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بعنوان:

SHARÔÑAH ISSUES IN INTANGIBLE ASSETS

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Abstract

Intangible assets are regarded as one of the most important asset classes for financial institutions, and their importance and consideration is rapidly increasing. There are existing, well established conventional standards on intangible assets (IA); however the SharĒĤah standard on IA is discussed rather minimally. Thus, this paper attempts to discuss the vital issues related to intangible assets: recognition and measurement, financing and trading, and zakat, which represent a grey area for the Islamic finance industry. The research employs critical analysis. It aims to provide clarification of the concept of intangible assets from the points of view of the SharĒĤah as well as an analysis of pertinent SharĒĤah issues on intangible assets. This research found the following: (i) there is an issue of *gharar* in the identification and determination of intangible assets due to non-existence of any physical substance and due to future benefit being a probabilistic matter; (ii) it is generally permissible to finance and trade IA except in the trading and exchange of receivables, options and futures; (iii) zakat is obligatory on intangible assets if the intention is to trade them either at sale price if they are sold or at market price if they are owned by a trader.

Keywords:

Intangible assets, SharĒĤah, Recognition and Measurement, Finance and Tradability, Zakat

SECTION ONE

Introduction

Islamic finance has developed rapidly over the decades with growth and development of array of modern financial products. These products involve tangible and/or intangible assets as their underlying. A tangible asset simply refers to any asset that is physical in nature; while

an intangible asset refers to any asset that does not exist physically. Despite the intangibility nature of the intangible asset, their utilisation in the financial activities has proliferated. Due to that, intangible assets are regarded as one of the important asset classes for financial institutions. Their importance is made conspicuous by the twin phenomena of globalization and liberalization.

This paper thus aims to provide clarity to the concept of intangible assets from SharĤĤah and analysing pertinent SharĤĤah issues on this type of assets. It refers to both classical and contemporary Islamic jurisprudence literature in understanding and analyzing the issues discussed. It also looks into fatwas, legal books, resolutions, standards, and other related literature.

This paper is organized into four main sections: the first section provides a brief introduction to the paper; the second section continues with an explanation of legality of intangible assets from the perspectives of SharĤĤah, and AAOIFI SharĤĤah Standards. The third section analyses the SharĤĤah issues related to intangible assets, specifically the issues pertaining to quantification of intangible assets; the tradability of intangible assets; and *zakĤĤ* payment on intangible assets. The fourth section concludes the paper and provides some brief parameters for the application of the concept of intangible assets in Islamic finance.

SECTION TWO

Intangible Assets from the SharĤĤah Perspective

The discussion on intangible assets from the SharĤĤah perspective is initiated with the deliberation of the concept of *mĤĤ* (property). The discussion will then be followed by the examination of types of *mĤĤ*, the SharĤĤah characterization and ruling of intangible assets.

The discussion on the concept of *mÉl* in SharĤĤah is important as to determine whether intangible assets can be categorized as *mÉl* or otherwise.

The concept of *mÉl*

MÉl is defined literally as anything owned (al-FayruzabÉdĤ, 1995; Ibn ManĤĤr, 1994). Technically, classical jurists have given various meanings of *mÉl*. The definitions vary from one another according to different juristic approaches to the concept (Islam, 1999). Basically, there are two major views on the definition of *mÉl*: the prevailing ĤanafĤ view and the view of the majority of jurists.

a) Hanafis' View

According to the prevailing view of the ĤanafĤ school, *mÉl* is limited to something that has a physical feature. Thus, whatever which does not have a physical feature, such as usufructs and rights, are not regarded as property. This view was put forward by many ĤanafĤ jurists, amongst them are al-SarakhsĤ (1993, 11:79, 71:60), Ibn Nujaym (n.d, 5:277) and Ibn ĤAbidĤn (1992, 4:501).

Ibn ĤAbidĤn in explaining ĤanafĤ's stance on this matter states that property is something that humans instinctively covet and can be kept for a period of time. According to the prevailing view of the ĤanafĤ school, *mÉl* should fulfil the following characteristics:

- a) It has physical features;
- b) It can be kept for a long period;
- c) It can be benefited from ;
- d) It is of benefit to mankind.

Hence, anything that does not have physical features, such as usufruct (*manfaĤah*) and right (*Íaqq*), is not considered property, based on the classical majority view of the ĤanafĤ school. As a consequence of this definition intangible assets are excluded from being classified as property.

However, there are some ĤanafĤ jurists who are of the view that property is not limited to tangible things only but should include intangible, such as usufruct. Al-KÉsÉnĤ (1986, 7:385) clearly states that, "*MÉl* covers the corporeal (*Ĥayn*) as well as usufruct (*manfaĤah*)."

b) Majority Jurists's view

The majority of jurists are of the view that *mÉl* includes tangible and intangible assets. This is evident from their discussion on the concept of *mÉl*. The MÉlikÊ jurist al-QÉÏÊ ÑAbd al-WahhÉb (n.d, 2:271), for instance, defined *mÉl* as anything that can be benefited from by custom and accept consideration (Ñiwad). Al-ZarkashÊ (1982, 3:222), one of ShÉfiÑÊ jurists, defined *mÉl* as anything that can be benefited from it either from *a`yÉn* (corporeal matters) or from *manÉfiÑ* (usufructs) itself. Ibn QudÉmah (1994, 2:5), one of Hanbali jurists, mentioned *mÉl* as anything that can be benefited from it in non-necessity situation.

From the definitions given, it can be concluded that the required criteria for considering something to be *mÉl* or property in the view of the majority jurists are as follows:

- a) People consider it as a source of wealth (*tamawwul*).
- b) It can be benefited from the SharÊÑah point of view.
- c) It can be compensated (*al-iÑtiyÉd*).
- d) It has value

Based on the above, it can be concluded that definitions given by the majority of jurists and some ×anafÊ jurists are inclusive in a way that they do not limit *mÉl* to something that has physical features. Accordingly something *maÑnawÊ* (intangible) can thus be considered as property if it fulfils all criteria.

This view of the majority classical Muslim jurists is adopted by contemporary scholars such as al-NashmÊ (1988), al-UthmÉnÊ (1988), al-ZuhaylÊ (1988), al-BÉÏÊ (1988) and Ali (2012). Internationally recognised SharÊÑah advisory institutions such as IFA-OIC (IDB & IFA, 2000) and AAOIFI (2012) have also shared and adopted the majority view of the classical Muslim jurists. In both of these institutions, they have resolved in Resolution no. 43 (5/5) of IFA-OIC and Article no 3/3/3/1 of AAOIFI Shari`ah Standards respectively, that intangible assets are property which inherent with monetary value that entitle it to legal protection and hence any violations is punishable.

