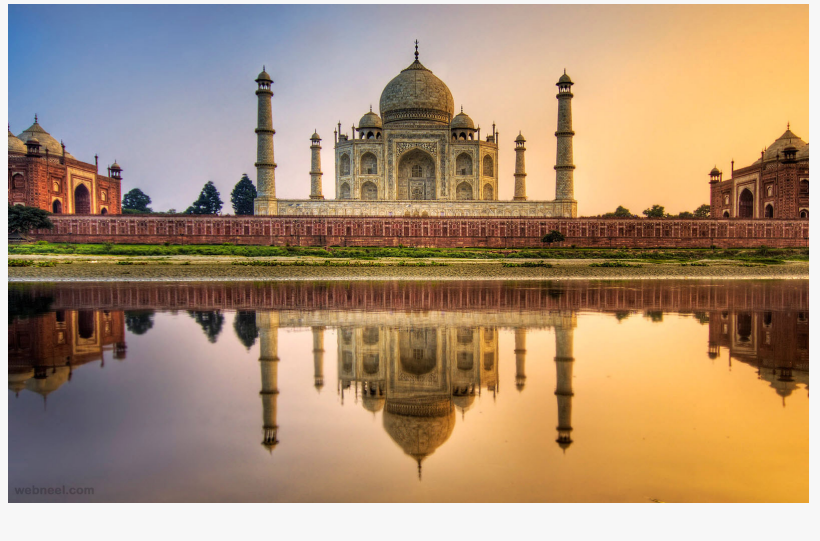


India and Islamic Finance Update 2016

I have never known an Indian not to take a business opportunity.

DUBAI, UAE, April 11, 2016

/EINPresswire.com/ -- I believe there is a tremendous potential for Islamic Finance in India with the amendment of the Banking Regulation Act of 1949. This brief article aims to give a brief snapshot of the current situation of Islamic Finance and Banking in India and is based upon the Report of the Working Group to Examine Financial Instruments Used in Islamic Banking, Reserve Bank of India, Department of Banking Operations and



Development, Central Office, Mumbai, July 2006, various research papers, magazines, and newspaper articles.

Currently, the Banking Regulation Act of 1949 does not allow Islamic Banking in India. Section 21 of the Banking Regulation Act 1949 requires payment of interest.

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This is a business opportunity, which India should not miss!

Camille Silla Paldi

Sections 5 and 6 of the Banking Regulation Act 1949 disallows banks to enter into any profit-sharing and partnership contract. Section 8 forbids murabahah or the buying, selling, or barter of goods. Section 9 of the Banking Regulation Act 1949 prohibits banks to own any sort of immovable property for a period greater than seven years apart from private use, which is in contradiction to Ijarah for

home finance (Majeethia and Bose, 2014:22).

According to the Reserve Bank in India, Section 5(b) of the Banking Regulation Act, 1949 defines 'banking' to mean 'the accepting for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise.' Thus, 'banking' contemplates inter alia, lending of deposits of money from the public. However, in Islamic Banking, the bank accepting deposits of money from the public is not engaged in lending or the pure financial activity in the 'conventional' sense, but is engaged in equity and trade financing, taking the risk of sharing profits or losses as against lending. The Islamic bank is a 'finance' house and business partner rather than a 'loan' house. Therefore, Islamic banking is not a form of 'banking' as defined under the Banking Regulation Act of 1949. In regards to provision 6 of the Banking Regulation Act, 1949, in addition to the business of 'banking,' banks are permitted to engage in business as prescribed under clauses (a) and (b). In terms of Islamic Banking, this form of 'banking' involves active trading, purchase and resale of properties and investment etc., which is not permissible under the Banking Regulation Act, 1949. In reference to providing an Islamic banking window in a branch of an Indian bank, the branches are only allowed to undertake those activities, which are permissible to a banking company in India as per the provisions of the Banking Regulation Act, 1949 and are, therefore, not legally allowed to operate

in India. In addition, there may be constraints in regards to the regulatory aspects of Islamic Banking in terms of the bank rate, maintenance of CRR and SLR, and liquidity surplus and shortage, which involves the concept of interest. Thus, the Banking Regulation Act of 1949 would require amendment before Islamic Banking and Islamic windows are legally allowed to operate in India (Excerpts of the letter written by RBI to the Government of India, July 18, 2007). According to the Legal Opinion from the Legal Department of the Reserve Bank of India, Report of the Working Group to Examine Financial Instruments Used in Islamic Banking, Reserve Bank of India, Department of Banking Operations and Development, Central Office, Mumbai, July 2006, 'the concept of Islamic Banking should be dealt with as a completely different sector with separate norms to address the specific structure and contents of the financial instruments in Islamic Banking.' The Legal Opinion states, 'If the banks in India are to be allowed to do Islamic Banking, appropriate amendments are required in the Banking Regulation Act of 1949 and separate rules and regulations may have to be framed to permit them to do the business in view of the special characteristics of financing they adopt.' Therefore, India may also consider creating a completely separate industry from banking called "Islamic Banking" and promulgate a separate act such as the Islamic Banking Regulation 2016 in order to facilitate Islamic banking in India.

In August 2013, the Reserve Bank of India (RBI) allowed a firm in the southern state of Kerala to operate as a non-banking financial company (NBFC) that follows Islamic principles, which is a small step towards developing Shari'ah compliant finance in India. There are now over 12,000 registered non-banking financial companies registered in India today. Most Shari'ah compliant investment and business in India occurs through the NBFC's. In August 2013, a Shari'ah compliant financial institution was established by Cheraman Financial Services Limited (CFSL) with Kerala State Industrial Development Corporation (KSRDC) being the single largest shareholder in the company, holding 11% shares. CFSL has already received clearances from the Reserve Bank of India, the Security and Exchange Board of India, and the Wakf Board. CFSL will engage in the infrastructure, services, and manufacturing sectors and has an initial capital of INR 1,000 crore (Majeethia and Bose, 2014:20). It has already funded start-up companies and infrastructure projects and floated the Rs2.5bn Cheramun Fund, a private equity fund with a minimum of Rs10 million set by the Securities and Exchange Board of India (SEBI) per investor. It also has a subsidiary, Cheramun Infrastructure, which channels ethical developments to developing world class industrial infrastructure in the state of Kerala (Arab News, 2014).

Thus, Shari'ah compliant finance is occurring on a small scale through non-banking financial companies and law firms in India, however, in order to operate full-fledged Islamic banks and Islamic windows in India, amendment to the Banking Regulation Act 1949 may be required. Alternatively, India may consider creating a completely separate sector for Islamic Banking with separate legislation such as the Islamic Banking Regulation Act 2016. This is a business opportunity, which India should not miss!

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