

Islamic Finance *news*



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Islamic Project Financing: The Shuaibah and Marafiq Models <i>By John Dewar and Alison Smith</i>	3
Nakheel Sukuk: World's Largest Single Sukuk Issue <i>By Clifford Chance</i>	7
Sukuk in Indonesia: A Legal Review <i>By Mirza A Karim</i>	10
Saudi Arabia: Emerging Trends in Islamic Project Finance <i>By Oliver Agha</i>	19
Islamic Banks Enter the Syrian Market <i>By Hussein Khaddour</i>	23
Turkey Continues to Grow <i>By Paul Wouters</i>	27
Recent Islamic Finance Developments in the UK <i>By Neil D Miller and Aziza Atta</i>	31
Law Firms Profiles	34

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Islamic Project Financing: The Shuaibah and Marafiq Models

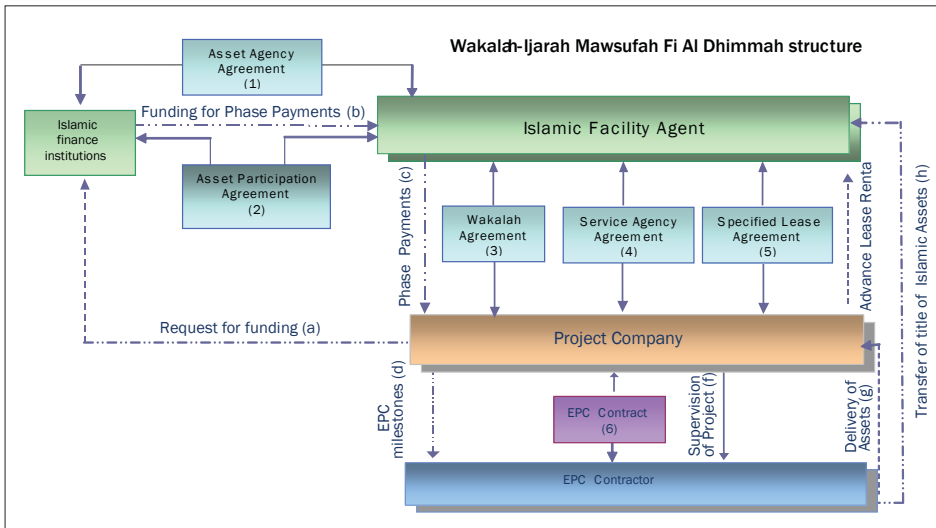
By John Dewar and Alison Smith

If the market required any convincing as to the growing strength and prominence of Islamic financing in the Middle East financing market, then the closing of the Shuaibah power project in 2005 (then the largest single financing for an individual power sector project) — followed by the Marafiq project financing in June 2007, the largest individual power and water project in the world — should serve as compelling evidence. These deals in aggregate encompassed US\$5.5 billion in senior financing facilities, including Islamic facilities totaling US\$210 million and US\$600 million respectively. In addition, the Shuaibah Expansion Project, which closed in October 2007, included an Islamic facility of US\$85 million

(comprising 50% of the project's senior financing facilities). Assisted undoubtedly by the high hydrocarbon prices of recent years, Islamic financing is experiencing a boom, growing at an estimated rate of 15% in each of the last three years.

Both the Shuaibah and Marafiq financings combined funding from Islamic finance institutions, international and local commercial banks and export credit agencies. These deals represent recent examples of how Islamic finance techniques have been successfully utilised in the context of multi-sourced financings, while remaining consistent with the principles of the Islamic Shariah.

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Islamic Project Financing: The Shuaibah and Marafiq Models (continued..)

This article explores the main structural aspects of these transactions in the context of Islamic financing and the future challenges that Islamic finance institutions and project companies may face in the Middle East's project finance sector.

Unusually, in the context of complex cross-border project financings, the Islamic tranches are governed by the law of the Kingdom of Saudi Arabia and the provisions of Shariah law. Customarily, finance documentation in Middle East project financings is governed by English law (except in New York-preferring Qatar). The Islamic facilities in Shuaibah and Marafiq are based on a Wakalah-ljarah Mawsufah Fi Al Dhimmah structure, a hybrid based on the existing and recognizable Ijarah Islamic finance technique, under which a financial institution leases an asset to the customer. In the context of a project financing, however, the asset needs to be built. This is where the structure must be redefined so that it remains fit for purpose while conforming to the Shariah.

Hybrid bespoke structure

Under this structure, the project company is employed as the Islamic finance institution's agent or "wakil" under an agency agreement, entitled the Wakalah Agreement, to procure the construction and delivery of certain assets required by the project and identified in the Wakalah Agreement (the Assets).

The provision of the Assets is facilitated by the project company's entry into the engineering, procurement and construction

(EPC) contract with the EPC contractor. A key Shariah principle is that the financial institution must share the commercial risks with the project company, and thus it is expressed to be responsible for effecting the insurance and major maintenance of the asset. In order to offset the financial institution's risks in this regard, the project company agrees separately in the Service Agency Agreement to insure and maintain the Assets on behalf of the Islamic facility agent. This structure can be characterized by the ongoing risk over the asset that the Islamic finance institution is agreeing to take.

“Finance documentation in Middle East project financings is governed by English law”

Title to the Assets passes directly from the EPC contractor to the Islamic facility agent

Under the Agency Agreement, the Islamic finance institutions appoint the Islamic facility agent as their agent in respect of the financing and, under the Asset Participation Agreement, agree to participate in financing the construction and ownership of the Assets procured from the EPC contractor by the project company. Title to the Assets passes directly from the EPC contractor to the Islamic facility agent and the Islamic facility agent undertakes (on behalf of the Islamic finance institutions) to lease the Assets (to be constructed). The lease will

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Islamic Project Financing: The Shuaibah and Marafiq Models (continued..)

be effective from a specified date as set out in the Specified Lease Agreement. In certain jurisdictions, this may lead to concerns over the relevant tax treatment and thus appropriate structuring should be considered.

Contracts with an uncertain price may be treated as void under Shariah principles

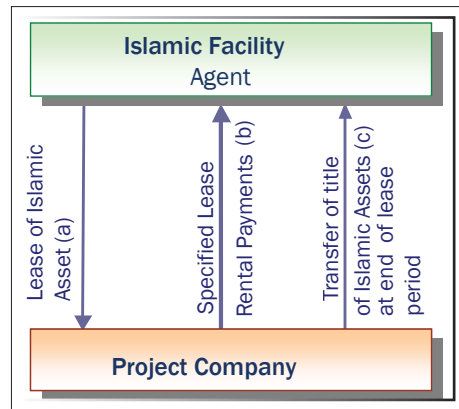
During the construction period, upon receipt of funds from the Islamic finance institutions, the Islamic facility agent will make phase payments to the project company in accordance with an agreed payment schedule for on-payment to the EPC contractor under the EPC contract. All responsibilities relating to the procurement of the Project's execution, completion and supervision rest with the project company. During this period, the project company is required to pay to the Islamic facility agent advance lease rentals set out in a pre-determined advance lease rental schedule.

The specified lease rental comprises two elements:

- (a) a fixed element for each payment date which represents the capital repayment; and
- (b) a variable amount representing the Islamic finance institutions' profit.

While the Shariah prohibits the payment of interest (on the basis that money may not be used to make money as this would represent an unfair exploitation), Islamic principles do not prohibit the making of profit, provided that there is a level of risk

sharing between the parties. The specified lease rental represents the financial institutions' return based on the profits generated on the sale of the asset to the project company. Project finance by its very nature means that the financial institutions are assuming certain risks in the project and this is consistent with Shariah principles. At the end of the lease period, provided that all lease rentals have been paid, legal title to the leased assets will be transferred to the project company.



The Islamic finance institutions are bound by the intercreditor arrangements

In order to ensure that all of the finance parties (conventional and Islamic) are bound by the intercreditor arrangements, under which the finance parties agree among other things not to take independent action against the project company, they enter into an intercreditor agreement.

Challenges going forward

The demand for Islamic finance at present is

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Islamic Project Financing: The Shuaibah and Marafiq Models (continued..)

relatively high and, coupled with increasing market liquidity, has led active participants in the sector to conclude that the growth in demand will continue. However, there remain some challenges for participants in Islamically funded project financing which should not be underestimated.

“While the Shariah prohibits the payment of interest... Islamic principles do not prohibit the making of profit, provided that there is a level of risk sharing between the parties”

Islamic funding must be structured so that it meets the requirements of each Islamic financial institution’s Shariah committee (responsible for providing guidance on Shariah requirements and determining (on behalf of its institution) whether the proposed financing and related documentation is Shariah compliant). The views of the Shariah committee at a certain institution or in a different jurisdiction may be different from another’s, which may be more or less conservative. Amendments to the structure may be required to balance the changing requirements of the respective Shariah committees within the context of a parallel conventional financing.

