

An overview of the *sukuk* market

Rahail Ali

Hogan Lovells (Middle East) LLP

1. **Origins of the *sukuk* market**

The *sukuk* market is at a seminal point in its development, following unprecedented growth in the Islamic finance industry in recent years. In fact, the terms 'Islamic capital market' or '*sukuk* market' would have been meaningless a decade ago, aside from a general desire for the Islamic finance industry to raise capital on a long-term basis using the efficiency and transparency of the capital markets. Provision of Islamic finance from the bank and syndication markets was well established before the advent of the first global *sukuk*: the Malaysian sovereign *sukuk* issued in 2002. The Malaysian *sukuk* was not the first *sukuk* ever issued, but it was the first to gain widespread coverage, as were the GE Capital and International Finance Corporation (IFC) *sukuk* issuances in November 2009. These *sukuks* were issued in the midst of the global financial crisis and drew attention to the *sukuk* market's opportunities. For a multilateral institution such as IFC to issue a *sukuk* demonstrates how far the *sukuk* market has come. The development of the *sukuk* market has resulted in increased sophistication, but innovation has also brought some controversy. This chapter provides an overview of the *sukuk* market and those developments, primarily by reference to the structures and documentation involved.

Capital market:

A 'capital market' is a market for issuance and sale of bonds, stocks or similar securities to raise long-term capital. The maturity of securities distinguishes debt capital markets from the 'money market', where trading is in short-term debt instruments with a tenor of less than one year or so. Capital markets are divided into debt capital markets and equity capital markets. The *sukuk* market falls into the debt capital markets arena because contemporary *sukuk* are structured to produce a fixed-income return for *sukuk* holders. Capital markets are also classified into primary markets and secondary markets. In the primary market an investor buys securities which are issued for the first time. Existing securities are purchased and sold in the secondary market. Primary capital markets are important for capital development of an economy.

2. **Nature of *sukuk***

Derived from the term '*sak*' in classic Arabic, the term '*sukuk*' (the plural of '*sak*') as used today is synonymous with 'Islamic bond'. However, *sukuk* are not IOUs or debt instruments like conventional bonds. Accordingly, while *sukuk* are commonly

termed Islamic bonds, this description actually serves to confuse. Contemporary *sukuk* (in the commercially understood, fixed-income 'Islamic bond' sense) would be better explained as *Sharia*-compliant certificates:

- whose (fixed) income return derives from ownership (on a *pro rata* and undivided basis) of *Sharia*-compliant assets, including contractual rights, held on trust for *sukuk* holders – no *sukuk* holder can claim a specific part of the assets as its own, as they are co-owned with other *sukuk* holders *pro rata*; and
- whose redemption (or principal 'repayment', to use loosehand terminology) on maturity or following default results from an obligation to purchase those assets by a corporate, bank or sovereign (commonly called the 'obligor') whose creditworthiness is the economic rationale for investing in the *sukuk*.

The term 'asset based' is sometimes used as shorthand to distinguish *sukuk* structurally as fixed-income securities from actual asset-backed securities. The distinguishing feature is that the recourse to the assets underpinning the *sukuk* should not form the commercial decision to invest in the *sukuk*. This is because, ordinarily, *sukuk* holders cannot sell them in the market or to third parties – only the obligor can and will be obliged to purchase them, because that is the commercial deal. This is also because of the nature of the assets or the practical and legal issues in endeavouring to obtain custody or possession of those assets. By the obligor assuming an obligation to pay for those assets, this creates a debt, and therefore a base economic characteristic to that of a conventional bond. This does not mean that the *sukuk* is an IOU or that *pro rata* ownership of the assets underpinning the *sukuk* is devoid of substance. Instead, it is a reflection of the commercial nature of contemporary *sukuk* as fixed-income securities, with the underlying *sukuk* assets being used to structure a *Sharia*-compliant instrument. While the economic results may be the same, the means by which they are obtained is the key difference between a conventional bond and a *sukuk* – the former is *haram*, or prohibited, and the latter is permissible.

3. ***Sukuk* documentation and structures**

Sukuk are structured instruments. With any structured product, understanding its structural and documentary components is key to understanding it – and *sukuk* are no different. *Sukuk* documentation is often split into what are colloquially called 'Sharia transaction documents' and 'capital markets documents'. The designation is, of course, imprecise because all *sukuk* documents must be *Sharia* compliant and they can also all be said to be capital markets documents, given the nature of the instrument being issued. However, the terminology does serve to split *sukuk* documentation understanding into documents which should follow capital market norms relating to custody, payment and administration generally, and documents which form the core of a *Sharia*-compliant transaction (ie, contractual provisions required to provide a periodic return and pay the face amount of the *sukuk* to *sukuk* holders in a *Sharia*-compliant manner).