The ensuing section discusses the types of property as in Islam each types of property entails its own rulings and conditions which implicates the dealings and usage of the property whether it is tangible or intangible.

Types of *MÉl*

Property or *mÉl* can be divided into many categories based on different considerations, among the categories related to the issue of intangible assets are:

- a) From the aspect of sharing similarities or not among each property, property is divided into two which are comparable property (*mÉl mithlÊ*) and non-comparable property *mÉl qÊmÊ*. *MÉl mithlÊ* is a property that is available in market and have total similarity with the one on its type or have slight difference until it is not taken into account by the traders or the people. One example of *mÉl mithlÊ* is a large amount of books or a specific brand of hand phones that can be easily replaced in the event of damage as they available in market. *MÉl qÊmÊ* is a property that is not available in market such as Information Technology materials that have been discontinued, therefore cannot be replaced in the event of damage.
- b) From the aspect of ownership, property is divided into *mÉl khÉÎ* and *mÉl ÑÉm*. *MÉl khÉÎ* is a property that is specifically owned whether it is individually owned or jointly owned or shared. An example of *mÉl khÉÎ*, is a house owned by a specific person. On the other hand, *mÉl ÑÉm* is public property that is not owned by individuals or certain groups. Examples of this type are roads, *waqf* property, water in the river, and many others.
- c) From the aspect of recognition and protection by Islam or otherwise, property is divided into *mÉl mutaqawwam* and *mÉl ghayr mutaqawwam*. *MÉl mutaqawwam* is a possessed property and Islam permit people to benefit from it such as a car that belongs to Ahmad. *MÉl ghayr mutaqawwam* is a property with no owner or Islam does not permit people to benefit from it, for example, wine or carcass.
- d) From the aspect of ability to grow or not, property can be divided into *mÉl nÉmÊ* and *ghayr nÉmÊ*. *MÉl nÉmÊ* is a property that can grow or can be invested to grow on its own. Example of property that increases its value without investment is gold and silver, or people who make the property to grow like business items. *MÉl ghayr nÉmÊ* is a property that does not grow or not available for investment purposes like foods, shelters and other which are basic needs for human.

These categories are directly related to the issue of intangible assets as comparable property (*mÉl mithlÊ*) and non-comparable property (*mÉl qÊmÊ*) are related to the issue of measurement. The *mÉl ÑÉm* and *mÉl nÉmÊ*, on the other hand, are related to the issue of

zakât. Whereas *mâl ghayr mutaqawwam* is related to the issue of recognition of income generated from non-halal or mixed intangible assets.”

Shar’i characterization of Intangible Assets

Based on the prevailing view of the majority jurists, that usufructs are recognized as property, the following section discusses the nature and Shar’i ruling on intangible assets, also known as abstract rights. Although the current manifestations of intangible assets were not present during the era of classical Islamic jurisprudence, the classical fiqh literature discussed certain intangible property rights, such as easement rights (*’iqaq al-irtifâq*) and the right of pre-emption (*’iqaq al-shuf’ah*).

The Definition of Intangible Assets

AAOIFI, in its Shar’i Standard 42, defines intangible assets as:

“property rights that apply to intangible matters, entitling their owners to the exclusive right to any proceeds arising from them” (AAOIFI, 2012, Article 3/3/1).

On the other hand, IFA-OIC, in its Resolution no. 43 (5/5), chose to clarify the concept by citing the most important examples, saying:

“Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by Shar’i and should not be infringed” (IDB & IFA, 2000: 89)

Types of Intangible Assets in the Shar’i

Civil laws, regulations and accounting standards have divided intangible assets into assets that can be independently distinguished, such as copyright, and those which cannot be distinguished from their sources and cannot be separated from the company, or from one another, or even from other assets, such as experience and skills of employees, sales services, and efficiency in management. On the other hand, their classification in Shar’i research

varies according to the objective of the research about these assets. The most prominent classifications worth mentioning here are classifications according to the authority granting them consideration and according to their types .

a) Classification According to the Authority Granting Them Consideration

Jurists have divided abstract rights, according to the authority of granting them consideration, into two categories :

1. Legal rights established by the SharĤĤah without the intermediary of *ijtihĤd*. They are established for their possessors by an explicit text or the implication of a text; for example, the right of pre-emption, rights of inheritance, the right to maintenance, etcetera (al-UthmĤĤ, 2003:80).
2. Customary rights are legal rights that are established for their possessors by virtue of custom and practice. They are legal rights in that the SharĤĤah has recognized the authority of custom and practice in general; however, the primary justification for these particular rights comes from standard practice rather than any specific SharĤĤah text; for example, easement rights such as drainage, passage, etc., and the right step to down from a job in favour of another for compensation (al-UthmĤĤ, (2003:84).

b) Classification According to the Types

AAOIFI is of the view that intangible rights should be divided based on their types. The relevant AAOIFI SharĤĤah Standard 42 (2012) states:

“Types of intellectual rights: There are various types of moral rights, including: trade name, commercial title, trademark, commercial license, intellectual property, and artistic, manufacturing, and innovation rights.”

It should be noted that, at the beginning of the modern juristic effort to identify the theoretical basis for determining the status of these rights in the SharĤĤah, they were called “literary rights”; then they were called “creative rights”. One of those who suggested that the name should be changed was MuĤĤafĤ al-ZarqĤ (1999:32), who pointed out that the term “literary rights” is too limited, being inappropriate for some members of the category, such as trademarks and industrial inventions, commercial titles and other intangible rights that have nothing to do with literary effort.

The SharĖĤah Ruling on Recognition of Intangible Assets

This section delineates the SharĖĤah rulings on abstract rights, based upon the texts of the Quran and the Sunnah, and the statements of the Righteous Predecessors (*al-salaf al-ĤĖlĖĤ*), as well as Islamic legal maxims and principles of *uĤĖĤ al-fiqh* that give consideration to this type of asset.

a) Evidence from the Quran and Sunnah Relevant to Intangible Assets

Verses from the Quran that affirm the right of ownership and the obligation to preserve it from any transgression represent general evidence in respect to intangible assets. Additional evidence exists in verses that deal with rights associated with intangible assets or abstract moral rights, such as the right to blood money in exchange for waiving the right to retribution against the murderer, as mentioned in Allah’s statement:

“It is not for a believer to kill a believer unless [it be] by mistake. He who has killed a believer by mistake must set free a believing slave, and pay blood-money to the family of the slain, unless they remit it as a charity...”
(al-Qur’an, 4:92).

