as explained earlier, there is a difference in treatment of Muslims and non-Muslims in terms of money and control. Therefore, if a corporation does not officially declare a religion, there is still a need to know if it has a religion or not and this might be found out through different factors inspired by the measures used to determine corporate nationality.

Corporate nationality: In international law, there are a number of reasons why it is important to know the nationality of companies. For example, to benefit from the protection offered by international investment treaties⁴⁵. Hence, it is essential to know if a company is

³⁹ <www.cbmcint.com> accessed 24 March 2016.

⁴⁰ For example, the Human Rights Act 1998 s13 (UK): ‘If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.’

⁴¹ The Welfare of Animals regulations 1995 (UK), Regulations 21 and 22, Schedule 12 Additional Provisions for Slaughter by a Religious Method.

⁴² Employment Non-Discrimination Act 2013 s6 (US), Exemption for Religious Organisations.

⁴³ Article 93 of Law no 32 of 1968 Concerning Currency, the Central Bank of Kuwait and the Organisation of Banking Business.

⁴⁴ Article 4 of Law no 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Amendments (Kuwait).

⁴⁵ ‘The definition of nationality is one of the key elements to determine the scope of rights and obligations under international investment agreements.’ Xiao-Jing Zhang, ‘Proper Interpretation of Corporate Nationality under International Investment Law to Prevent Treaty Shopping’ (2013) 6 Contemporary Asia Arbitration Journal 49, 50.

foreign or domestic. The measures that determine corporate nationality range from the place of incorporation, place of seat and nationality of controlling members⁴⁶ or a mixture of these[2]⁴⁷.

Young addressed the matter of corporate nationality in detail and found that there are four main theories used to determine the nationality of a juristic person: (1) according to the majority of its members or the owners of the greater part of its capital;⁴⁸ (2) according to the state which authorised it;⁴⁹ (3) according to the state where the acts by which it came into existence were performed;⁵⁰ and (4) according to the state in which it is domiciled⁵¹. Basically, Courts examine the connection between a corporation and various jurisdictions, decide which connections appear most significant in the context of the legal problem of issue and then attribute to the corporation the nationality of the jurisdiction thereby selected⁵².

Two theories of corporate nationality will be tested on corporate religion. The first theory will look into the possibility to determine a company’s religion according to its members’ religion while the second will test the possibility to determine corporate religion according to the religion of the country where it is incorporated or where its seat is located.

First theory: corporate religion is determined based on the religion of the company’s members/owners: According to Morawetz, although a corporation can be seen as an entity independent from its founders, the fact remains that it is not⁵³. A corporation is nothing but a collective term to define its members and if it has to be considered as a person then this should only be in a symbolic sense⁵⁴.

This theory assumes that the corporation follows its owners and shares their characteristics in the matter of religion, i.e., if the owners are Muslims then the company is Muslim too and vice versa.

This measure could conceivably be applied to companies with a limited number of owners who follow the same religion but it would be difficult to apply to large companies whose shares are held by many members who may have different faiths. In addition, members of companies usually change and a member who follows a religion might be succeeded by another who follows a different religion or does not

⁴⁶ The controlling rule: ‘Thus the court might regard the corporation as most closely linked to the country whose nationals hold more of the shares or more of the directors’ seat, ... or the one whose nationals, however small their shareholders or few their directorship, are in fact able to exert the greatest influence or high level corporate decisions’. Harvard Law Review Association ‘The “Nationality” of International Corporations under Civil Law and Treaty’ (1961) 74 Harvard Law Review 1429. ‘Many countries began to use the control rule to define investors. The control rule determines the nationality of companies through the nationality of owners, controlling shareholders or outsiders who have a major influence on the operation of a company.’ Zhang (n 44) 51.

⁴⁷ See in general Aleksandrs Fillers, ‘Corporate Nationality in International Investment Law’ (2014) 1 European Scientific Journal 50. E Hilton Young, *Foreign Companies and Other Corporations* (Cambridge University Press 1912). Geoffrey Jones, ‘Nationality and Multinationals in Historical Perspective’ [2006] Harvard Business School Paper 06-052. <www.hbs.edu/faculty/Publication%20Files/06-052.pdf> accessed 1 March 2016. Zhang (n 45) 49. *ibid* Harvard Law Review Association.

⁴⁸ For more details see *ibid* Young 113.

⁴⁹ For more details see *ibid* Young 116.

⁵⁰ For more details see *ibid* Young 124.

⁵¹ For more details see *ibid* Young 136.