3.1 *Sukuk* documentation standards

There have been a few ill-fated attempts to standardise *sukuk* documentation. The lack of success is predictable. This is because *sukuk* are structured instruments and, as such, several considerations invariably arise when structuring *sukuk*. They also need to be *Sharia* compliant and pronounced as such by (eminent) *Sharia* scholars, who can have different views on what is and is not permissible. The core principles of Islamic finance are universal and very simple, but more peripheral or detailed application of those core principles requires knowledge of Islamic jurisprudence or *fiqh*. Islamic jurisprudence derives much from (and in fact embraces) intellectual opinions because, through genuine striving for knowledge, consensus can be achieved and knowledge increased. To the uninitiated, divergent opinions present discord. But much in the same way as there are medical, legal and other expert differences of opinion, varying views on what are, in reality, issues of detail and not core *Sharia* compliance concerns should not be overstated. This, controversial as it may sound, also applies to the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) ruling on *sukuk*, because in its most basic form, the AAOIFI ruling was and remains a question of form versus substance – or holistically, the direction or purpose of the Islamic finance market. At a micro level, is it right to use a *musharaka* or *mudarabah* structure, but negate a genuine assumption of investment risk for one partner by its ability to ‘put’ its interest in the *musharaka* or *mudarabah* to the other partner or obligor? At a macro level, should the Islamic finance market engage in financial engineering to economically replicate conventional products? The simple response would be that there is nothing wrong with providing the same return as a conventional product in a *Sharia*-compliant or ethical manner.

At a transaction-specific level, the controversies engendered by the AAOIFI ruling were perhaps confusing to some because the use of diminishing *musharaka* (which involves one party to the *musharaka* periodically buying out the other party’s interest in the *musharaka*) is a widely used structure, particularly for home financing, so why limit its use for *sukuk*? The view that *sukuk* should not be distinguished is strengthened by the commercial nature of the instrument being issued – namely, a fixed-income security and not one giving an equity upside return. However, the controversies surrounding the AAOIFI ruling are essentially as much to do with the Islamic finance market continuing to wrestle with profound issues which go to its very nature and which continue to cause confusion (eg, the often-repeated insistence on the need for a profit-and-loss sharing system), without appreciating that the provision of retail and corporate finance in a *Sharia*-compliant manner is no less important to meet socio-economic needs and has no less value in proper *Sharia* analysis.

Asset ownership due diligence considerations

Interposing asset ownership into any financing structure, including *sukuk*, requires early due diligence considerations for deal viability. Considerations that need to be addressed include whether there are any security interests on other

third-party rights over assets. What regulatory consents, approvals and so on are required for any sale? Are the assets *halal*? If so, can they be effectively excluded from any sale? Do documents need to be registered, recorded or filed at any public office or registry? Are any notarial or other fees payable? Registration fees will be payable in most jurisdictions when the asset being conveyed is land. What taxes could in principle be charged on the sale? Are there any capital gains, value added tax, sales or other local taxes such as stamp or other documentary taxes that could be charged by a sale of the assets or even a disposal of the *sukuk*? If significant taxes or fees are chargeable (eg, because they are linked to the value of the assets), what can be done to mitigate them?

The AAOIFI *sukuk* ruling

In November 2007 Sheikh Taqi Usmani, one of the world's leading *Sharia* scholars and chairman of the AAOIFI Board of *Sharia* Scholars, said that 80% of *sukuk* are not *Sharia* compliant, mainly because their method for redemption incorporates a purchase undertaking (a promise that the 'obligor' will redeem the *sukuk* by repurchasing the underlying assets at a price representing the face amount of the *sukuk* at maturity or following an event of default). Sheikh Usmani's view was that this promise violated the principle of risk and profit-sharing on which such *sukuk* should be based. The AAOIFI brought together its Board of *Sharia* Scholars to clarify the issues raised by Sheikh Usmani and to form a consensus among the *Sharia* scholars. After much discussion, the AAOIFI Board of *Sharia* Scholars published a six-point paper in 2008 outlining their position on *sukuk*, which included a ruling that purchase undertakings at face value for *musharaka* and *mudarabah sukuk* structures are no longer permissible.

Mudarabah and *Musharaka*

A *mudarabah* is a partnership (akin to a non-discretionary investment management arrangement) between a capital provider and a person that applies its skill and expertise in investing that capital. Put differently, one partner – the *rab-ul-maal* (or the investor) – contributes capital; and the other – the *mudarib* (or investment trustee) – invests its time and skill with a view to generating profit on that capital.

A *musharaka* is a partnership which differs from *mudarabah* because each party to the venture must contribute capital, unlike a *mudarabah*, where the *mudarib* invests its time and skill only.