Another example is the right of inheritance, mentioned in Allah’s statement in ØĖrah al-NisĖĤ’, verse 11: *“Allah charges you concerning [the inheritance for] your children...”*. Although the SharĖĤah has prohibited exchanging these two rights for wealth, it has recognised them as moral financial rights .

As for the Sunnah, the most relevant evidence on moral rights is the followings:

First: the right of pre-emption to a co-owner partner or neighbour. Pre-emption has been defined in Islamic legal terminology as *“the right to claim ownership of a sold immovable object, thus taking it from the buyer (with or without his consent) in exchange for its price and any expenses that he paid”*; or *“a right established for an old partner over a new partner, to take ownership of his share with or without his consent, with fair compensation”* (WizĖrat al-AwqĖĤ wa al-Shu’ĖĤn al-IslĖĤmiyyah, (1992, v26, p136,).

Pre-emption has been affirmed in the hadith of Jabir, who said that the Messenger of Allah (peace be upon him) only decreed pre-emption in [joint property] that has not been divided; however, when boundary lines are established and paths are laid down, there is no pre-emption (al-Bukh  r  , 1422AH, 3:87, *  ad  th* no. 2257).

He also reported that the Messenger of Allah (peace be upon him) decreed pre-emption in every joint ownership, [such as] a dwelling or an orchard. It is not lawful for [a partner] to sell [his share] until his partner gives his consent. If [the other partner] wills, he may buy it or abandon it if he wills. If [a partner] sells it without getting the consent of [his partner], [his partner] has the greatest right to it (Muslim, 1995, 6:38, *  ad  th* no.1608).

Second: The *  ad  th*, "Do not cause harm or reciprocate it" (Malik, 1412AH, 2:467, *  ad  th* no. 2895). AAOIFI has regarded this *  ad  th* as the most important text on intangible assets because it has prohibited infringement of any rights possessed by a person, whether that right is tangible or intangible .

b) Narrations from the *Salaf*

Among the narrations from the Muslim predecessors (*salaf*) that support the consideration of intangible assets is the following:

"It is reported that a man wanted to sell his house; when a buyer expressed his intention to purchase it, the owner said: "I will not turn the house over to you until you also purchase from me the proximity to the neighbour." The buyer said: "Who's the neighbour?" The owner said: "Sa    d ibn al-     ." They then began negotiating an increase in the price. The buyer said: "Have you ever seen anyone buying or selling proximity to a neighbour?" The owner replied: "Would you not be willing to pay for proximity to a neighbour who, when I treated him badly, treated me well; and who, when I treated him discourteously, was forbearing with me; and who, when I had difficulties, eased my burden?" News of this reached Sa    d ibn al-     , who sent him 100,000 dirhams" (al-Salm  n,1424AH, 3:492).

c) The Consideration of Custom and Things as They Are

Classical Muslim jurists were of the view that custom and the dealings among people are evidence for considering something as property. ImÉm MÉlik (Sahnun,1994, 3:5) mentioned: *“If people were to accept leather as a medium of exchange among themselves, I would dislike that it be sold on deferment”*, namely the rules of *ribÉ al-faÈll* would apply to it just as they do to gold and silver coins. Whether people consider something as property was used by jurists as a criterion for deciding if something is considered property by the SharÉÑah. They said: *“Qualifying as property is established by the public, or a portion of them, treating a thing as property”* (Ibn NÓbidÉn, 1992, 4:501) Therefore, they considered custom as evidence for considering something as property. One of the legal maxims that supports this view is *“Custom is an arbiter.”* Another legal maxim that supports the recognition of intangible assets as a form of property is the maxim, *“The decision of the ruler ends legal controversy”* (al-×amawÉ, 1985, 3:113) Although the ×anafÉ opinion may be recognized as a legitimate opinion in the classical legal dispute on the definition of property, the recognition by governments and their laws that intangible assets are property and have financial value settles this dispute in favour of the majority opinion, especially when there is no difference from one jurisdiction to another on this matter. They all grant legal recognition to intangible assets as a form of property and grant them protection on that basis. IFA-OIC called attention to this point in its resolution on the subject, stating:

“Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by SharÉÑah and should not be infringed” (IDB & IFA, 2000: 89, Resolution no. 43 (5/5)).

al-Khafif (1996: 58) further clarifies this point by saying:

“Some jurists have explicitly stated that qualifying as property is an attribute of things that is based solely upon people treating them as property and as the subject of their transactions; and that would not be so unless their need [for those things] called them to do so. They incline to those things by their nature and because it is possible to establish control over them to the exclusion of other parties’ claims upon them. It is not necessary that such things be capable of being saved for a time of future need. It is sufficient that it be possible to gain access to them when they are needed. This attribute is found in benefits as well as many other rights. When it is

present in something, then it qualifies to be defined as property, based upon people's customs and transactions".

In contemporary Shar'ĤĤah research, the *fiqh* academies and bodies supporting Islamic financial institutions have recognised intangible assets, such as business name, corporate name, trademark, copyrights and patents as property, and have approved their exchange for property.

The point of the preceding discussion is that intangible assets are property that are recognised by the Shar'ĤĤah, they deserve legal protection and it is permitted, in general, to exchange them for consideration.

Intangible Asset in Accounting and Auditing Organization of Islamic Financial Institution (AAOIFI) Shar'ĤĤah Standards

Intangible asset is not mentioned in AAOIFI's Accounting Standards. However, AAOIFI has issued a Shar'ĤĤah Standard 42 on "Financial Rights and their disposition" in 2012. Though the Standard is not dedicated to intangible asset, a considerable part of it is directly related to it. The following is a brief summary of issues related to intangible assets in the AAOIFI Shar'ĤĤah Standards:

- a. Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by Shar'ĤĤah and should not be infringed (AAOIFI, 2012, Article 3/3/3/1).
- b. Disposing of intangible rights and transferring any of them for monetary recompense is allowed when it is free of ambiguity, fraud and deception. That is because they are considered financial rights (AAOIFI, 2012, Article 3/3/3/2).
- c. Commercial license: It is a right given by the authority to certain businessmen to engage in specified activities. The license holder is allowed to dispose of it with or without recompense, except when it is explicitly prohibited by law (AAOIFI, 2012 Article 3/3/3/3).
- d. Financial rights can be acquired by contracts, stipulated conditions, inheritance, or court order. At times, they are the result of precedence when all those

SharĖĖNah conditions are met which are required for any cause resulting in a right (AAOIFI, 2012, Article 3/4).