⁵² Harvard Law Review Association (n 45) 1429.

⁵³ Victor Morawetz, *A Treatise on the Law of Private Corporations* (v1, 2nd edn, Little Brown and Company 1886) 2.

⁵⁴ *Ibid*.

follow a religion at all. This change in membership has its effect on the company which may change accordingly⁵⁵. Consequently, ownership alone is not an accurate measure to determine corporate religion; 'control' is a much more accurate measure⁵⁶.

However, locating control is not an easy task. There has always been ambiguity about who controls companies, is it the directors, managers, shareholders, the holders of the greater part of capital or others? In addition, decisions in large companies are not always taken by the same people which complicates the matter further⁵⁷.

However, assuming that it is possible to identify a company's controlling members, the theory is still challenged by the diversity of faiths amongst the controlling members. Therefore, the measure can be adjusted by adding the 'dominant religion' standard to provide a more accurate finding. Accordingly, the religion of a company is to be determined according to the most dominant religion of its controlling members. Nevertheless, it must be acknowledged that in real life there must be a complete uncertainty in some cases on applying the previous theory and therefore on what a company's actual religion is⁵⁸.

This theory is still prone to collide with a larger obstacle which is the rule of separate legal personality. Corporations, once incorporated, take on a different legal existence to their owners that have their own legal identity⁵⁹. The main reason behind recognizing a separate legal personality for a corporation is to protect its owners and their assets from being pursued by people dealing with the corporation as a business entity [3]⁶⁰. Therefore, due to this separation, the owners' identity is shielded and corporations should not be assumed to share the same characteristics, rights and duties of their owners⁶¹. However, this rule is not without exceptions.

Under specific circumstances, the separation between the corporation and its owners' personalities is disregarded and people dealing with the corporation are entitled to look behind the shield and reveal the corporate owners mainly to reach their personal assets over a claim against the corporation⁶². This mechanism can be activated if the separate legal personality is being exploited by a corporation's owners and used beyond its intended reason for improper purposes. In the area of international law, the case concerning the Barcelona Traction, Light and Power Company Limited, the court addressed the matter of lifting the corporate veil and clarified its reasons⁶³.

The court explained that: *Forms of incorporation and their legal personality have sometimes not been employed for the sole purposes they were originally intended to serve. (Then it confirmed the valid reasons for*

⁵⁵ Young (n 47) 114.

⁵⁶ Similar argument used in the case of determining the corporate nationality according to the nationality of its owners. Stephen Cohen, 'Corporate Nationality Can Matter A lot' [1990] Berkeley Roundtable on the International Economy Paper 44, 1. <file:///Users/apple/Downloads/00b7d53ba931f31c92000000.pdf > accessed 22 January 2016

⁵⁷ Jones (n 47) 9.

⁵⁸ This uncertainty also exists in the case of determining the corporate nationality. See Young (n 47) 114.

⁵⁹ This fact was recognized over a century ago in *Salomon v Salomon*. *Salomon v Salomon* [1897] AC 22 (HL).

⁶⁰ Larry Bryant, 'Piercing the Corporate Veil' (1982) 87 Commercial Law Journal 299. However, this is not the only benefit from the separate legal personality.

⁶¹ Young (n 47) 115.

⁶² Bryant (n 60) 299.

⁶³ *Barcelona Traction, Light and Power Company, Limited* (Judgment) ICJ Reports 1970, 3.

*lifting the corporate veil as) to prevent the misuse of the privileges of legal personality as in certain cases of fraud or malfeasance, to protect third persons such as a creditor or purchaser, or to prevent the evasion of legal requirements or of obligations*⁶⁴.

The court then mentioned two specific cases involving disregarding the legal entity of corporations. One of which is the treatment of enemies during and after World War I and II as follows:

*[E]nemy-property legislation was an instrument of economy welfare, aimed at denying the enemy the advantages to be derived from the anonymity and separate personality of corporations. Hence the lifting of the veil was regarded as justified ex necessitate and was extended to all entities which were tainted with enemy character, even the nationals of the State enacting the legislation*⁶⁵.

The mechanism of lifting the corporate veil could be used to play a similar role in the case of corporate religion if the investor is hiding his real identity or if the corporation was established for fraudulent purposes in order to unjustly benefit from the advantage of the separate legal personality⁶⁶. For example, if the controlling owners of an alcoholic drinks company are Muslims and they are hiding their identity to benefit from the treatment of non-Muslims or the controlling owners of an Islamic company are non-Muslims and are hiding their identity to have access to an Islamic institution to control it. Under these circumstances, the court might find a valid reason to pierce the veil and reveal the controlling members behind the legal entity, and consider them as the real owners of the company. In the examples given, the intention would be to hold that the real owners of an alcoholic drinks company are Muslims and cannot receive the treatment of non-Muslims in the first case, and that the real owners of the Islamic company are non-Muslims who established it for the purpose of controlling an Islamic institution in the other case.