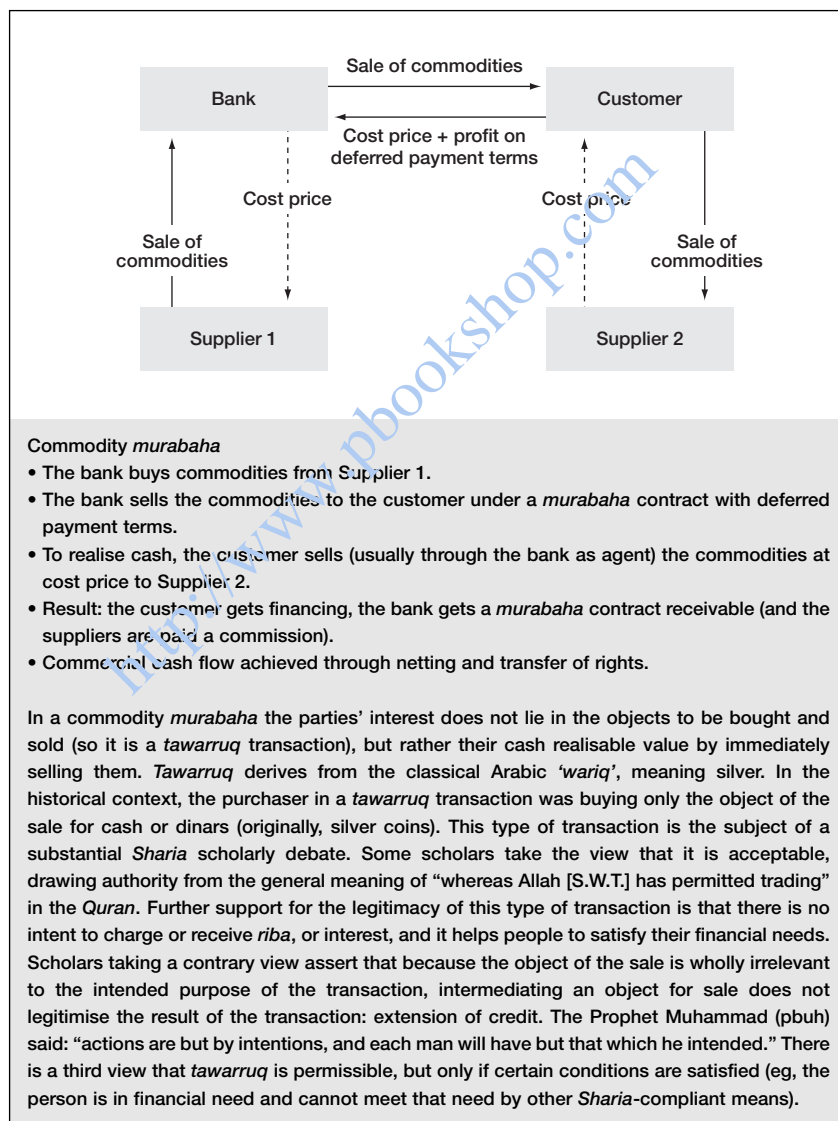
4. Money market impetus for *sukuk*

Debate and discussion have often failed to acknowledge the most obvious and glaring points: Islamic finance operates in a conventional debt finance regulatory environment, where trading in debt is the means by which banks make margins – the ubiquitous IOU, in all its guises, is the mainstay of the conventional banking world and its ultimate weakness. 'Renting money' is prohibited by Islamic finance, because making money out of money serves no societal benefit as money is merely a medium of exchange. A discussion on banking regulation is beyond the scope of this chapter, but it is the backdrop against which the *sukuk* market evolved and must therefore be borne in mind.

In many respects, the *sukuk* market owes its origins to the money market. The need for a solution to the perennial difficulties that Islamic financial institutions face in transforming their short-term liabilities (ie, deposits) into long-term assets (ie, receivables) provided the conceptual impetus to the *sukuk* market. Bank deposits, from a conventional accounting and regulatory perspective, are treated as liabilities because the bank 'owes' the money to the customer.

The notion that as tradable investment instruments, *sukuk* could be used to assist

Table 1: Commodity *murabaha*



development of an Islamic money market by Islamic banks buying and selling *sukuk* to house or manage excess liquidity temporarily, instead of *tawarruq* or commodity *murabaha* treasury products (see Table 1), gained much interest – not least because commodity *murabaha*, while appealing many, fails to satisfy all. In summary, the desire for a better short-term money market liquidity or treasury management product grew with the rapid increase in Islamic deposits. That growth was driven by the desire of retail banking customers to deposit or invest funds in a manner consistent with their beliefs. Sovereign interest, from Malaysia in particular, and general demand for (cheap) finance, buoyed by the real estate boom in the Gulf, accelerated the advent of *sukuk* from a conceptual (short-term) money market product to a (longer-term) capital market instrument.