The Standard has also stated some intangible assets discussed in the classical books of *fiqh*. Among these intangible assets are:

- a) **Easement rights (*Īqq al-irtifĖq*)** which means the established right of one real estate property over another. For instance, watering right, the right of watercourse, the right of rivulet, and the right to passage (AAOIFI, 2012, Article 5/1).
- b) **The right of pre-emption (*Īqq al-shufĖNah*)**: It is the right to take possession of the sold property from the buyer at its sale price, even without his consent. The right of pre-emption is established for the partner in property or for a neighbour (AAOIFI, 2012, Article 7/1).
- c) **The right of vacating the premises (*Īqq al-khuluww*)**: Vacating the premises is a right based on the right of tenant to stay in the property or business place (AAOIFI, 2012, Article 8).

The standard has also set some condition for compensation for rights (*al-iĖĖtiyĖĖ ĖNalĖ al-Īqq*) where it allows all kinds of compensations except of what causing harm or contravening SharĖĖNah principle.

As for the methods of disposing of rights, it states that (AAOIFI, 2012, Article 11/1 and 11/2):

“the starting principle for all financial rights is that they accept disposition, and the owner of a right has the absolute right to dispose of his right in accordance with the principles and provisions of the SharĖĖNah, especially the following:

- a. Rights should not be used highhandedly.*
- b. The public interest is given priority in case the use of property rights clashes with it.*

Subject to consideration of what has been stated in this standard, the ways in which rights can be legally disposed include: all kinds of exchange contracts, donations, rebates, partnerships, and assignments of rights; Standard 7 is to be observed in case of assignment.”

The clauses of AAOIFI SharĤĤah Standard stated above are directly related to the issue of intangible assets from the SharĤĤah perspective especially the issues of recognition, measurement, valuation, tradability and *zakĤĤ* payment, therefore, they represent the platform for our next critical analysis of SharĤĤah issues and a term of reference when it comes to make a SharĤĤah opinion.

SECTION THREE

Analysis of SharĖh Issues in Intangible Assets

Since there is no Islamic accounting standard on intangible assets, this section will analyse some Shar'iah issues related to intangible assets AAOIFI Shar'iah Standard 42. The issues to be analysed are: recognition and measurement, financing and tradability and *zakât* obligation.

Some Islamic accounting experts and even SharĒĒh scholars argue that accounting standards, including the standard on intangible assets, are purely technical tools for assessing and measuring these assets; therefore, the key underlying principles of these standards are in general acceptable from the SharĒĒh perspective and are to be adopted by Islamic financial institutions to achieve standardisation and facilitate competition in the global arena. However, other scholars argue that the key underlying principles of conventional accounting standards reflect the conventional ideology, which is not SharĒĒh compliant in principles and objectives; therefore it is an obligation for SharĒĒh experts to set a SharĒĒh based standard of accounting. al-UthmĒĒnĒ (AAOIFI, 2010:ط) defended this view in the introduction of AAOIFI’s SharĒĒh Standards by saying:

“Islamic banking differs from conventional banking in its principles, perceptions, and products. To make transactions SharÊÑah compliant, these differences must be reflected clearly in the treatment calculations. Since the criteria of traditional accounting do not meet this purpose because it is based on fundamental which is different from that of Islamic banking, it was necessary to have accounting standards for Islamic financial institutions different from their conventional counterparts.”

a) SharĤĤah Issues on the Recognition of Intangible Assets

With regards to the recognition of intangible assets, two main SharĤĤah issues may arise. The first is the issue of identification and determination of the intangible asset because of the non-existence of its physical substance; and the second is the probability of its future benefits, which may raise the issue of excessive uncertainty (*gharar fĤĤish*).

As for the first issue, namely, the issue of identification and initial recognition of the intangible asset because of the non-existence of its physical substance, though there exist an established *fiqhĤĤ* opinion rejecting the consideration of usufruct as property that makes intangible assets not considered as well, contemporary scholars, AAOIFI and IFA-OIC have adopted the definition of property (*mĤĤl*) that includes usufructs and services. They have also considered intangible assets as real property and the IFA-OIC stated above has clearly established this point where it states that:

“Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by SharĤĤah and should not be infringed” (IDB & IFA, 2000: 89, Resolution no. 43 (5/5)).

AAOIFI emphasised on the IFA-OIC resolution by stating that:

“Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by SharĤĤah and should not be infringed” (AAOIFI, 2012, Article 3.3.3.1).

Therefore, although there are those who claim that identification and determination of intangible asset as property raises SharĤĤah issues, they represent a small segment of scholars compared to the vast majority, and their arguments are not as strong and rational as the arguments of the majority of scholars. Furthermore, the business reality is that such assets are recognised as possessing financial value.

With regards to the issue of probability of expected future economic benefits, which are quantified based on estimation, the main SharĤĤah issue is the possibility of the existence of excessive uncertainty (*gharar fĤĤish*), which is one of the prohibited elements in Islamic commercial transactions. International Shari’ah Research Academy for Islamic Finance (ISRA) (2010:131) has defined *gharar* as:

“Something for which the probability of getting it and not getting it are about the same. Some said: something whose acquisition is uncertain and its true nature and quantity are unknown.”

The prohibition of *gharar* can be deduced from the Quran in SĤrah al-NisĤ’, verse 29:

“O you who believe, do not consume one another’s wealth wrongfully; rather, let there be trade by mutual consent; and do not kill one another, for Allah is merciful to you.”

There is also the ĤadĤth reported by AbĤ Hurayrah: *“The Messenger of Allah forbade sales of pebble and sales that involve gharar”* (Muslim, 1995, 5:127, ĤadĤth no. 1513). The issue of concern here is whether the probability of expected future economic benefits that is based on estimation is considered excessive uncertainty (*gharar fĤĤish*), and is therefore prohibited, or is it considered light uncertainty (*gharar yasĤr*) that is tolerated by the SharĤĤah. By reference to the IAS 38 standard, we can identify measures proposed by the standard to increase the level of probability of expected future economic benefits. The Standard has set conditions strengthening the level of probability such as:

“An entity shall assess the probability of expected future economic benefits using reasonable and supportable assumptions that represent management’s best estimate of the set of economic conditions that will exist over the useful life of the asset” (IAS 38:22)

and

“An entity uses judgement to assess the degree of certainty attached to the flow of future economic benefits that are attributable to the use of the asset on the basis of the evidence available at the time of initial recognition, giving greater weight to external evidence” (IAS 38:23).