Islamic finance institutions may not be as flexible in their approach as conventional

lenders in similar circumstances as a result of the constraints imposed on Islamically financed products. The strict views of certain Shariah committees may not be immediately compatible with the project company’s structuring requirements, with the result that project companies need to be willing to be flexible in their approach. The long-term nature of project finance brings its own challenges in this regard since project companies may be unable to obtain from certain Islamic institutions the flexibility to change the transaction or refinance during its tenor.

While maintaining adherence to Shariah principles, Islamic finance institutions will need to keep these matters under review and be creative in their approach if they are to remain competitive in the international capital markets.

John Dewar is a partner and Alison Smith is an associate in the global project finance group at Milbank, Tweed, Hadley & McCloy LLP and both are members of the Islamic Finance Business Unit. They have advised Islamic banks on the structuring of a number of Shariah compliant financings.

Nakheel Sukuk: World's Largest Single Sukuk Issue

By Clifford Chance

Last December, the largest Sukuk to date was listed on the Dubai International Financial Exchange. The Shariah compliant structure was used in Nakheel Development Ltd's landmark US\$3.52 billion Sukuk.

The proceeds were invested in the capital of Nakheel PJSC, the main holding company of the Nakheel Group, and were intended to be used for the financing of Nakheel's projects, which include iconic developments that are well-known beyond Dubai, such as The Palm Jumeirah.

Nakheel is a subsidiary of Dubai World, a holding company that manages and supervises the portfolio of businesses and projects for the government of Dubai. Other companies that Dubai World holds are Istithmar PJSC, an alternative investment house; Limitless LLC, a real estate development entity; and DP World.

“Ijarah is Islamic financing's equivalent of leasing and may be seen as a hybrid between conventional operating and finance leases”

The deal

The Sukuk was structured as a Sukuk al-ijarah. An Ijarah is a lease agreement

under Shariah and is a hybrid between an operating lease and a finance/capital lease.

Nakheel Development used the proceeds of the Sukuk issue to purchase a long-term leasehold interest in part of the land at Dubai Waterfront from an entity within the Nakheel group. This land was then leased under an Ijarah to another Nakheel entity, with the rentals being used to make coupon payments to the Sukuk holders. Dubai World has guaranteed the payment obligations due to the issuer.

Upon redemption of the Sukuk, the issuer has the right to require the lessee to purchase its long-term leasehold interest in the Dubai Waterfront land. The purchase amount payable is calculated in a manner that will be sufficient to allow the issuer to pay all amounts due to the Sukuk holders upon redemption.

In addition, the Sukuk holders have certain priority rights in the event of any public offering of shares in Nakheel PJSC or its subsidiaries during the next four years.

Ijarah structure

This is Ijarah Islamic financing's equivalent of leasing and may be seen as a hybrid between conventional operating and finance leases. As with Murabahah financings, Ijarah rental payments will reflect an agreed profit element, calculated using the London Interbank Offered Rate

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Nakheel Sukuk: World's Largest Single Sukuk Issue (continued..)

(Libor) as a benchmark, and comparisons with rentals on conventional leases can readily be made.

There are certain key issues in relation to using Ijarah so as to ensure that it is Shariah compliant. One is that the obligation to insure and undertake any major maintenance on the leased asset must remain with the lessor. In addition, the lessee is only responsible for payment of rent while the use of the asset continues, so an issue arises where the lessee is no longer able to use the leased asset — for example, due to its total destruction — as the obligation to make lease payments will cease.

“There are certain key issues in relation to using Ijarah so as to ensure that it is Shariah compliant. One is that the obligation to insure and undertake any major maintenance on the leased asset must remain with the lessor.”

Principal Islamic documents

The Ijarah Islamic structure used in the Sukuk combines the use of: (i) purchase/sale undertakings; (ii) a lease agreement; and (iii) a service agency agreement.

(i) Purchase agreement

Pursuant to the purchase agreement, the seller (Nakheel Holdings 1 LLC, one of the shareholders of Nakheel PJSC) sold to the issuer a leasehold interest over certain land, buildings and other property at Dubai Waterfront (the property) for a term of 50 years. The issuer used the proceeds of the Sukuk issue to pay the purchase price for this property. The seller invested the net proceeds in Nakheel PJSC as share capital.

(ii) Lease agreement ('Ijarah')

The Ijarah was entered into between the issuer as lessee and Nakheel Holdings 2 LLC (another shareholder of Nakheel PJSC) as lessor. The Ijarah provided for the lease of the property during six consecutive periods of six months. The lease rental payments were structured to match the coupon payments to the Sukuk holders.

If any payment under the lease agreement is not made when due, the lessee undertakes to pay an additional amount calculated on a daily basis. However, any late payment charge received by the lessor shall be donated to Red Crescent charity, being the charity of the lessee's choice.

(iii) Servicing agency agreement

The parties to the service agency agreement were Nakheel Holdings 2 LLC (as servicing agent) and the issuer (as lessee under Ijarah).

Under the principles of Shariah, a lessor has certain obligations that it cannot pass

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Nakheel Sukuk: World's Largest Single Sukuk Issue (continued..)

to the lessee under the Ijarah. These include the obligation to insure the lease asset, the responsibility to pay property taxes (other than those imposed by law against a lessee or tenant) and any major maintenance and structural repair of the property. These obligations can, however, be passed by the lessor to an agent.

To the extent the servicing agent claims any costs and expenses under the servicing agency agreement, the lease rentals will be increased by an equal amount. Any increased lease rental is offset against the costs and expenses claimed under the servicing agency agreement.

(iv) Sukuk assets sale undertaking

The sale undertaking was granted by the issuer in favor of Nakheel Holdings 1 LLC. Under this agreement, the issuer agreed that the leasehold in the property may, in certain circumstances, be sold back to the original seller (in whole or in part) provided that there was a payment in kind by the seller in the form of similar assets (payment in kind asset). This mechanism allows Nakheel to substitute the property in whole or in part with another similar portion of land. The replacement land will then be leased by the issuer to Nakheel Holdings 2 LLC under the Ijarah.

(v) Purchase undertaking

This undertaking is given by Nakheel Holdings 2 LLC in favor of the issuer. It is a key document from a credit perspective because it allows the certificate holders to be paid on early termination or at the term of the Ijarah.

Under the purchase undertaking, Nakheel Holdings 2 LLC agrees to purchase the issuer's interest in the Sukuk assets at a specified price on a specified date following the issue of a notice from the issuer. This notice will be served by the issuer either upon the occurrence of an event of default or immediately before the scheduled redemption date of the Sukuk certificates, and the Sukuk assets will be sold to Nakheel Holdings 2 LLC under a separate sale agreement.

**C L I F F O R D
C H A N C E**

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Sukuk in Indonesia: A Legal Review

By *Mirza A Karim*

The term “Shariah bond” has been in frequent use lately in Indonesia following the issuance of Sukuk by countries like Qatar, Bahrain and Malaysia. In English, Sukuk means Islamic bond. The term “Sukuk” is Arabic, which means certificate or letter. Sukuk has the meaning of a note, which is a financing instrument made based on certain Shariah transactions that oblige the issuer to pay income in the form of profit sharing or profit margin or service payment (Ujah) as determined in the contract and repay the fund as stated in the Sukuk certificate on the due date of the Sukuk to the Sukuk holder.

The translation of Sukuk into Shariah bond in Indonesia has not always been appropriate. As explained later on, there are differences between Sukuk based on the contract of Ijarah as issued internationally and Ijarah bond as known in Indonesia.

Government Regulation No 4 Year 1998 defines “Obligasi” (the Indonesian term for bond) as “a long-term debt security, with obligation to pay interest on a certain period and settle the principal amount as stated in (the) bond certificate”. Such definition is no longer thought to conform with Shariah principles. So, Muslim legal scholars have made a breakthrough to accommodate the aspiration of investors and those who seek additional capital yet do not want to violate Shariah principles.

At a glance, the term Shariah bond sounds contradictory. As mentioned above, Obligasi connects to payment obligation

over interest of debt in addition to the same over the principal amount. On the other hand, Islamic law prohibits any transaction that contains the element of interest. Here, the innovative opinions (fatwa) of experts on Islamic jurisprudence can play an instrumental part in enabling the issuance of Obligasi (bond), but still remain compliant with Islamic law.

Sukuk can be issued by a corporation or government. Until today, the government of Indonesia has not issued Sukuk, pending the implementing regulation on this matter. Only corporations have issued Sukuk (in Indonesia, Sukuk is known as “Obligasi Shariah”). Governments of countries like Malaysia, Qatar, Bahrain and Pakistan have issued international Sukuk as a means to boost state revenue budgets.