5. *Sukuk* structures

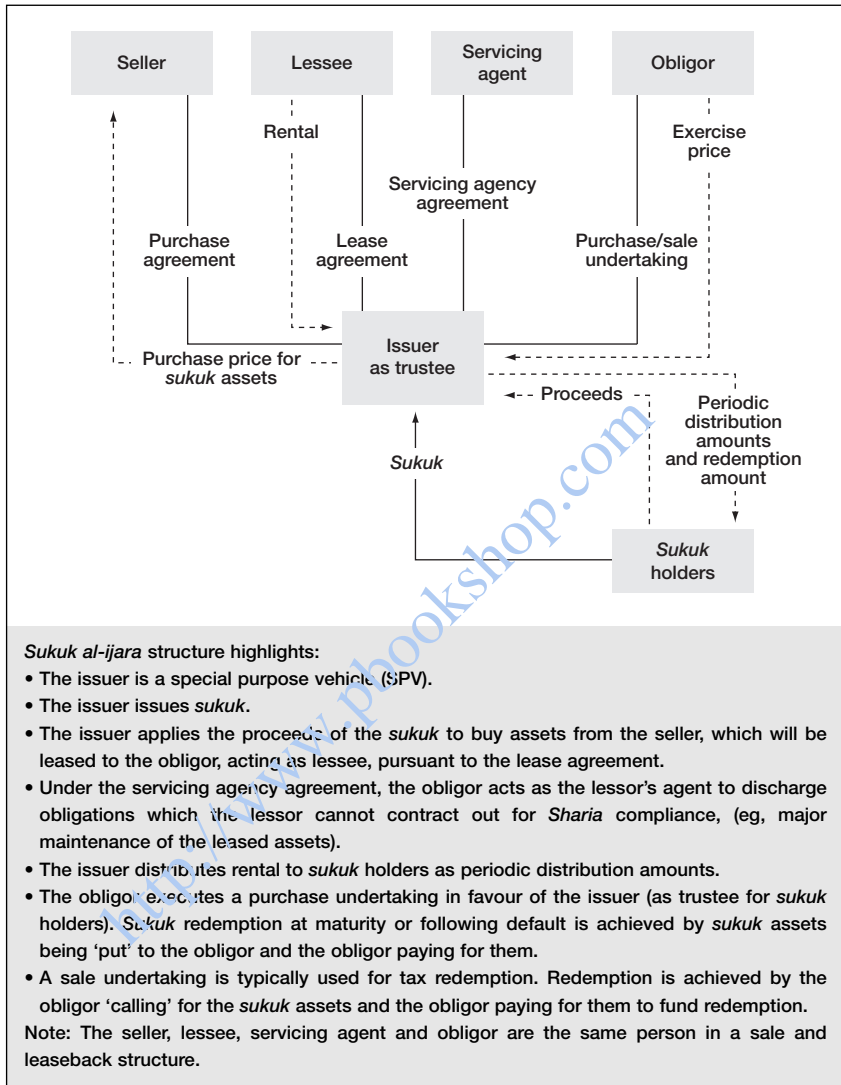
The earliest and predominant structure of *sukuk* issued to date has been the *sukuk al-ijara* (see Table 2). Its prevalence can be explained by the need to present investors with familiar structures; a sale and leaseback structure is easily understood, even by those unfamiliar with Islamic financing. While there is no such thing as a ‘cookie-cutter’ *sukuk*, repeat structures, following the earliest *sukuk al-ijara*, reflect a market seeking to create benchmark structures and yield curves.

Other *sukuk* structures, primarily *musharaka* (see Table 3 overleaf) and *mudarabah* (see Table 4 overleaf), were developed to overcome the disadvantages of the *sukuk al-ijara* structure – namely, that the *sukuk* issue amount cannot be justified if the value of the assets (which will be the subject of the sale and leaseback structure) do not approximate to the issue amount. Put differently, a *sukuk* cannot be issued for \$100 million if its proceeds are to buy only \$50 million from the obligor. Other disadvantages include *sukuk* structural inflexibility to accommodate commercial points such as periodic redemptions and the obligor’s commercial need to dispose of or deal with the assets immediately if they are on lease.

Those drawbacks gave rise to the first *musharaka sukuk* structure: the 2005 \$200 million Dubai Multi Commodities Centre (DMCC) *sukuk*. A sale and leaseback structure was not viable as the land available for the *sukuk* was undeveloped and consequently did not have a value to justify the targeted issue amount. While the DMCC *sukuk* received widespread acclaim for a number of reasons (it was the first international *sukuk* to employ a *musharaka* structure and the first rated *sukuk* coming out of Dubai), the DMCC *sukuk* was also notable for the fact that its proceeds were to be used to finance construction projects.