The Standard also proposed to measure it at cost in the early stage of recognition to guarantee an accurate recognition. The question to be answered is does the SharĤĤah recognise a property based on this level of probability of future economic benefit?

By examining classical *fiqh* literature we can find two general views:

First view: Any consideration of property or right based on future probability is prohibited. The supporting evidences of this view is that, **first:** one of the main objectives of SharĤĤah with regards to property (*mĤĤl*) is to guarantee certainty and stability (*thabĤĤt*); **second:** one of the five leading legal maxims stipulates that “Certainty is not to be overruled by doubt” (*al-YaqĤĤn la yazĤĤl bi al-shakk*), this is in addition to other legal maxims that indicate reliance on certainty such as “A thing is not considered to exist before its existence” (*LĤĤ yathbut Ĥukm al-shay’ qabl wujĤĤdih*), “Something that will probably occur cannot be made similar with something that has already occurred” (*al-MutawaqqaĤ lĤĤ yujĤĤnal ka al-wĤĤqiĤ*), “The essential nature of transient attributes is non-existence” (*al-AĤĤ fĤĤ al-ĤifĤĤt al-ĤĤriĤah al-Ĥadam*).

Hence, whatever future economic benefit that is probable should not be recognised until it exists. This is to ensure the protection of property and avoid disputes among contracting parties.

Second view: The achievement of certainty is the outmost objective of Islamic law, however this does not mean that Islamic law rejects applying probability. This is because the consideration of preponderant presumption (*ghalabat al-Ĥann* or *al-Ĥann al-rĤĤjiĤ*) in SharĤĤah rulings and occurrences has been present throughout the history of Islamic law. Among the evidences defending this view is, **firstly**, the consideration of solitary narrations (*akhbĤĤr ĤĤĤĤd*) in making SharĤĤah rulings. **Secondly**, the consideration of probability (*Ĥann* and *ghalabat al-Ĥann*) in making *ijtihĤĤd*. **Thirdly**, there are a set of Islamic legal maxims supporting the consideration of probability, among them: “Future acquisition is given the ruling of present property” (*TanzĤĤl al-iktisĤĤb manzilat al-mĤĤl al-ĤalĤir*), “Something close to another takes its ruling” (*MĤĤ qĤĤraba al-shay’ aĤĤĤ hukmahu*), “Consideration is given to the predominant and widespread, not to the rare” (*al-Ĥibrah li al-ghĤĤlib al-shĤĤ’iĤ lĤĤ li al-nĤĤdir*), “Rare possibilities are not to be considered” (*al-IhtimĤĤlĤĤt al-nĤĤdirah lĤĤ yultafat ilayhĤĤ*). **Fourthly**, the Resolution of Shariah Advisory Council of Bank Negara

Malaysia in its 71st meeting dated 26-27 October 2007 affirmed the SharĖĖNah compliance of recognition based on probability.

After examining the two approaches and their justifications and evidences, we are in favour of considering the probable future economic benefits of intangible assets, on condition that they are based on reasonable and supportable assumptions and assessed using judgement based on the best evidence.

b) SharĖĖNah Issues on the Measurement of Intangible Assets

Standard IAS 38 states: “*Intangible assets such as these may be recognised either at fair value or nominal value. This is an accounting policy choice*” and: “*If an entity chooses not to recognise the asset initially at fair value, the entity recognises the asset initially at a nominal amount.*” From the above mentioned provision of the measurement, we can conclude that the measurement is based on expert evaluation that is subject to revisions and adjustments and even exceptions, or it can be concluded that the above provisions are indications of the flexible approach of measurement. Another indication of relativity and flexibility of the method of measurement is that countries’ preferences and exceptions added to the standard.

With regards to the SharĖĖNah, the initial ruling on procedural and technical measure is the permissibility condition that the person or the institution exhausts its utmost effort in measuring assets. The *ĪadĖĖth* of the Prophet that says: “أَنْتُمْ أَعْلَمُ بِأَمْرِ دُنْيَاكُمْ” “*You know more about your worldly affairs*” (Muslim, 1995, 8:100, *ĪadĖĖth* no.2363) is a clear indication of the consideration of experts in exercising their *ijtihĖĖd* on measurement issues. Muslim jurists stressed this approach when it comes to *ijtihĖĖd* in measuring or deciding the level of application. ImĖĖm MĖĖlik, for instance, uses repeatedly the term:

”ذَلِكَ عَلَى وَجْهِ الْإِجْتِهَادِ مِنَ الْإِمَامِ، لَيْسَ عِنْدَنَا فِي ذَلِكَ أَمْرٌ مَعْرُوفٌ إِلَّا الْإِجْتِهَادُ مِنَ الْإِمَامِ

“*This is to be decided by the ruler’s ijtiĖĖd; we have no determined position on that other than leaving it to the ruler’s ijtiĖĖd,*”

and

”ذَلِكَ إِلَى الْإِمَامِ يَرَى فِيهِمْ رَأْيَهُ

“*It is up to the ruler to decide about such persons.*” (Sahnun, 1994, 1:502)

This means giving authority to the ruler, which includes Islamic institutions and standard setting bodies, to decide on the matter. Al-ShÉfiÑÊ in discussing evaluation of the compensation for game that has been killed during *Íajj* by a pilgrim in a state of *íÍrÉm*, if it has no similar animal, the matter is referred to the *ijtihÉd* of experts. He says:

“For those which are not lawfully edible, determination shall be made on the basis of precedent and analogy by paying their price to the owner. It is agreed [among the scholars] that the decision as to the price should be on the price of the game in the place and the day [it was killed], for [the prices] vary from one place to another” (al-ShÉfiÑÊ, 1961:298).

He also discussed the disagreement of judges on the qualified person for testimony by saying:

“Thus two judges may take a decision in which one of them accepts [a witness] while the other rejects him. This is [an example] of disagreement, but each judge has fulfilled his duty” (al-ShÉfiÑÊ, 1961:299).