The issuance of international Sukuk has been continuously increasing year to year, not to mention the aftermath of drastic increases in oil prices, which invited additional millions of dollars into the oil-producing countries, especially those in the Middle East. The fact is that such additional sums have opened up opportunities for cooperation in financing between investors and those additional capital seekers who wish their transactions to comply with Islamic law.

Such opportunity shall be responded to positively by the Indonesian government, which is under the pressure of economic hardship. Bearing in mind the issuance of corporate Sukuk, which has shown a

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Sukuk in Indonesia: A Legal Review (continued..)

positive trend domestically and overseas, and the issuance of international Sukuk by the governments of other countries, it is recommended that the government review regulations on bonds issued by the government.

In the meantime, the issuance of Sukuk by domestic corporations has rapidly increased. At end-July 2005, there were 16 Sukuk with the issuance value of IDR 2 billion (US\$212,600). This means the number of corporate Sukuk has grown by 23% and its issuance value has grown in 143, 25%, compared to end-2004.

The basic principles

Islamic teachings cover not only ritual (ibadah) aspects that instruct interaction with God, but also social aspects that teach how people should interact (Muamalat).

Islamic jurisprudence provides the following principle: "All kinds of Muamalat are permissible, unless otherwise prohibited by a text" (al-ashlu fi al-mu'âmalâti al-ibâhâtu illâ an yadulla dalîlun 'alâ tahrîmihâ). Therefore, in principle, all kinds of transactions are allowed unless there is a reason (nash) that prohibits them.

A Muslim can perform a transaction on business cooperation, investments, loans, borrowings or sale and purchase with other members of the community as long as the transaction does not have any prohibited content. Further, in the context of Muamalat, Islamic law does not discriminate against the rights and obligations between Muslims and non-Muslims. Each has the right and obligation pursuant to what has been

agreed. In connection with this, Imam Ali bin Abi Thalib a.s. said that: "In Muamalat, their obligations are ours and their rights are also ours."

From the Muamalat aspect, Islam provides the following basic principles that shall be considered by every Muslim:

- 1) Do not make a living from any prohibited things, either in terms of their substance or method of their obtaining and do not use them for things that are also prohibited;
- 2) Do not oppress and do not be oppressed;
- 3) A necessity of being fair/honest;
- 4) The transaction shall be done on the basis of mutual sincerity;
- 5) There is no element of riba (on top of a principal debt, with no legitimate transaction as the basis);
- 6) There is no element of maysir (gambling);
- 7) There is no element of gharar (uncertainty/vagueness).

Activities of Muamalat in the capital market must comply with the above provisions. Activities of the Shariah capital market may not involve prohibited things like distribution of funds to build an alcoholic-drinks factory, fund prostitution or gambling resorts. All transactions must be done on the basis of mutual sincerity, there can be no forceful element, no party shall be allowed to oppress or be oppressed by another, no elements of riba are allowed, no gambling transactions are allowed and all transactions must be done transparently.

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Sukuk in Indonesia: A Legal Review (continued..)

Definition of bond

Bond shall mean debt evidentiary certificate, issued by a limited liability company or certain institution, either government or other institution in the frame of obtaining fund/capital (funding). A company pays interest upon the bond on the dates as periodically determined and redeems the debt on the due date by repaying the principal amount of loan plus any indebted interest.

“A bond shall consist of commercial papers issued by a limited liability company or a certain institution, which obliges the issuer to pay interest on a periodical basis and repay the principal debt on the due date to the party providing additional capital (bondholder)”

Law No 8 of 1985 regarding the capital market (Capital Market Law) classifies bond as a group of tradable securities in the capital market. Article 1.5 of the Capital Market Law defines securities as “promissory notes, commercial paper, shares, bonds... Participation Units of collective investment contract, futures

contract related to Securities and all derivatives of Securities”.

In short, a bond shall consist of commercial papers issued by a limited liability company or a certain institution, which obliges the issuer to pay interest on a periodical basis and repay the principal debt on the due date to the party providing additional capital (bondholder).

Based on this definition, it is certain that the issuance of bond does not conform with the basic principle of Islamic law since there is an element of interest. This matter is also affirmed in the consideration of the fatwa of the National Board of Shariah No 32/DSN-MUI/IX/2002 regarding Shariah bond dated the 14th September 2002 (Fatwa of DSN [Dewan Shariah Nasional, or the National Shariah Board]) on Shariah bond).

Shariah bond

Fatwa of DSN on Shariah bond provides the following definition: “Shariah bond is a long-term Shariah-based securities issued by the issuer to the Shariah bondholder, which obliges the issuer to pay income to the Shariah bondholder in the form of sharing/margin/fee and repay the fund of bond on the due date”.

The issuance of a Shariah bond can be based on various kinds of contracts, such as cooperation contract of profit sharing, sale purchase contract or lease contract. The fatwa on Shariah bond mentions that the following contracts can be used in the issuance of a Shariah bond: Mudarabah,

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Sukuk in Indonesia: A Legal Review (continued..)

Musharakah, Murabahah, Salam, Istisnah and Ijarah.

Mudarabah and Musharakah are categorized as sharing cooperation contracts. A bond under a Mudarabah or Musharakah contract will provide the returns, whose amount is not fixed due to the performance that generates income.

Murabahah, Salam and Istisnah are categorized as sale-purchase contracts where the principal price is added to a certain agreed profit margin. Ijarah is a lease contract. Bonds that are based on such contracts will provide fixed returns, though an Ijarah-based bond may also give returns gradually pursuant to the arrangement stated in the contract.

“Mudarabah is different from a sale and purchase contract, which requires security upon assets being financed”

In addition, the fatwa on Shariah bond also mentions the type of business the issuer is involved in may not contravene the principles of Islamic law. DSN provides guidance on the type of businesses that are contrary to the principles of Shariah, among which are:

- a) Gambling and other related businesses classified as gambling or prohibited trading;
- b) Interest-based financial institution

business, including conventional banking and insurance;

- c) Businesses that produce, distribute and trade prohibited foods and beverages; businesses that produce, distribute and/or provide moral hazardous goods or services, and those that have bad influences.

Mudarabah bond

Shariah bond based on Mudarabah contract, which is known as Mudarabah bond, has already been provided in the Opinion of DSN No 33/DSN-MUI/IX/2002 on Mudarabah Bond (fatwa on Mudarabah Bond). As mentioned earlier, Mudarabah is a business cooperation contract whose parties consist of the investor (Shahibul Mâl) and the investment manager (Mudarib), with the business profit being split between them based on a mutually agreed percentage (nisbah). The characteristics of Mudarabah bond are as follows:

1. It is the most suitable form of funding for investment in big numbers and in a relatively long term;
2. It is usable for public funding, like working capital funding;
3. Security upon certain assets is not absolutely necessary, since Mudarabah is a kind of cooperation between an investor and an investment manager. Mudarabah is different from a sale and purchase contract, which requires security upon assets being financed.

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Sukuk in Indonesia: A Legal Review (continued..)

4. There is a global trend to use Mudarabah or Ijarah contract in the issuance of Sukuk.

The fatwa on Mudarabah bond not only provides the basic principles of Shariah-based transactions, but also the following:

1. Percentage of sharing (nisbah) shall be agreed upon prior to issuance.
2. If an issuer fails and/or breaches the terms of the agreement and/or is being excessive, the issuer shall guarantee to repay Mudarabah fund to the holder of the Mudarabah bond and the holder of the Mudarabah bond may request the issuer to execute a letter of debt acknowledgment.
3. Ownership of the Mudarabah bond can be transferred to the other party as long as agreed by the parties in the contract.

“Sukuk Ijarah is different from Ijarah bond”

The mechanism of Mudarabah bond can be summarized as follows:

1. Issuer offers Mudarabah bond to prospective investors.
2. Contract of Mudarabah is made in trustee agreement of Mudarabah bond.
3. Percentage of sharing (nisbah) can be fixed based on the principle of revenue sharing being calculated from total revenue of fund management, or profit shar-

ing being calculated from revenue after deduction of fund management expenses. However, the Opinion of DSN No 15/DSN-MUI/IX/2000 provides that it is better to determine the nisbah percentage on the basis of revenue sharing principle. This percentage must be stated in the agreement prior to the issuance.

4. Sharing can be done periodicaly and this must be stated in an agreement. If the issuer fails to pay part of the sharing, which is the right of Mudarabah bond holder on the agreed time, then a fine can be imposed on the issuer.
5. At the maturity date, the issuer is obliged to repay the fund of Mudarabah bond to the holders of Mudarabah bond.
6. Security is not a must in Mudarabah bond. However, the Opinion of DSN No 07/DSN-MUI/IV/2000 on Mudarabah financing permits security on a Mudarabah transaction. In addition, Articles 1131 and 1132 of the Indonesian Civil Code state that all assets of the debtor, either movable or immovable, either currently or which will be present in the future, shall serve as guarantee for all agreements that he or she has entered into. Nevertheless, if such certain guarantee is not bound in a security agreement, the lender has no preferential right to be given first choice upon the goods being made as the guarantee.