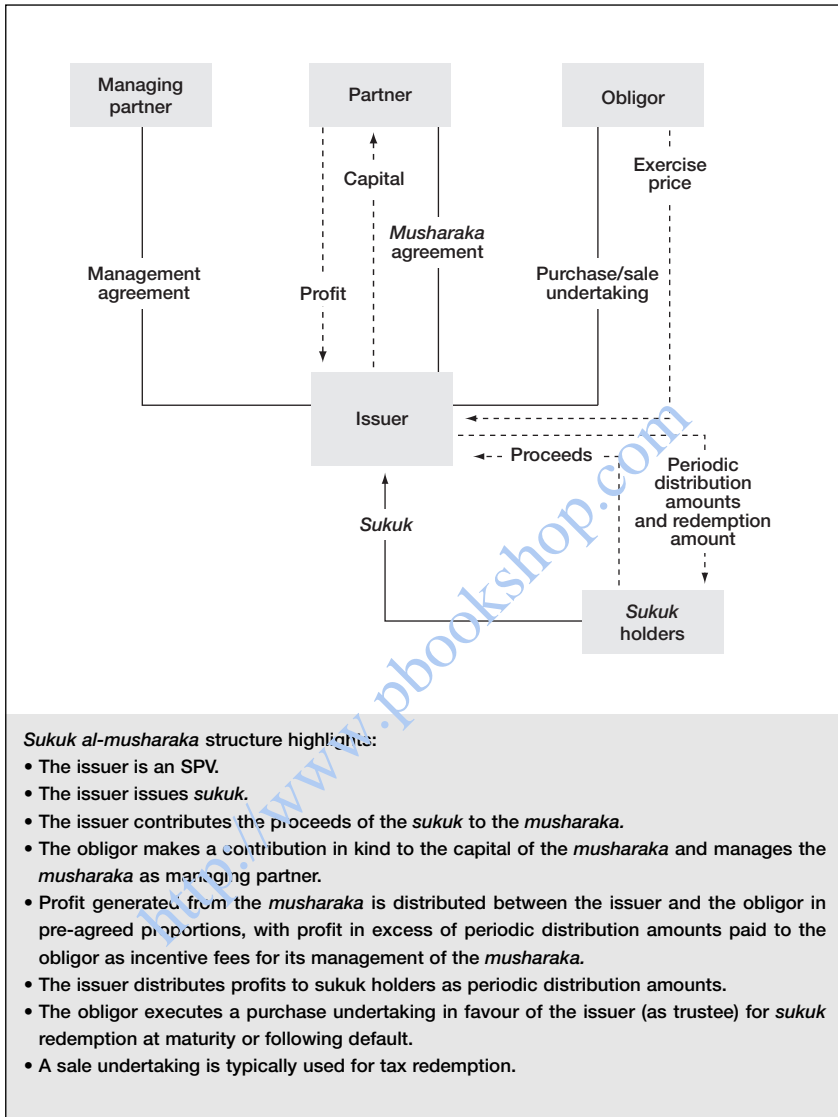
The DMCC *sukuk* demonstrated that construction projects could be funded using a *musharaka* structure, rather than the usual *istisnalijara* or forward lease route, avoiding complications that those structures face in generating acceptable periodic returns during the construction phase.

However, in hindsight, the DMCC *sukuk* was most noteworthy because it was the first to offer investors an option for settlement in commodities (in that case, gold) rather than cash. Settlement flexibility is, of course, vital for equity-linked *sukuk* offerings such as convertible and exchangeable *sukuk* offerings. A *sukuk* structure must accommodate the commercial deal where the *sukuk* may be redeemed in the

Table 2: *Sukuk al-ijara*

same commercial and tax scenarios as a conventional convertible equity-linked bond (eg, voluntary redemption, change of control, elective tax redemption). *Sukuk al-musharaka* and *sukuk al-mudarabah* accommodate structural flexibility by structurally permitting 'puts' and 'calls' without many limitations. Flexibility is important to accommodate innovation and development. At present, the *sukuk* market is in a state of flux following the AAOIFI ruling because, beyond *sukuk al-ijara* or *ijara* portfolio asset-managed *sukuk* structures, there is no clear structure which has gained general *Sharia* market acceptability.