Contemporary scholars have even allowed the use of conventional tools to measure Islamic products. AAOIFI, for instance, in its standard 27 on benchmarking, allowed Islamic banks to use LIBOR (the London Inter-Bank Overnight [Interest] Rate) to calculate their mark-ups on *murÉbaÁah* sales and their profits on all their financing instruments.

c) Shariah Issues on Tradability of Intangible Assets

The IFA-OIC and AAOIFI have set a number of general rulings and parameter for the tradability of the intangible assets. The IFA-OIC in its Resolution no 43(5/5) (IDB & IFA,2000:89), for instance, stated that: *“It is permitted to sell a business name, trademark for a price in the absence of any fraud, swindling or forgery, since it has become a financial right.”* AAOIFI gave more specific conditions for trading an intangible asset. They first differentiated between intangible rights established to the respective people to avoid harm such as the right of pre-emption (*Íaqq al-shufÑah*) where the person is permitted to dispose it but not to sell it, whereas the intangible rights and assets established initially as legitimate rights such as the right of vacating the premises (*Íaqq al-khuluww*) and easement rights (*Íaqq al-irtifÉq*) can be traded and exchanged. They mentioned some rulings on compensation for rights (*al-iÑtiyÉd ÑalÉ al-Íaqq*) such as the prohibition of selling rights in the form of

options. They also set some general condition for the disposal of right under the title of “Method of disposing of rights”, these conditions are:

- a. *“The starting principle for all financial rights is that they accept disposition, and the owner of a right has the absolute right to dispose of his right in accordance with the principles and provisions of the SharĤĤah, especially the followings:*
 - i. *Rights should not be used highhandedly.*
 - ii. *The public interest is given priority in case the use of property rights clashes with it.*
- b. *Subject to consideration of what has been stated in this standard, the ways in which rights can be legally disposed include: all kinds of exchange contracts, donations, rebates, partnerships, and assignments of rights. Standard 7 is to be observed in case of assignment” (AAOIFI, 2012, Article 11/1 &11/2).*

Some scholars proposed some parameters to trade and exchange intangible assets. Al-Qurah DĤghĤ (2009) for instance proposed the following parameters:

1. The right should be established at present and not expected in the future;
2. The right should be established initially as legitimate rights and not to avoid harm;
3. There is a possibility to transfer rights from a person to another;
4. The right should be specified and does not entail excessive uncertainty or ambiguity; and
5. The right should in the custom the character of wealth with regards to value and tradability.

With regards to the tradability of intangible assets, two major SharĤĤah issues are of concern:

- (i) The first one in trading and exchanging intangible assets such as receivables, options and futures. With regards to SharĤĤah related standards and resolutions, AAOIFI SharĤĤah Standard mentioned above clearly prohibits trading option as it stated that: *“Recompense, through sale, etc., is not allowed for rights in the form of options”* . IFA-OIC in its resolution of 1992, asserts that:

“Option contracts as currently applied in the world financial markets is a new type of contract which do not come under any one of the Shariah nominate contracts. Since the subject of the contract is neither a sum of money nor a utility or a financial right which may be waived, the contract is not permissible in SharĖĤah” (IDB & IFA, 2000:131, Resolution no. 63/1/7).

El Gari (1993) who argued in favour of introducing options trading on other grounds concurs with this viewpoint. He concludes that:

“The said right does not have a tangible and material quality, but is indeed intangible that may not be sold or bought, considering that it is not a property. It is only similar to a preemptive right (shofaah, right of custody and guardianship) all of which, while allowed in shari'ah are intangible rights that are not allowed to be sold or relinquished against monetary consideration.”

Different view was hold by The Islamic Instrument Study Group of the Securities Commission Malaysia as it finds call warrants being acceptable because it:

“has the characteristics of an asset which satisfies the concept of “Īlaqq mĖlĖ” and “Īlaqq tamalluk” which is transferable based on the majority of fuqahĖ’ views other than mazhab ×anafĖ. Therefore this right can be classified as an asset and can, therefore, be traded. The famous fuqahĖ’ can also accept this right as an asset on the basis that conventional wisdom is something you can possess and benefit from” (Obaidullah, 1993:76).

Same SharĖĤah issue is to be said on the issue of receivables based on *murĖbaĖah* and *salam* where we have the majority of scholars including AAOIFI, IFA-OIC, International Fiqh Academy Muslim World League (IFA-MWL and Middle East and North Africa SharĖĤah Councils (MENA) prohibiting trading receivables based on *murĖbaĖah* and *salam* considering them as a sale of debt, whereas Malaysia scholars differentiate between debt based on sale where it is permissible to trade them in secondary market and debt based on pure loan (*qarĖ*) where it is prohibited to trade them in secondary market.

The researchers though considering the matter an *ijtihād* issue due to the non-existence of explicit text, they are not in favour of trading these assets in secondary market. This is preferred as the evidences prohibiting tradability are weightier in our opinion than those allowing. Furthermore, the impact of opening the door for such transaction will have a negative repercussion on the financial market.

- (ii) The second issue is the issue of trading intangible assets which contain prohibited elements, either bearing interest or mixed with non Shar'iah compliant assets. The IAS 23 stated that:

“If payment for an intangible asset is deferred beyond normal credit terms, its cost is the cash price equivalent. The difference between this amount and the total payments is recognised as interest expense over the period of credit unless it is capitalised in accordance with IAS 23 Borrowing Costs”¹ (IAS 23.32).

This means that there is a price for the intangible asset plus the interest over the period of credit and there is a Shar'iah non-compliant portion in the intangible asset or in the company holding that intangible asset.

Muslim Jurists agree on the prohibition of trading Shar'iah non-compliant assets such as gambling software. They have also agreed that the Shar'iah non-compliant portion related to the intangible asset is prohibited and needs to be purified, however they differ on the benchmark that make a mixed company Shar'iah non-compliant.

The Securities Commission Malaysia in its revised screening methodology has adopted a two-tier quantitative approach which comprise of quantitative assessment that apply the business activity benchmarks and the newly introduced financial ratio benchmarks. Apart from that, the qualitative assessment at the same time is retained. The newly adopted financial ratios are as follows (Securities Commission, 2013, Mohamad, S. et al., 2014):

i. Cash over Total Assets

Cash will only include cash placed in conventional accounts and instruments, whereas cash placed in Islamic accounts and instruments will be excluded from the calculation.

¹ Borrowing costs are interest and other costs that an entity incurs in connection with the borrowing of funds.

ii. Debt over Total Assets

Debt will only include interest-bearing debt whereas; Islamic debt/financing or sukuk will be excluded from the calculation.