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Sukuk in Indonesia: A Legal Review (continued..)

Ijarah Bond

- **Sukuk Ijarah**

Besides Mudarabah bond, Sukuk Ijarah has been globally used. Sukuk Ijarah is different from Ijarah bond as it is known in Indonesia. This matter will be further described hereunder.

One of the examples of Sukuk Ijarah is the issuance of Qatar Global Sukuk by the Qatar government to build a medical center known as Hamad Medical City. The government of Qatar, together with Qatar International Islamic Bank and HSBC, first established a joint venture company (joint venture special purpose vehicle/SPV company), which then purchased some plots from the Qatar government.

The SPV company sold the right to use the land to the investors by issuing Sukuk. The money from the sale was used to build Hamad Medical City. The land was leased to the government of Qatar, which is obliged to pay the leasing fee (Ujrah). Ujrah was then distributed by the SPV company to holders of Qatar Global Sukuk.

In the issuance of Qatar Global Sukuk as mentioned above, the following contracts were involved:

1. Contract of Ijarah (lease) between the Qatar government and the SPV company as representative of holders of the Qatar Global Sukuk;
2. Contract of al-bay' (sale purchase) between the Qatar government and the SPV company as

representatives of holders of Qatar Global Sukuk;

3. Contract of Wakalah between holders of Qatar Global Sukuk and the SPV company.

Since at the end of the Sukuk period, land ownership will further be transferred to the Qatar government, the contract of Ijarah being made shall be the contract of Ijarah muntahiya bi at-tamlik (Ijarah with option to buy the ownership at the end of the Ijarah period). In this matter, the land utilized for Hamad Medical City is not used as a guarantee to Sukuk holders since within the period of Sukuk, the land is actually under the ownership of the Sukuk holders through the SPV company, and the ownership will only be further transferred at the end of the Sukuk period after the option to own is exercised by the Qatar government.

“The mechanism used in Qatar Global Sukuk will certainly be impossible if applied in Indonesia”

- **Ijarah Bond in Indonesia**

The mechanism used in Qatar Global Sukuk will certainly be impossible if applied in Indonesia. Following the sale by the Qatari government, the landowner is actually the holder of Qatar Global Sukuk. The holders of these Sukuk jointly become the landowners in accordance with the portion of Sukuk held.

continued...

Sukuk in Indonesia: A Legal Review (continued..)

In other words, the holders of Qatar Global Sukuk are the “beneficial owners” of the land. But formally, the purchaser of the land is an SPV company. Therefore, the SPV company is the “legal owner” of the land. This differentiation is not recognized under Indonesian law.

Problems will also occur since the title conversion will be made twice: first, from the issuer of Ijarah bond to the Ijarah bondholder at the beginning of the issuance of the bond; and second, from the Ijarah bondholder to the issuer at the end of the bond period.

The writer is of the opinion that the problems posed by the above mechanism in issuing Ijarah bond by a limited liability company in Indonesia can be solved by applying the principle of free contract as provided in Article 1338 of the Indonesian Civil Code, but still in the corridor of Shariah principles as mentioned above. The solution is for the land to be formally owned by the limited liability company.

However, from the perspective of Islamic jurisprudence (fiqh), the land shall be deemed to belong to Ijarah bondholders but is leased to the issuer of the Ijarah bond. The land will be used as guarantee, which will protect Ijarah bondholders from any breach of contract possibilities by the issuer of Ijarah bond.

If at the end of the period, all obligations of the Ijarah bond issuer towards Ijarah bondholders have been complied with, then the ownership of the land will be

returned to the Ijarah bond issuer without any further title to conversion process.

In the issuance of Ijarah bond by PT Berlina Tbk (as the issuer), the fund of Ijarah bond is used to purchase machines as assets. The machine becomes the object of Ijarah and at the same time, a guarantee if the issuer breaches the contract in making payment over Ijarah fee and fund of Ijarah bond on the maturity date. The scheme shall be as follows: The issuer (which, in terms of Islamic jurisprudence/fiqh, is acting as the representative of Ijarah bondholders) purchases a machine.

The machine then serves as an object of Ijarah (being leased to issuer), which obliges the issuer to pay the fee of Ijarah to Ijarah bondholders. However, in writing, the machine shall belong to the issuer and so it can be used as guarantee if the issuer breaches a contract in paying fee of Ijarah and fund of bond on maturity date.

Unlike in the issuance of Ijarah bond by PT Berlina Tbk, in the issuance of Ijarah bond by Matahari Putra Prima, the object of Ijarah and the guarantee were two different things. In the trust agreement on the Ijarah bond of Matahari Putra Prima, whose purpose of issuance was for fund-raising to lease a business space, the issuer in fiqh terms will act as representative of the Ijarah bond holder to carry on a lease contract upon the said business space from its owner. Benefit upon the said business space will then be enjoyed by the issuer. Upon the use of such benefit, the issuer will make payment of Ijarah fee and fund

continued...

Sukuk in Indonesia: A Legal Review (continued..)

of Ijarah bond to Ijarah bondholders as determined in the trust agreement. In order to provide more guaranteed payment upon all funds of Ijarah bond and Ijarah fee, the issuer shall also provide special guarantee in the form of issuer's assets (land, building and apartment unit in Makassar) in the interests of the Ijarah bondholder.

In this matter, the object of Ijarah is a business space that belongs to a third party, whereas the guarantee is that the land belongs to Matahari Putra Prima in Makassar. In relation to that matter and in line with the fatwa on Ijarah bond, the issuer agrees to execute a debt acknowledgment letter in the interest of Ijarah bondholders in the amount of fund of the Ijarah bond, Ijarah fee and damages compensation due to delay, if any.

In this mechanism, the issuer shall not necessarily make prior sale over its assets to Ijarah bondholders to obtain funds and further leaseback from Ijarah bondholders as applied in Sukuk Ijarah internationally.

If the mechanism of Sukuk Ijarah as applied internationally is to be applied in the issuance of state commercial papers in Indonesia, then another problem will arise since it is not possible to sell or guarantee state assets. The more appropriate mechanism for the issuance of state commercial papers shall be Sukuk Manafi' ("Manafi'" means "benefit"). In this matter, the government transfers utilization of a state asset to its appointed legal entity (state-owned company BUMN). But since the procurement and development of such

state assets involve funds from the holder of the state commercial papers, holders of these papers also have the right to acquire some of the result of utilization over the said state asset in the form of an Ujah (fee). Under Sukuk Manafi', there is no state asset being sold or guaranteed.

On the 4th March 2004, DSN issued Opinion No 41/DSN-MUI/III/2004 on Ijarah Bond (Ijarah Bond opinion). The opinion not only provides reference over substance of the previous opinion on Ijarah, but also provides, among others, the following:

1. Issuer in its position as Ijarah bond issuer may issue such bond for the existing assets or assets that will be provided for lease.
2. Bondholder as owner of the asset or benefit must lease his or her rightful asset or benefit to the other party through the issuer as representative.
3. Issuer may lease for itself or lease to other party.
4. If issuer leases for itself, then it shall pay the lease in the agreed amount and period as compensation in the same amount as when the lease is being applied to the other party.
5. Ownership of Ijarah bond is transferable if agreed by the parties in the contract.

Unlike Mudarabah bond, whose returns cannot be fixed due to the fluctuation of profit from the fund management, Sukuk Ijarah provides more stable returns, even gradual returns pursuant to the agreement.

continued...

Sukuk in Indonesia: A Legal Review (continued..)

In 2004, Indonesia saw seven issuers acquiring statement of effective from the authority to issue Ijarah bond with total issuance value of IDR 642 billion (US\$68 million).

“Unlike Mudarabah bond, Sukuk Ijarah provides more stable returns, even gradual returns pursuant to the agreement”

Conclusion

Sukuk is considered to be closer to the parties' sense of fairness. In Sukuk Mudarabah, the issuer would obtain additional funds from the investors who are the holders of Sukuk Mudarabah, with the obligation to make payment over sharing from the profit of the project funded from Sukuk Mudarabah, and repay the fund of bond on its maturity date.

Therefore, the return to be obtained by Sukuk Mudarabah holders is unstable as it depends on the profit from the project financed by the bond. If the profit obtained by the bond issuer is high, so will the sharing that will be obtained by the bondholder. If the profit obtained is small, so will the sharing to be obtained by the bondholder. In anticipating a breach of contract or negligence by the bond issuer, the bond issuer can be requested to provide an acknowledgment of debt and requesting for guarantee.