Table 3: *Sukuk al-musharaka*

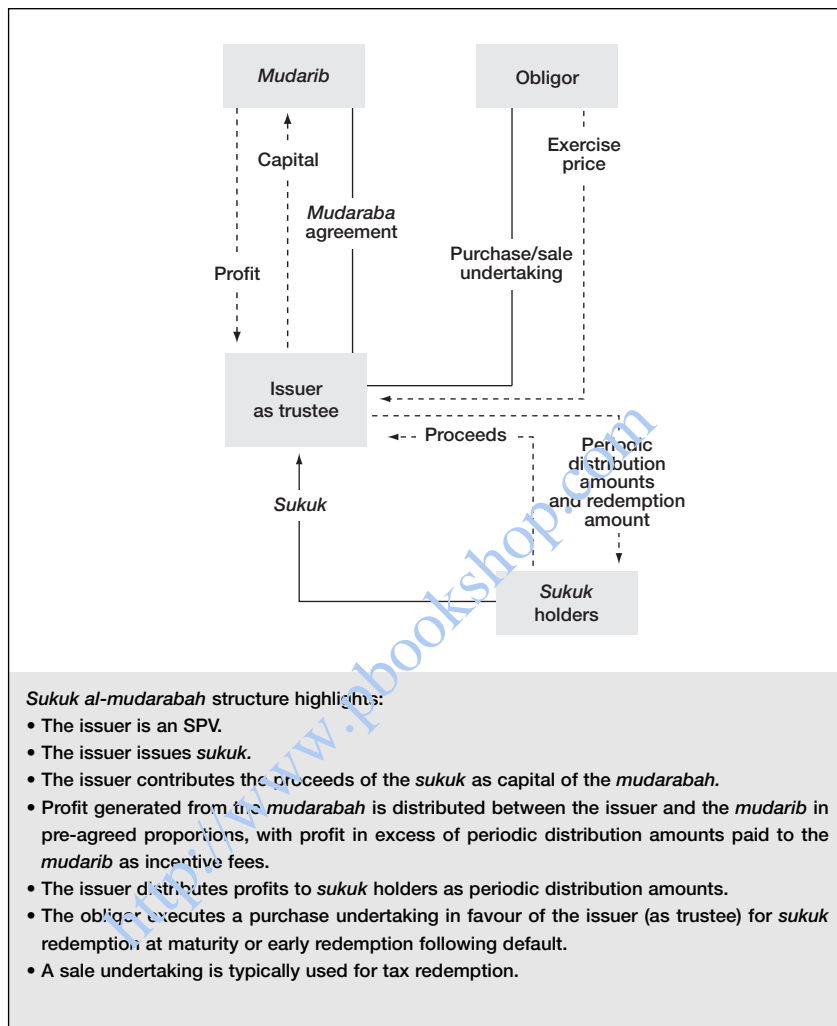


6. **Sukuk documents**

As mentioned earlier, *sukuk* documentation is often split into *Sharia* transaction documents and capital markets documents.

6.1 **Mandates**

Preceding entry into the *Sharia* transaction documents and the capital markets documents is the signing of mandate documents.

Table 4: *Sukuk al-mudarabah*

6.2 Lead managers' mandate letter

This is a letter setting out the agreement between the obligor and the financial institutions acting as lead managers of the *sukuk*. The SPV issuer is not a party because it is usually established later. The letter will set out the roles of the managers and responsibilities for the prospective *sukuk* including, if not already determined, the structure of the *sukuk* (eg, *sukuk al-ijara*). Their role, if so agreed, may involve the managers underwriting the *sukuk* issuance or, more typically, a 'best efforts' arranging function. In any case, this letter will include the *sukuk*'s high-level deal details, including fees or commissions to be paid to the managers on issuance or closure of the *sukuk* and provisions for costs, expenses and indemnities.

6.3 Mandate with *Sharia* scholars and *fatwa*

The lead managers usually select the *Sharia* scholars who will issue the *sukuk fatwa* (pronouncement). If the lead managers have their own *Sharia* boards, they will typically make a selection on a common scholar basis, as well as on the profile and seniority of the scholar. The managers may decide that there will be a *Sharia* panel comprising three scholars. Three is a good number to present to investors, as the *Sharia* scholars will ordinarily be selected in consideration of the banks and financial institutions of which they are panel members, and so that a majority view can prevail on points which are open for intellectual consensus.

6.4 Mandate with paying agents and other service providers

One of the lead managers usually invites fee proposals from prospective paying agents, delegates and service providers, without which payment, administration and enforcement of the *sukuk* terms and conditions cannot properly be carried out, bearing in mind that the issuer is usually an SPV specifically incorporated to issue the *sukuk* and to act as trustee for the *sukuk* holders. The obligor will typically decide whom to appoint after being presented with competing proposals, and will sign a mandate on the service provider's standard engagement terms.

7. Capital markets documents

7.1 Prospectus

The prospectus or offering document is the key document for *sukuk* investors (and for listing, if any) because it discloses all material information that an investor needs to know to decide whether to invest in the *sukuk*. There are legal and regulatory requirements to protect investors against false or misleading statements, such as the EU Prospectus Directive (2003/71/EC) and, if listed, the rules of the relevant stock exchange, all of which mandate the level of disclosure required. The offering document is not a contract between the obligor, the issuer and the *sukuk* investors. It is nonetheless a legal document because it is primarily a legal and regulatory mandated disclosure document whose contents cannot be 'puffed up' – investors should be able to rely on its contents to make an informed decision as to whether to invest.

The obligor will be responsible for the contents of the offering document, as will the SPV issuer. But remember that the issuer is usually an SPV – the worth of the SPV's responsibility is only as good as the obligor's ultimate responsibility. The managers and all service providers and paying agents will always disclaim responsibility or liability for the contents of the offering document. If things go wrong, disclaimers will not provide a universal exclusion on claims – they will fall to be considered to establish who is liable. Therefore, managers are understandably aware of the need to ensure that the offering document is true and accurate and does not omit anything which could make it misleading. Due diligence is carried out to provide the appropriate degree of comfort. The extent of the due diligence depends on the obligor, the market and what the diligence exercise itself throws up for further review, consideration, analysis and disclosure.