Both ratios, which are intended to measure *ribÉ* and *ribÉ*-based elements within a company's balance sheet, must be lower than 33%. Table 1 shows a comparison between revised SharÉÑah screening methodology and previous SharÉÑah screening methodology.

Table 1: Comparison between revised SharÉÑah screening methodology and previous SharÉÑah screening methodology

	Previous SharÉÑah Screening Methodology (as from 1995 to Oct 2013)	Revised SharÉÑah Screening Methodology (as from Nov 2013)
Quantitative Assessment		
(i) Business activity benchmarks	<ul style="list-style-type: none">• 5%• 10%• 20%• 25%	<ul style="list-style-type: none">• 5%• 20%
(ii) Financial ratio benchmarks	Not applicable	<ul style="list-style-type: none">• 33%
Qualitative Assessment	Applicable	Applicable

Source: <http://www.sc.com.my>, 2 Nov 2013; Authors' own

The contribution of SharÉÑah non-compliant activities to the overall revenue and profit before tax of the company will be calculated and compared against the relevant business activity benchmarks. The outcome of the revised methodology will be reflected in the list of SharÉÑah-compliant Securities by the SAC effective from November 2013 (Securities Commission, 2012).

AAOIFI in its SharÉÑah Standard 21, al-Rajhi in its Resolution no. 485, and Dow Jones Islamic in its website² have also issued screens for SharÉÑah-compliant companies and businesses. Al-Rajhi stated in its Resolution no. 485 on investment in mixed shares held in 2001 that:³ “*The SharÉÑah committee explains that the report determining the proportions in this decision is based on the ijtiÉd and subject to revision as appropriate*” (al-Rajhi Bank, 2010).

² For further information, please visit: <http://www.djindexes.com/islamicmarket/>

³ The original text is: والهيئة توضح أن ما ورد من تحديد للنسب في هذا القرار مبني على الاجتهاد وهو قابل لإعادة النظر حسب الاقتضاء

d) Shari'ah Issues Related to Financing Intangible assets

As for financing intangible assets IFA-OIC and AAOIFI allow financing these assets if specific conditions such as the absence of any fraud, swindling or forgery are met. Dallah al-Barakah in its twentieth seminar on Islamic economics, on 3-5 Rab' al-Awwal 1422/25-27/6/2001, resolve allowed financing intangible assets and propose appropriate Methods for Financing Intellectual Products at the development phase of the idea and before completion as well as after completion. For financing Intellectual Products at the Development Stage, they allow financing the execution of intellectual work that ends into a product that generates a moral right, either based on Partnership or *mu'ārabah*, in addition to other modes such as *isti'ārah* and *ju'alah* that need in their view further analysis and investigation. With regards to financing intellectual products after completion, they proposed the mode of partnership, lease contract, *murābahah* and *mu'ārabah*. (Dallah al-Barakah, 2001).

e) SharĤĤah Issues Related to *ZakĤĤ* Obligation on Intangible Assets

With regards to *zakĤĤ* obligations on intangible assets, two main issues can be identified: the first one is the SharĤĤah ruling on *zakĤĤ* obligations on intangible assets; the second one is the method of measurement of intangible assets for *zakĤĤ* payment.

i) Shariah Ruling on *ZakĤĤ* obligations on intangible assets

AAOIFI has issued two standards on *zakĤĤ*: The first one is SharĤĤah Standard 35 in 2008 and the second one is Accounting Standard 9 in 1999, however there was no discussion on zakat obligation on intangible assets in the standards. The same can be said for IFA-OIC and IFA-MWL resolutions. The only institution that has dedicated a section in its annual international seminar is Bayt al-ZakĤĤ (the international SharĤĤah institution of *zakĤĤ*) in its Seventh International Symposium held in Kuwait in 1997,⁴ where they dedicated a full section on the issue of *zakĤĤ* obligations on intangible assets. This is in addition to some scholarly writings on the issue.

With regards to Muslim jurists' views on *zakĤĤ* obligations on intangible assets, three opinions can be identified:

First opinion: No *zakĤĤ* obligation on intangible assets. This opinion is adopted by MuĤammad SaĤid RamaĤĤn Al-BĤĤĤ (1997), ᵂassan al-ShĤzlĤĤ (1997) and others. Their argument is that intangible assets though considered property, do not have the element of growth which is one of the conditions of *zakĤĤ* payment. This is based upon the statement of the Prophet (peace be upon him), “*There is no zakĤĤ upon a Muslim on his slave or his horse*” (Muslim, 1995, 4:48, *ĤadĤth* no. 982). This is because it is diverted from growth to personal use. Being capable of growth can mean growth in the literal sense, such as by biological reproduction or trade; or it could mean in a more abstract sense, as in the case of gold, silver and currencies. The latter are capable of growth by investing them in business; therefore, *zakĤĤ* is paid on them unconditionally. As for property that is owned with the sole intention of possessing it, no *zakĤĤ* is due upon it because it doesn't grow, either literally or abstractly. Therefore, no *zakĤĤ* obligation on intangible assets is paid unless they are sold and reach a minimum limit (*niĤĤb*). In this situation *zakĤĤ* should be paid on the spot regardless of

⁴ For further information, please visit: <http://info.zakathouse.org.kw/nadawat/nadwa7tam.htm>.

the passage of a lunar year (*Īawl*) based on the views of some jurists or to add the amount to other money and wait until the passage of a lunar year (*Īawl*) based on the second view. If they are not sold *zakĒt* is due on these intangible rights when associated to the company assets.

Second Opinion: *ZakĒt* is obligatory on intangible assets regardless of any other consideration, so the owner has to get the expert estimates of their value, combine them with other property and then pays *zakĒt* annually. This is the opinion of scholars in favour of *zakĒt al-mustaghalĒt* such as ĤAbd al-WahhĒb Khalaf, AbĒ Zahrah and al-QaraĒĒwĒ , and others (al-QaraĒĒwĒ, 1981). The proponent of this view based their argument on the general texts of the Quran such as Allah’s saying: “*And in whose wealth there is a right acknowledged. For the beggar and the destitute* ” (al-Quran,70:24-25)], and the texts of Sunnah that commands the payment of *zakĒt* on property above minimum limit (*niĒĒb*) without any specification. The proponent of this view are scholars in favour of paying zakat on property when it reaches minimum limit (*niĒĒb*) regardless whether they are meant for trade or investment (*istighĒl*).