In Sukuk Ijarah, the bondholder would acquire more stable returns, even gradually depending on the agreement between the parties since the amount of Ujrah has been determined from the beginning. Currently, global trend indicates that investors prefer Sukuk Ijarah due to their more stable returns.

The Indonesian government is drafting regulations on Ijarah bond, which are expected to be in line with the Ijarah Bond Opinion issued by DSN. However, pending the enactment of such regulation, parties may minimize any possible dispute by making a clear agreement that will sufficiently protect the interest of the contracting parties and inserting all principles of Islamic jurisprudence, especially on Sukuk Ijarah.

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Saudi Arabia: Emerging Trends in Islamic Project Finance

By Oliver Agha, Abdul Aziz Al-Bosaily and Shadi Sedghinejad

As one of the major project finance markets globally, the Middle East is the epicenter for innovative financing structures. Last year, US\$20 billion in debt financing was utilized for projects in Saudi Arabia, representing 55% of the total debt transactions in the Middle East and Africa. Landmark projects in both the public and private sectors have evolved as the new norms for financing structures.

With a growing need for diverse sources of funding, the demand for Islamic financing has been on the rise throughout the Middle East, especially in the oil, gas and petrochemical (OGP) sectors. Saudi Arabia has been the major driving force on this front and continues to attract major international financiers as well as export credit agencies (ECAs) in conjunction with local and regional financial institutions to meet growing market demands.

As the market matures, novel structures emerge with a trend towards foregoing conventional financing in favor of their Islamic counterparts. The growing scope and size of the transactions necessitate tailor-made and project-specific Shariah compliant structures. Despite the complexity of the structures, their flexibility sustains the innovative and vibrant nature of the market.

One of the more popular structures in use in Islamic financing besides Sukuk is the Ijarah Mausufa Fil Thimma (forward

lease) arrangement where, through a special purpose vehicle (SPV), investors can acquire an asset under construction and forward lease it to the project entity pending completion. In such a forward lease, investors are entitled to income during the construction phase, provided that all lease payments are refunded in the event the asset is not delivered upon completion.

Trend Setters

• Rabigh (March 2005)

The US\$9.8 billion Rabigh refinery and petrochemical project, a joint project by Saudi Aramco and Sumitomo Chemical Company of Japan, represents the largest long-term Islamic project financing in the Middle East to date. It saw significant participation by 17 internationally renowned financial institutions along with the Japan Bank for International Cooperation (JBIC) and the Public Investment Fund for Saudi Arabia (PIF). Upon completion in 2009, Rabigh will be one of the world's largest export-oriented refinery and petrochemical complexes.

Along with conventional financing, this project entailed an Islamic tranche for US\$600 million spearheaded by APICORP, Islamic Development Bank, Bank Al Bilad and Gulf International Bank utilizing the Ijarah Mausufa Fil Thimma structure.

• IWPP Shuaibah (December 2005)

Thanks to the success of the Abu Dhabi

continued...

Saudi Arabia: Emerging Trends in Islamic Project Finance (continued..)

independent water and power project (IWPP), the US\$2.5 billion in Shuaibah represents the first IWPP project of its kind in Saudi Arabia, as well as the largest greenfield power and desalination project to date.

This project comprised of three separate tranches with 23 banks involved in the commercial financing for US\$974 million on a limited recourse basis. Additional export credit facilities of US\$400 million and US\$455 million were arranged by Germany's Hermes and South Korea's Export-Import Bank (Kexim) respectively. The project also relied on a US\$210 million Islamic financing tranche.

As was the case with Rabigh, the Ijarah Mausufa Fil Thimma was used. The subsequent Shuqaiq, Marafiq and Ras Al Zour IWPP structures were based on the Shuaibah model.

Although the 20-year tenor for Shuaibah established the longest tenor for project financing in Saudi Arabia, future tenors are expected to stretch beyond 20 years. In addition to these characteristics, Shuaibah illustrates the increasing popularity of Islamic financing in mega projects in the region, with the gap between the two tranches diminishing.

- Yansab (June 2006)
Yansab was the largest greenfield project in Saudi Arabia, requiring US\$5 billion in financing. It featured multi-tranche financing, including ECA-backed facilities provided by the official export credit agencies of

Italy (SACE) and the UK (ECGD) as well as an Islamic finance tranche of US\$846.8 million. Again, Yansab entailed unique characteristics representing the largest ever Islamic financing globally and the biggest single bank underwriting (ABN Amro) in the Middle East.

The Islamic financing component of the transaction improved overall pricing as well as enhanced the profile of future SABIC projects. The structure used with regard to Yansab was Ijarah Mausufa Fil Thimma.

- Al-Waha (November 2006)
The US\$1 billion Al-Waha petrochemical project was financed through only Islamic vehicles representing the equivalent of US\$526 million in debt. As the first ever greenfield petrochemical project to be Islamically financed on a limited recourse basis without relying on commercial funding, the complexity of the transaction required a unique variation of the standard Islamic vehicles. This structure combined a procurement arrangement (a variation of an Istisnah contract) and a lease arrangement. The investors and the project company were involved in a co-purchase/co-ownership arrangement with respect to project assets.

The innovative structure and the sole use of Islamic financing for funding the project earned it the "Project Finance Deal of the Year 2006" award from *Islamic Finance news*.

Looking Ahead
Projects currently underway in Saudi

continued...

Saudi Arabia: Emerging Trends in Islamic Project Finance (continued..)

Arabia with a strong emphasis on Islamic finance tranches include Maaden Mining Co and Kayan Petrochemical Co in Jubail (which requires debt financing of US\$6 billion).

As the first project to be exclusively financed through Islamic products, Al-Waha acknowledges the potential of the Islamic finance market while introducing a new benchmark for complex structures. Despite estimates of market value ranging from US\$350 billion to US\$500 billion, the concept of Islamic finance is still evolving.

“Al-Waha is likely to form the basis for forthcoming financings and promises to be a paradigm for future structures”

Al-Waha is unique in that it utilizes a seminal Islamic financing vehicle in line with Shariah precepts; as such, it is likely to form the basis for forthcoming financings and promises to be a paradigm for future structures. As the market evolves, the related documentation will become more demanding to reflect the sophisticated nature of the structures.

Saudi Scenario

Saudi Arabian corporate entities prefer Shariah compliant transactions. At present, local banks in Saudi Arabia offer Islamic financing products due to the high demand for Shariah products. Given the

size and scope of transactions in Saudi Arabia, especially in the OGP sector, the participation of international financial institutions is inevitable. However, Yansab clearly emphasizes the role of local and regional banks in conjunction with their international counterparts.

Emerging Trend

Equity products and international investors are injecting additional liquidity into Saudi Arabia, the Sukuk market continues to thrive as illustrated by the SABIC Sukuk and the Saudi Electricity Co Sukuk.

Despite certain political concerns in the region, the flow of foreign funds is consistently increasing. Local lending institutions such as the Saudi Investment Development Fund and PIF, western banks and ECAs play an integral role in project financing in the Middle East by lending a hand to their local counterparts. While domestic and regional banks provide local expertise especially with respect to Islamic financing and the regulatory framework, international banks play a vital role in the syndication process. Although Islamic financing is still evolving, its increasingly important role in mega projects in the Middle East and beyond is becoming more pronounced.

Oliver Agha is global head of Islamic finance at DLA Piper Middle East LLP in Dubai, United Arab Emirates

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Islamic Banks Enter the Syrian Market

By Hussein Khaddour

Last month, Syria saw the launch of Sham Islamic Bank, the steps to whose creation did not begin in 2005 until a special legislation pertaining to Islamic banks, Law No 35/2005, was issued. Sham Islamic is the first Islamic bank in the country's history to have operated with a capital of up to US\$100 million.

Following on its heels was Islamic International Bank of Syria, which has completed its subscription-for-shares exercise and is preparing to start up in the market with a capital similar to Sham Islamic Bank's. Al Baraka Islamic Bank is also gearing up to offer its bonds for subscription shortly.

In addition, the Central Bank of Syria has received several applications for the creation of other Islamic banks, said its governor Dr Adib Mayaleh.

Subsequent to launching four private traditional banks in the market, there was talk about the necessity of creating Islamic banks in Syria. First, opinion veered towards the possibility of adding new text to the executive list of the Act of Creation of Private (conventional) Banks that need not have legislation issued for the creation of Islamic banks.

But the need to create Islamic banks of high volume of capital nullified that and on the contrary, leaned towards increasing the capital of conventional private banks, hence the issuance of Act 35 of 2005 governing Islamic banks.

Wanted: Islamic investment banks

Many Syrian officials have not curtailed their objective to allow Islamic banks to operate in the domestic market, as seen by the opening of new investment channels, particularly in view of the failure of private conventional banks to achieve their purpose.