7.2 Global certificate

Sukuk are invariably not issued as individual *sukuk* certificates, but are represented by a global certificate. The use of a global certificate is driven by the role of clearing systems (eg, Euroclear and Clearstream). Clearing systems remove settlement risk by payment being made against simultaneous delivery through accounts in the clearing system and settlement instructions. A global certificate accommodates trading through Euroclear and Clearstream by the global certificate being delivered to a common depository on behalf of Euroclear and Clearstream. The securities account of each *sukuk* holder will be credited with the face amount of the interest in the global *sukuk* purchased by each *sukuk* holder. If an investor does not hold an account in the clearing system, it can appoint an account holder as its custodian through a custodian arrangement between them.

7.3 Declaration of trust

A declaration of trust is required because the *sukuk* must create an undivided *pro rata* interest in the assets that the *sukuk* represents for the holders of the *sukuk*. 'Undivided' means that no *sukuk* holder can point to any part of the *sukuk* assets and claim them as exclusively its own – the interest of each *sukuk* holder is indivisible and *pro rata* according to the face amount held by the *sukuk* holder. The declaration of trust achieves this through the creation of a trust over the *sukuk* assets by the issuer declaring a trust over them in favour of the trust beneficiaries (ie, the *sukuk* holders). It sets out the relationship between the *sukuk* holders with regard to those assets. Pursuant to the declaration of trust, the issuer, as trustee, will hold the *sukuk* assets for the *sukuk* holders *pro rata* according to the face amount of *sukuk* held by each *sukuk* holder. The issuer also agrees to distribute all income from the trust assets in accordance with the terms and conditions of the *sukuk*. This document is entered into by the obligor, the issuer (as issuer and trustee) and a service provider typically acting as a delegate of the trustee. The governing law for the declaration of trust is usually English law. The unique feature of a *sukuk*, as compared to a conventional bond or conventional structured note, is that the issuer of the *sukuk* is also the trustee, but the issuer has no obligation independent of the *sukuk* assets to pay because the *sukuk* is not an IOU – payment comes from the obligor under the *Sharia*-compliant contracts it signs with the issuer as trustee. The declaration of trust will set out its duties and responsibilities and will seek to exclude general, non-applicable provisions of English law generally relating to trustees.

If a *sukuk* must be structured in circumstances where the use of an English law declaration of trust is not valid to confer the undivided, *pro rata* interest in the *sukuk* assets of the *sukuk* holders (eg, the *sukuk* is a pure civil jurisdiction transaction in which the SPV issuer must be incorporated locally) an agency declaration can be considered to create a relationship of principal and agent, as opposed to trustee and beneficiaries, between the SPV and the *sukuk* holders.

7.4 Paying agency agreement

The issuer is required to carry out numerous functions under the *sukuk*. As the issuer is an SPV, it is not in a position to carry out these functions. These functions include

payment of the redemption amount and periodic distribution amounts when payable under the terms and conditions of the *sukuk*. Therefore, the issuer will appoint a service provider to act as paying agent. Other service provider appointments will be to act as:

- a replacement agent (ie, for the issuance of replacement *sukuk* certificates in place of those which have been lost, stolen, mutilated, defaced or destroyed if individual *sukuk* certificates are ever issued because the clearing system operating through a global *sukuk* certificate ceases to function);
- a transfer agent, to transfer individual certificates; and
- a calculation agent, to determine the periodic distribution amount payable to the *sukuk* holders.

A registrar will keep a record of information relating to the outstanding face amount of *sukuk*, all transfers and changes of ownership of individual *sukuk*, the names and addresses and account details of *sukuk* holders and all cancellations or replacements of *sukuk*. Provided that no individual *sukuk* certificates are issued, the holder of the global *sukuk* certificate will be the common depository of the clearing systems. In practice, a single corporate service provider or its affiliate is usually appointed to perform these functions and the parties to the paying agency agreement are that entity or its affiliate, the obligor and the issuer. Again, the governing law for the paying agency agreement is typically English law.

7.5 Cost undertaking

Because the issuer is an SPV and will not have the financial standing to pay its service providers, the obligor provides an undertaking to pay fees and expenses due to them and a general indemnity to keep them 'whole' in discharge of the services that they provide. The governing law for the cost undertaking is usually English law.

8. *Sharia* transaction documents

The extent and nature of the *Sharia* transaction documents depend on the structure of the *sukuk* used. For a *sukuk al-ijara* structure, for instance, the *sukuk* proceeds will be passed on to the obligor as consideration for the sale of assets by the obligor under a sale and purchase agreement. *Sukuk* return or periodic distribution amounts will be paid from rental under an *ijara* or lease agreement and redemption will be pursuant to a put under a purchase undertaking. For a structure which does not involve a sale, the *sukuk* proceeds will typically be applied or invested in an enterprise or transactions which must fit in with the commercial objective of the obligor, and redemption will typically be pursuant to a put under a purchase undertaking. Whatever structure is used, the *Sharia* transaction documents will need to be reviewed by the *Sharia* scholars providing the *fatwa* for the *sukuk* because those documents form the essence of the *sukuk* for *Sharia* compliance.