Second theory: corporate religion is determined based on the religion of the place of incorporation or place of seat: The religion of a corporation under this theory depends on the religion of a country and not individuals. Although as seen earlier, countries are capable of having a religion, the general objection to this theory is that the religion of a country cannot be enforced on its residents based on the freedom of religion principle. Nevertheless, this theory is possible to be used to determine the religion of governmental corporations, as they are owned by their countries.

The results of testing the theories of corporate nationality show that there is no strong measure that can be relied on to determine corporate religion. The first theory is faced with the obstacle of the separate legal personality and the second is invalid. This leaves us with a sole measure when the corporation specifies its religion. However, there might be another solution in the case of a non-specified religion company whose nature of business contradicts Islamic Sharia.

Inability to determine a religion of a company whose nature of business contradicts Islamic Sharia: The rule is, as stated earlier, that Muslims are not allowed to deal with prohibited money if they know it is prohibited unless it is the money of people who earn it in a lawful way according to their religion. Hence, the general rule is the prohibition

⁶⁴ *Ibid* [38-40] (emphasis added).

⁶⁵ *Ibid* [40].

⁶⁶ A similar argument has been applied to extract corporate nationality. Young (n 47) 115.

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'⁶⁷, for example, to willingly reveal the identity and faith of the company's controlling owners or to provide an official document that the company is not Muslim.

It is worth noting that the nature of the business cannot be used as sole evidence to prove a religion because a person's acts do not always reflect his religion. For example, a person can be a Muslim but drinks alcohol and this does not take him out of the circle of Islam; it just makes him a sinner.

According to the previous discussion, corporate religion can be determined using the following criteria in Islamic business:

- The first measure is the company's self-determination of religion with a nature of business that complies with that religion.
- If the company does not overly demonstrate a religion then this might form a reason to look behind the legal entity to its controlling members.
- If piercing the veil is not applicable and the nature of the business of a corporation with a non-specified religion contradicts Sharia then Islamic companies should adhere to the rule of prohibited money and not activate the exception without evidence.

Final findings:

- If a corporation is defined as Islamic, it should be subjected to Sharia rules and principles as its personal law.
- An Islamic company whose nature of business complies with Sharia should be treated as a Muslim investor regardless of the religion of its owners unless the company is a sham.
- Lifting the corporate veil can be invoked in the case of a

⁶⁷ Yahyā An-Nawawī, An-Nawawī's Forty (hadith no 33 4th edn, Dārussalām Publishers 2007) 25.

company with non- specified religion in order to look into the religion of its controlling members.

- If the religion of a corporation cannot be specified for any reason then the nature of the business matters. Islamic institutions should not deal with a corporation whose nature of business contradicts Sharia unless it provides evidence that the owners are non-Muslims.
- There are cases where determining the religion of a corporation or its members is not possible. In such cases, dealing with the corporation is left to the Islamic institution to determine; if there is any suspicion regarding the permissibility of its money then it always better not to deal with it according to the rule of dealing with suspicious matters explained above.

Conclusion

Islamic Sharia does not prohibit business between Muslims and non-Muslims. However, it distinguishes between them in terms of control and money. Regarding control, it is preferable to impose some restrictions on non-Muslims to ensure that the business fully complies with Islamic Shariah rules at all times. As for the source of money, the trader's religion determines whether it is allowed in Sharia to accept his money or not. If the money is earned in a lawful way according to the trader's religion, then this money can be accepted by Muslims.

Therefore, recognizing a trader's faith is an important element in Islamic business. Since traders can be both natural and artificial persons, it is important to determine the religion of companies. Testing some theories has resulted in extracting the criteria that help to determine the religion of a corporation. The first measure is the company's self-determination. If the company does not specify a religion then looking behind the legal entity to its controlling members might be a solution. If piercing the veil is not applicable, and the nature of business of a corporation with a non-specified religion contradicts Sharia, then Muslims should not accept the money of this corporation unless evidence has been provided that it is a non-Muslim.

This article has attempted to establish the measures that can be used to extract the religion of a corporation. However, it should be acknowledged that there are some cases where determining the religion of a corporation or its members is not possible.

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