Mayaleh expressly said: "We need the Islamic banks to be investment companies and not institutions of lending and borrowing like traditional banks, on the principle that currency does not give birth to currency but rather grows by its investment." In his opinion, this is a strategic need for the Syrian market in order to further push the economic growth wheel forward.

He built his conviction on the theory that the essence of Islamic banks' operation lies in the partnership with their customers. This leads to the optimal allocation of resources through directing the capital of feasible development enterprises or the Islamic bank of technical expertise becomes a partner in the production process.

Social role required

Mayaleh adds that Islamic funding bears participation in the social dimension through managing to tackle the problem of unemployment and reduce the poverty phenomenon.

This came to be consistent with the components of social market economy, which is considered a methodology of the 10th five-year plan in Syria.

continued...

Islamic Banks Enter the Syrian Market (continued..)

In the same vein, the Islamic banks of Syria are considered one of the important tools of currency policy. "In this respect, resort on the part of Islamic banks to invest in the bonds of the companies, seeking to create investment funds and offer Islamic instruments may contribute to the activation of financial market and continuity of attraction of accumulated funds to be utilized in the investment process — hence enabling Central Bank to achieve its goals in the field of liquidity management and control of offered cash in order to ensure the stability of the exchange rate adopted by monetary policy as an anticipated objective on the medium term," says Mayaleh.

Islamic banks in Syria have received official and Shariah blessings. Dr Ziad Eddin Ayoubi, Syrian Minister of Religious Endowment (Waqf), has classified Syria as the twelfth state that issued legislations encouraging the operation of Islamic banks.

He said Islamic banks must work to move the savings of millions of people of limited income as deposits and prepare channels into which those deposits can be invested.

Enthusiasm

On the other hand, many experts and officials expect Islamic banks would be met with appreciation by popular categories. In this regard, Dr Mohamad Al Hussein, Minister of Finance, expects that Islamic banks will meet the approval of Syrians due to the various services and methods of funding provided by those banks.

It is hoped that these Islamic financial institutions will work hand in hand with the Syrian public and private banks to serve consumers as well as the Syrian economy by providing the best services.

Moreover, on more than one occasion, Al Hussein pointed out that there is a plan by the monetary authority of Syria to estimate the needs of market and grant approvals for creation of new banks based on the needs of Syrian economy. The Minister of Finance repeated the wishes of the Syrian government that Islamic banks would aim to support investment activities in the Syrian market.

It seems that the Syrian success of attraction of financial institutions has provided an important indicator of the investment success in Syria. Adnan Al Mussalem, chairman of the board of Sham Islamic Bank (which started up in the market) described investment in Syria as a draw that was different from that of many other economies.

Al Mussalem renewed his interest in any opportunity that would be available for working in any Islamic bank due to the availability of expertise in this field; Syrians are educated and have large human resources that are important for any service activities.

Wahbeh Al Zuhayli, head of the Shariah board (religious code) at Sham Islamic Bank, pointed out that starting an Islamic bank in general begins with the decisions

continued...

Islamic Banks Enter the Syrian Market (continued..)

of the Shariah board, which are binding on all bank managers, staff and its various activities. This makes the monitoring board of great importance in the study of issues so that there would be alternatives for whatever is familiar to the traditional banks.

According to Zuhayli, the role of the Shariah board is to find alternatives for the traditional jurisprudence which is different from the contemporary jurisprudence and therefore, the objective is to maintain Islamic Shariah and its provisions.

In this respect, many monetary and finance experts have visited Damascus and came away with their own views as to the primary foundations of the creation of Islamic banks in the Syrian market. Dr Riyadh Salameh, governor of the Central Bank of Lebanon (who is considered an authority in the region), said: "We consider the spread of Islamic banks and financial institutions in our region as a positive issue and openness."

Salameh gave the final say for the terms of reference of operation of Islamic banks to the jurisprudence of formalities and the Shariah provisions which govern the principles of contracts and commercial and financial dealing in the Islamic funding sector.

The opinion derived from Shariah and edicts emerging from the Shariah boards are the first and last reference to add the legitimacy of any Islamic funding instrument with full independence.

Introduction of public banks

Within the atmospheres of discussion about Islamic banks in the Syrian market, I would like to highlight an important point mentioned by the governor of Central Bank of Syria, namely creation of Islamic banks with the participation of Syrian governmental banks. The following idea is based on the hypothesis that there are large non-interest bearing deposits at the Syrian governmental banks.

It is common sense that these deposits be transferred to the created Islamic banks. Some of the financial expertise houses in Syria have been aware of that and are trying to arrange partnerships between the Syrian public banks and Islamic banks coming to the market subsequent to the approval of the mandatory bodies which have likely agreed on the principle. In this respect, the governor of Central Bank of Syria has emphasized that there are at least six Islamic banks that had applied and there are governmental partnerships in those applications.

In a related context, it is imperative to point out that introduction of Islamic banks to the Syrian market with large capital (US\$100 million per bank) and offering a portion of their capital to public subscription will encourage a considerable segment of society who accumulated their money in foreign currency to participate in subscription to Islamic banks which took place recently.

Subscription to the offered bonds (shares) by Sham Islamic Bank, which represents

continued...

Islamic Banks Enter the Syrian Market (continued..)

25% of its capital amounting to US\$100 million at the rate of 525%, has been covered. Also, subscription to the bonds offered by Islamic International Bank of Syria which represent 51% of its capital amounting to US\$100 million, at the rate of 336% with a number of shareholders of over 15,300 shareholders.

Joint Liability Insurance (Islamic)

On par, the joint liability insurance (Islamic) is met with a clear acceptance in the market, as ascertained by the Minister of Finance it is expected that the joint liability insurance will cover a large portion of the Syrian market.

Sheikh Badrudin Hassoun, grand mufti, thinks that joint liability insurance dates back to the early days of Islam. He believes

Muslims' Financial House was the first to have created the joint liability insurance fund.

People used to deposit their alms (zakat) in that fund and when a group is subject to a calamity, an amount would be withdrawn to be distributed to those participants and non-participants. Thereafter, the idea developed so that the fund would be for participants and out of its profits an amount would go to non-participants. This is the joint liability cooperative fund of insurance.

Hussein Khaddour is managing partner of the Syrian Legal Bureau. He can be contacted via email at sibureau@scs-net.org.

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Turkey Continues to Grow

By Paul Wouters

Market players in Turkey are still confronted with obstacles vis-à-vis their conventional opponents pending government and private Sukuk regulations. Also, access to the money markets is still closed, which means substantial illiquidity at the participation banks (local terminology for Islamic finance banks) and thus, unproductive for the Turkish economy.

Recent elections confirmed administration by the ruling government will continue, but for the moment, talks about the new “civil constitution” and debate on the headscarf ban at universities appear to be attracting a lot of attention.

Discrete lobbying has started since several parties on the financial market are inclined to at least be in favor of issuing Sukuk as soon as possible.

The Turkish market keeps moving, however. Since 1999, the participation banks have been outperforming their rivals in the conventional segment. To recapitulate, in early February 2001, the largest finance house in Turkey, Ihlas Finans Special Finance House, became insolvent due to irregular use of funds and was abruptly closed. The impact was widely felt as Ihlas Finans had 40% of the sector’s deposits. Just a few days later, Turkey was hit by a general financial crisis — resulting in, among others, a devaluation of 30% in its currency overnight. The effects of this fallout was felt till late 2003.

Several conventional banks went under, rendering government intervention a necessity. The Special Finance Houses, however, ran contrary to the conventional

continued...

Participation banks as at 30th June 2007 (TRY'000)

No	Topics		31 st December 2006	30 th June 2007	%
1	Funds collected	TRY	5,258,537	6,036,909	15
		FX	5,978,747	6,889,744	15
		Total	11,237,284	12,926,653	15
2	Loans		10,492,453	13,808,587	32
3	Problem loans (Net)		129,441	213,807	65
4	Total assets		13,729,720	16,772,762	22
5	Total shareholders' equity		1,559,717	2,052,434	32
6	Profit (Net)		391,041	222,798	—
7	No of staff		7,114	8,229	16
8	No of branches		355	378	6

SOURCE: TURKISH PARTICIPATION BANKS ASSOCIATION

Turkey Continues to Grow (continued..)

banks not mixed up in lending to government bonds and massive speculation on foreign currency (the devaluation of its currency overnight had a devastating, if not terminal, effect). The crisis did not cause — unlike conventional market players that suffered substantial damage — any real setbacks in financial strength and the Special Finance Houses made a quick recovery.