9. Global *sukuk* issuances

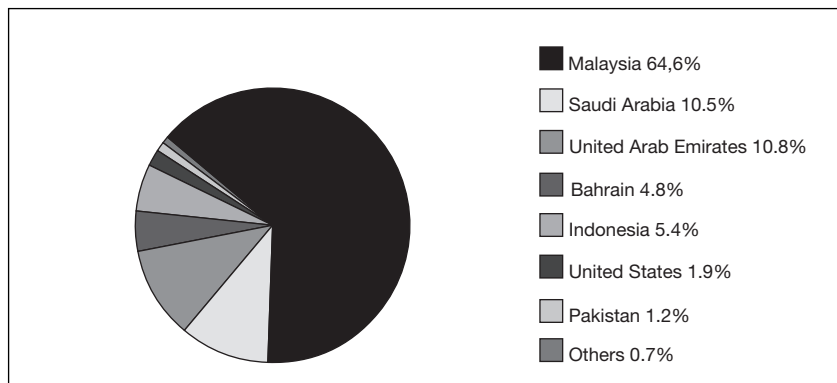
The AAOIFI ruling has had the effect of limiting *sukuk* issuances which are not *ijara* based. The global financial crisis and the resulting stagnation in lending predictably

served to stifle structural innovation. The *sukuk* market also experienced its first defaults. These included Kuwait's Investment Dar, East Cameron Gas Company (the first *sukuk* issued by a US-based company) and Saudi's Saad Trading. The media coverage surrounding those defaults paled into insignificance to the furore over the Nakheel \$3.52 billion *sukuk*, with a Dubai World guarantee. This has led to much commentary as to how *sukuk* holders would fare as compared to creditors generally, bearing in mind their *pro rata* ownership of *sukuk* assets. However, much of this commentary overlooks the commercial intent: that *sukuk* asset ownership is intended to achieve a *Sharia*-compliant return and redemption of the *sukuk* investment, and not necessarily a preferred creditor position.

There have been some developments of note since the advent of the financial crisis. The unique economic conditions of 2009 also enabled the *sukuk* world to experience its first 'buy-back' – if *sukuk* are traded on the secondary market at a significant discount to their issuance amount, an opportunity exists for obligors to take commercial benefit. Although buy-back bonds feature regularly in the conventional capital markets, the Dubai Islamic Bank (DIB) *sukuk* buy-back was the first transaction of this kind in the *sukuk* market, demonstrating that the *sukuk* market can accommodate liability management considerations in a *Sharia*-compliant manner. In 2009 DIB invited *sukuk* holders to tender up to \$200 million of *sukuk* for purchase by DIB for cash, pursuant to a modified Dutch auction procedure. The *sukuk* were tendered on the basis that DIB was allowed to determine the aggregate face amount of *sukuk* that it was willing to accept for purchase and a single purchase price that it was willing to pay for the *sukuk*, taking into account the aggregate face amount of *sukuk* validly tendered and the prices at which such *sukuk* were tendered. The total *sukuk* accepted by DIB for purchase was approximately \$50 million.

Geographically, however, the dominance of the Malaysian *sukuk* market is to be applauded (see Table 5). Paradoxically, it could also be considered as a hindrance to the development of a truly global *sukuk* market, due to Malaysian *Sharia* scholars sanctioning *sukuk* structures that are purely backed by receivables. Along with Malaysia, the next Southeast Asian *sukuk* market to watch is Indonesia, which

Table 5: Global *sukuk* issuance in 2009



together with Saudi Arabia and Malaysia tops local currency issuances and benefits from a sizeable economy and liquidity of its local currency. Singapore's regional financial centre credentials cannot be overlooked if it backs up its interest in Islamic finance with rigour.

As for the Gulf Cooperation Council (GCC) region, the demise of the regional real estate markets resulted in the shelving of numerous *sukuk* plans. Some of the largest issuers of *sukuk* in the GCC before 2008 were large real estate companies. Nevertheless, the GCC remains a key *sukuk* market due to investor appetite for *Sharia*-compliant products and the need to finance the billions of dollars in infrastructure projects that are planned over the next decade. The *sukuk* market has not even begun to tap its potential as an infrastructure capital development instrument.

Saudi Arabia remains a sleeping giant, although there are signs that its markets are stirring. The Saudi Arabian Capital Markets Authority continues to take a keen interest in the development of the Saudi *sukuk* market, which has the potential to rival the depth of the Malaysian market. Elsewhere, governments in Hong Kong, South Korea, the United Kingdom and France have indicated an interest in developing the *sukuk* market to enable a level playing field for Islamic finance. The 2010 *sukuk* issuance for Kuveyt Türk signalled Turkey's interest in the *sukuk* market. Those initiatives are praiseworthy, but the more profound issue is whether a truly level playing field can really be achieved in debt-driven global financial markets. The ethical investment movement has sharpened its focus on conventional regulation of financial markets. *Sukuk* are, above all, ethically driven. So perhaps the biggest driver for *sukuk* in years to come will be ethically driven constituencies, of which the Islamic finance industry is very much a member.