Third Opinion: agrees with the view of the majority of scholars that intangible assets have in contemporary time financial value which are recognized by SharĒĤah and can be traded. However in term of *zakĒt* on these assets the proponents of this view divided their view into two situations:

- a) **The first situation** is when the intangible assets are part of the whole company assets and business which are not meant for trade. In this situation we do not need to pay *zakĒt* on these assets but on the dividends of the company. Defending this opinion, the IFA-OIC (IDB & IFA,2000, Resolution no.28 (3/4)) states that:

“If he [shareholder] had invested in the company to benefit from the annual dividends of those shares, and not for trading purposes, then the owner of such shares will not pay zakat on the market value of the shares but only on the basis of the dividends, at the rate of ¼ of /10, (2.5%) after the elapse of one year from the date of the actual reception of the dividends, provided that all other conditions are met and no impediment exists. This ruling is in conformity with resolution 2 (2/2) adopted by the Council of the Academy at

its 2nd session with respect to zakat on the rented real estates and non-agricultural leased lands” (IDB & IFA-OIC, 2000:57)

The resolution 2 (2/2) adopted by the Council of the Academy in December 1985 says:

“1.No zakat is levied on assets of the real estate and rented lands. 2. Zakat is due and payable on its yield, which is one fourth of the one tenth (2.5%), after the elapsing of one year period from the date of its actual receipt, if all other conditions are present and no impediments exist” (IDB & IFA-OIC, 2000:4)

This resolution is applicable to intangible assets as the IFA-OIC considers them as wealth that has value. This means that if the company has invested in intangible assets to benefit from their annual dividends and not for trading, they should not pay zakat on them but on the dividend of the whole company. The resolution implies that shares are to be treated as “earning assets” like real estate or properties notwithstanding the fact that a small percentage of investors look forward to long term appreciation and dividends.

- b) The second situation** is when the intangible assets can be separated from the company’s assets and are meant for trade. In this situation, scholars such as al-Ashqar (1997) and al-Qurah DÉghÊ (1997) in their research presented in the 7 Symposium of contemporary Issues in Zakat and Muġammad NaÑÊm YÉsin in his comment on the papers and others view that zakat is to be paid on these assets after they are sold. Muġammad NaÑÊm YÉsin in explaining this opinion says:

“An example of this is what is applied by a lot of industrial companies and institutions when they set specific branches to invent new designs, plans and programmes , and employ technicians and experts to devise models and designs and software innovations and pay them wages for it, and the output is owned by these companies and they have on them their names, and may be sold to others, where it will hold the name of the new buyer ... My view is that there is zakÊt obligation on these types of property if the intention is to trade them after the invention. ZakÊt is obligatory on the second buyer if he bought them with the

intention of selling them. However if the first buyer or the second one have no intention to trade them but to use them in their industry manufacturing or other facilities, there is no zakât obligation” (Yasin, 1997).

Al-Qurah DÉghÊ (1997) summarised this opinion by saying:

“Zakât is not obligatory on intangible assets except in two situations: First: When the trade mark is sold. Zakât in this case is obligatory on the sale price. Second: When the trade mark is dealt with as commodity, where it is owned by a trader expert in selling and buying trademarks. Zakât in this situation is obligatory based on market price.”

We prefer the third opinion as it is justified, rational and fair to both intangible assets owner and the people entitled to receive zakât.

ii) Method of measurement of intangible assets for zakât

We have preferred the third opinion that says that there is zakât obligation on intangible assets if the intention is to trade them either on sale price if they are sold or on market price if they are owned by a trader expert in selling and buying trademarks. However, the determination of the value in which zakât amount is to be deducted from this tradable intangible asset is an issue of disagreement among Muslim Jurists. In this respect, Muslim jurist agree that if the intangible asset is already sold, we have to consider the selling price of the good in zakât payment, however, if it is not sold and have a cost value and an existing market value, Muslim Jurists hold three views: the first view is in favour of paying zakât based on its cost value. Their argument is that this is the real value of the good at its inception and charging zakât on the market price is not fair to the intangible asset holder as the market may depreciate and the owner has yet to sale it and may not even be able to sale it. The second view is in favour of paying zakât based on its market value. Its argument is that if the asset is known in the market and has a relatively stable value, therefore, should be based on it, furthermore, it is fair to the intangible asset holder as the market may depreciate and may also appreciate where the asset may increase in value. The third view differentiates between the trader of intangible assets and the company developing or designing intangible assets,

where the former should pay *zakât* on its market price whereas the later should pay on the cost price.

SECTION FOUR

4.1 Conclusion

This research has discussed the concept of intangible assets from Shar'iah perspective. It examined pertinent Shar'iah issues on intangible assets: recognition and measurement, financing and trading, and *zakât* employing critical and comparative analysis.

Intangible assets is considered as property (*mâl*) as it fulfils the requirement of Shar'iah as people consider it a source of wealth (*tamawwul*) that generates future benefits and can be compensated and exchanged. This paper discussed different types of *mâl* to provide a better understanding on the legal aspects of intangible assets. In term of conventional application, the paper discussed its chronological development with reference to common and Shar'iah law.

The study found that there are few important Shar'iah issues related to intangible assets. The Shar'iah issues concerned include the issue of excessive uncertainty (*gharar fêhish*) in the identification and determination of the intangible assets due to the non-existence of its physical substance and the probability of its future benefits. There are two Shar'iah views on this aspect: one view does not recognize probability until the future economic benefit exists in order to ensure the protection of properties and avoid dispute among contracting parties; second view recognizes the probability of future economic benefit with consideration of the probability (*ghalabat al-ðan* or *al-ðan al-rêjih*) providing Shar'iah rulings and occurrences in the history of Islamic law as evidenced in the *Íadêth* and Islamic legal maxims.

In trading and financing intangible assets, the IFA-OIC and AAOIFI have set some general rulings and parameters that permit intangible assets to be traded and used in financing. Both agree on the prohibition of trading and exchanging of receivables, option and futures.

However, the securities commission of Malaysia hold a different view on the options and receivables allowing them to be traded and exchanged.

In addition to the recognition and measurement criteria, *zakÉt* payment on intangible assets was an issue of disagreement among scholars. Some scholars where not in favour of paying *zakÉt* on intangible assets, others made *zakÉt* compulsory on all intangible assets, whereas other differentiate between separate asset used for trade and assets that are not for trade.

In a nutshell, it can be concluded that intangible assets are property that have a financial value and are in general tradable.

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