The sector, which became accepted as participation banks in 2005, regrouped to four solid market players:

- **Türkiye Finans**

In July 2007, it was announced that the Saudi National Commercial Bank — the Gulf’s biggest bank in terms of assets — had agreed to pay US\$1.08 billion to acquire a 60% stake in the privately owned Turkish Islamic lender. The deal, apparently arranged with assistance from HSBC, would be completed by the end of the year, and the price could be revised

upwards by US\$120 million to US\$130 million, depending on 2007 profit figures. The existing shareholders (industrial groups Ülker and Boydak) will each hold a stake of 20%. Assets stood at TRY4.5 billion (US\$3.72 billion) as at the end of the first quarter of 2007.

Last month, a two-year syndicated Murabahah of US\$100 million was confirmed in order to fund small and medium-sized enterprises and contribute to the real estate sector in Turkey. Türkiye Finans is set to invest in Sukuk, explore the possibility of launching securitizations and build Shariah compliant infrastructure.

On the 26th June, 2007, a TRY200 million (US\$165 million) Protocol with Istanbul Ticaret Odası ITO (Istanbul Chamber of Commerce) was announced, according to which the members of ITO can apply for credit up to TRY250,000 (US\$206,679).

continued....

Total assets (TRY'000)

Years	Depository	Participatory	Total	PBs / Total
1995	4,102,384	78,070	4,180,454	1.87%
2000	104,283,106	2,266,000	106,549,106	2.13%
2001	216,507,617	2,365,000	218,872,617	1.08%
2002	212,675,488	3,962,000	216,637,488	1.83%
2003	249,692,000	5,112,934	254,804,934	2.01%
2004	304,524,090	7,298,601	311,822,691	2.34%
2005	382,241,594	9,945,431	392,187,025	2.54%
2006	470,622,000	13,729,720	484,351,720	2.83%
2007/2Q	498,730,777	16,772,762	515,503,639	3.25%

Turkey Continues to Grow (continued..)

- Bank Asya**
 Of about the same size in assets, Bank Asya had its IPO in May 2006. A total of US\$150 million was raised in a 50-times oversubscribed operation, reportedly the most successful in Turkish financial history. Its shares have more than doubled in value since then.
- In April 2007, a syndicated Murabahah financing facility of US\$175 million was announced for Bank Asya's general financing activities.
- On the 7th September 2007, a TRY200 million (US\$165 million) Protocol with *continued...*

Deposits (TRY'000)

Years	Depository	Participatory	Total	PBs/Total
1995	2,664,936	66,376	2,731,312	2.43%
2000	68,442,406	1,863,000	70,305,406	2.65%
2001	147,520,532	1,917,000	149,437,532	1.28%
2002	142,387,988	3,206,000	145,593,988	2.20%
2003	147,350,714	4,004,306	151,355,020	2.65%
2004	190,996,041	5,992,159	196,988,200	3.04%
2005	243,066,274	8,369,155	251,435,429	3.33%
2006	296,495,000	11,237,284	307,732,284	3.65%
2007/2Q	331,793,401	12,926,653	344,720,054	3.75%

Total loans: Non-performing not included**(TRY'000)**

Years	Depository	Participatory	Total	PBs/Total
1995	1,743,685	62,560	1,806,245	3.46%
2000	34,213,480	1,726,000	35,939,480	4.80%
2001	57,341,438	1,072,000	58,413,438	1.84%
2002	56,370,271	2,101,000	58,471,271	3.59%
2003	48,018,584	3,001,313	51,019,897	5.88%
2004	89,900,000	4,894,665	94,794,665	5.16%
2005	143,969,486	7,407,508	151,376,994	4.89%
2006	202,469,000	10,492,493	212,961,453	4.94%
2007/2Q	232,912,605	13,808,587	246,721,192	5.60%

Turkey Continues to Grow (continued..)

Istanbul Ticaret Odasi ITO (Istanbul Chamber of Commerce) followed, according to which the members of ITO — subject to terms and conditions — can receive 23 months' downpayment for credits (leasing, finance and investment) going up to TRY250,000.

- **Albaraka Türk**
Following Bank Asya's successful IPO, Albaraka Türk (part of the Bahrain-based Albaraka Banking Group (ABG)) conducted its exercise in June 2007, thereby becoming the second participation bank to be listed on the Istanbul Stock Exchange. The allotment of US\$42 million was reported to be 32 times oversubscribed. The bank's total assets as at the end of the first quarter was TRY2 billion.

ABG recently ventured into the Indian/

Chinese market. It opened a branch office in Jakarta, Indonesia last month.

- **Kuveyt Türk**
Kuveyt Türk is part of Kuwait Finance House. There are rumors that Kuveyt Türk could be a candidate for IPO in 2008-09, depending on market conditions.

In May 2007, the share capital was increased from US\$155,000 to US\$200,000. In order to support Turkish imports/exports, the availability of forward currency contracts was announced in August 2007.

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Recent Islamic Finance Developments in the UK

By Neil D Miller and Aziza Atta

Islamic finance as a concept has become increasingly popular in London's financial sector. As a result, numerous City of London banks, financial advisers and law firms have established Islamic finance windows in order to cater for the growing demand for Shariah compliant financial products. Earlier this year, the then Chancellor of the Exchequer Gordon Brown reiterated his desire to facilitate the expansion of Islamic finance by reconfirming earlier pronouncements that the Islamic finance industry would be granted equivalent tax treatment in the UK to other financial products.

“The FA 2007 changes ensure that Islamic securitizations are placed on a level playing field for SDLT purposes with conventional mortgage backed securitizations”

The announcement was particularly welcomed by finance and tax specialists, who realize the importance of ensuring that London preserves its position as the western capital for the budding Islamic finance industry. The most recent tax provisions can be found in the Finance Act 2007 (FA 2007).

Islamic finance and modern banking

One of the main challenges is applying the principles of Islamic financial jurisprudence

to modern banking and finance. A difficulty of doing this in European countries, and (perhaps surprisingly) in many Muslim-majority ones as well, is finding a way to incorporate the techniques of Islamic finance into regulatory and tax regimes that have only been designed to cater for conventional financing methodologies. The UK has been leading the way in resolving these difficulties, particularly in the tax arena.

Recent legislative changes

Previous amendments to the Stamp Duty Land Tax (SDLT) legislation provided for transfers of interests held by financial institutions in certain Islamic compliant mortgages to be exempt for SDLT purposes. The exemption applies to Murabahah, Ijarah and diminishing Musharakah/Ijarah forms of Islamic mortgage. These changes, in conjunction with the recent amendments to the tax treatment of Sukuk, will enable such products to be placed within securitization structures. The FA 2007 changes ensure that Islamic securitizations are placed on a level playing field for SDLT purposes with conventional mortgage backed securitizations. Sukuk arrangements can be located within the “alternative finance” regime, introduced over the past three years to address other Islamic finance methods such as Murabahah (cost-plus), Ijarah and diminishing Musharakah products.

Sukuk are regularly used as a form of financing in Muslim-majority countries. Unfavorable tax treatment in the UK may have inhibited the market's ability to invest

continued...

Recent Islamic Finance Developments in the UK (*continued..*)

in Sukuk. The FA 2007 changes are very welcome and it is hoped this will trigger the emergence of Shariah compliant UK-based bond issues and securitizations. Over the last five years, Sukuk instruments have developed rapidly. This year, Sukuk issuances are predicted to exceed US\$70 billion.

Tax concerns

Prior to FA 2007, the principal tax concern about Sukuk arrangements was that a UK-resident issuer would be taxable on the profits received in respect of the assets but not entitled to any deduction for payments made to Sukuk holders in respect of those profits. The new legislation eliminates this concern by treating the income payments "as if" they were payments of interest that enable the issuer to get a deduction in computing its tax liability. Additionally, there are provisions in the new legislation that equate Sukuk to traditional debt securities for other tax purposes such as the "qualifying corporate bond" regime and the tax treatment of discounts.

In order to dismiss concerns that the introduction of a beneficial regime for such products could facilitate tax avoidance schemes, there are a number of conditions that need to be met in order for arrangements to fall within this regime. These include:

- the payments made to the Sukuk holders must not exceed a reasonable commercial return on the amounts subscribed
- the arrangements must be treated as a financial liability of the issuer

under International Accounting Standards

- the Sukuk must be listed on a recognised stock exchange. This will eliminate UK withholding tax in respect of the payments.

Among other things, this change will allow financial institutions that have granted Shariah compliant mortgages over the last three years (taking advantage of the alternative finance provisions that have already been introduced) to securitize those mortgages in a tax-efficient manner. Certain forms of Islamic mortgages, such as diminishing Musharakah, are exempt from SDLT when held by financial institutions. This change is critical and will enable Islamic mortgages of UK land and buildings to be securitized.

“There are provisions in the new legislation that equate Sukuk to traditional debt securities for other tax purposes”

The Sukuk market is developing at a rapid rate and will need to be closely monitored in order to ensure that the legislative framework can keep track of the changes. Through groups such as the Islamic Finance Experts Group, the government has signaled that it wants to stay ahead of the field in this area and promote rather than react to the changes needed.

continued...

Recent Islamic Finance Developments in the UK *(continued..)*

Implications for the UK

There can be little doubt that London is a prime location for companies wanting to invest in Shariah compliant products such as Sukuk, due to the publicity, reputation and protective regulatory system the city offers. This competitive edge has supported the recent listings of Islamic bonds on the London Stock Exchange.

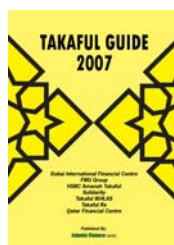
There is clearly an increasing number of amendments being made to fiscal legislation and regulatory policy in this sector worldwide. The industry itself is striving to become more standardized in order to shape the growth of Islamic finance. The Islamic Financial Services Board (IFSB) is addressing Basel II and governance standards. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) deals primarily with financial accounting and reporting standards. Both the IFSB and AAOIFI are instrumental in ensuring that comprehensive governance and accounting standards are being developed and are available for adoption by the global Islamic finance community.

Norton Rose LLP has been active in promoting the introduction of the alternative finance regime for Islamic finance and banking products in the UK.

 **NORTON ROSE**

Neil Miller is a partner and global head of Islamic finance while Aziza Atta is an associate in Norton Rose LLP.

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**LAW
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PROFILES**

Al Alawi, Mansoor Jamal & Co	36
Albar & Partners	37
Bener Law	39
Clifford Chance	41
Dechert LLP	43
Hanafiah Ponggawa & Partners	44
Jeff Leong, Poon & Wong	46
Karawani Law Firm	48
Law Office of Attayyar	49
Maples & Calder	50
Milbank, Tweed, Hadley & McCloy LLP	51
Mohamed Ridza & Co	53
Nasirs Lawyers & Notaries	54
Norton Rose	55
Patton Boggs LLP	57
Qays H. Zu'bi Attorneys & Legal Consultants	58
Shahrizat Rashid & Lee	60
Shook Lin & Bok	62
Syrian Legal Bureau	63
Trowers & Hamlins	64
Vinson & Elkins LLP	66
Walkers	67
Zul Rafique & Partners	69
Index by Sector	70
Index by Country	71

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AMJ has been in existence in Oman for over 26 years and is currently the largest law firm in Oman with over 30 lawyers and is the first fully integrated law firm capable of providing the full spectrum of major legal services for local and international clients. The firm's specific areas of expertise are banking, corporate and project finance, capital markets, maritime, energy, oil and gas, insurance, commercial and corporate laws of Oman, privatizations, mergers and acquisitions, litigation, arbitration, commercial agency and joint ventures.

Practice Areas

- Acquisitions and mergers
- Arbitration
- Banking
- Capital markets
- Commercial agency
- Commercial and corporate laws of Oman
- Corporate and project finance
- Energy, oil and gas
- Insurance
- Joint ventures
- Litigation
- Maritime
- Privatizations

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Debt capital markets, including securitization and REITs

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Industrial relations, arbitration and dispute resolution

Datuk N Chandran

Company secretarial

Seet Hooi Ping

THE FIRM: Established in 1999, Albar & Partners' origins can be traced back to 1981, when its founding and current managing partner, Syed Zaid Albar, established the firm under the name of Albar & Co. From a two-partner firm, it is today a mid-sized commercial law firm based in Kuala Lumpur, Malaysia with a partnership of 12 and an associate pool of around 34 lawyers. After taking up the active role of managing partner, Syed Zaid Albar continues to head the firm's well-known Islamic banking practice. He also oversees the firm's banking/finance and corporate/commercial department.

PRACTICE AREAS: The firm's practice covers the whole spectrum of financial and business activities. The firm is particularly regarded as one of the leading firms in the field of banking and finance and also in corporate/commercial law services. In particular, the firm has active practice teams in the fields of debt capital markets, Islamic finance and project finance. It has led in the development of innovative financing and debt restructuring solutions for corporations, as well as large lender groups. It is also at the forefront of development in the area of asset backed securitization and REITs.

We pride ourselves on having built an impressive and long-standing practice in the area of Islamic finance. We have worked with many different Shariah advisers from both local

continued...

and international Islamic financial institutions and have access to some of the leading Islamic practitioners in Malaysia and also the Middle East. Our firm's pioneer position in this field of Islamic financing is further fortified by the fact that we played a pivotal role in the country's first ever Islamic securitization program under the Shariah principles of Musharakah, the nation's first debt securities issuance facility arising out of a tripartite Istisnah contract and also in the world's first ever Islamic principle-based plantation REIT.

The firm's corporate & commercial practice group is known for its ability to work closely with its clients in their corporate exercises such as mergers, de-mergers, restructuring, takeovers, acquisitions and corporate finance. The firm also covers a broad area of banking and commercial litigation, which includes arbitration and alternative dispute resolution. The firm's senior litigation partner, Datuk N Chandran, is a pre-eminent advocate and arbitrator of exceptional caliber, with over 39 years of active practice at the Bar, and is often instructed as counsel in the nation's appellate courts.

SOME RECENT TRANSACTIONS WHERE THE FIRM PLAYED A LEADING ROLE AS ADVISER

- **Islamic funding arrangement for acquisition of Malakoff Berhad:** Advised CIMB Investment Bank Berhad (formerly Commerce International Merchant Bankers Berhad) as the lead arranger for the debt/quasi-debt issuance and the adviser and placement agents for the share placements in one of the biggest financing deals in Malaysian corporate history for 2006/07, worth over RM11.6 billion for the acquisition of the assets and liabilities of Malakoff, one of Malaysia's leading independent power producer corporations. The proposed funding comprised Islamic private debt securities and quasi-debt (preferred perpetual securities) in the form of cumulative Islamic debt securities under the Shariah principle of Musharakah; and placement of shares in Nucleus Avenue (M) Bhd and redeemable convertible preferences shares representing 49% of its equity.
- **Issuance of Islamic stapled income securities:** Advised Hijrah Pertama Berhad, a wholly owned subsidiary of Telekom Malaysia Berhad (TM), and TM in relation to a proposal for the issuance of Islamic stapled income securities under the Shariah principle of Sukuk Ijarah for approximately RM3 billion. This Islamic issuance was to meet one of the requirements for the inclusion of TM's shares in the Dow Jones Islamic Index.
- **Istisnah Islamic security issuance for Lebuhraya Kajang-Seremban Sdn Bhd (Lekas):** Advised AmInvestment Bank Berhad (formerly AmMerchant Bank Berhad) as lead arranger for Lekas, the concessionaire for the Kajang-Seremban highway, with regard to an Islamic securities issuance facility of approximately RM1.7 billion only under the Shariah principles of Istisnah comprising senior Sukuk Istisnah and the junior Sukuk Istisnah, a revolving credit/bank guarantee facility of up to RM40 million, redeemable convertible unsecured loan stocks of RM240 million and redeemable unsecured loan stocks of RM50 million.
- **Al-Hadharah Boustead REIT:** This is the first Islamic principle-based plantation REIT in the world, known as Al-Hadharah Boustead REIT. The firm advised the acquirer (which is Al-Hadharah Boustead REIT, acting through CIMB Trustee Berhad [formerly Bumiputra-Commerce Trustee Berhad] as trustee for Al-Hadharah) and the acquirer's principal financial advisers, collectively: (a) Pacific Alliance Capital Sdn Bhd; (b) Affin Bank Berhad; and (c) Malaysian International Merchant Bankers Berhad.

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Memberships: Ius Laboris, Globalaw, International Bar Association

Bener Law Office is a Turkish law firm with a broad international track record. Its flexibility and team-oriented approach allows responding to its clients in a quick and effective manner.

With native Turkish, US and European legal practitioners, we understand your culture, business and legal system.

Bener Law Office communicates promptly, clearly and concisely, so you can make well-informed and timely decisions. The firm offers innovative solutions and always strives to add value to your business.

Practice Areas

- **Islamic finance:** Bener Law Office keeps abreast with the latest developments in the Islamic finance area. We have relevant knowledge of Islamic products and contracts as used in Turkey and abroad (Gulf and Southeast Asia) and have been involved in international structuring. We also help you to enter the markets with efficient contacts at institutional and market level.
- **Banking and finance law:** Bener Law Office offers excellent knowledge of financial law issues involving capital markets, banking and financial regulations, project finance, structured finance, foreign exchange regulations, investment funds and special purpose vehicles, securitization, insurance, pledges and securities, all in an international market context.

continued...

- **Commercial law:** We advise on all aspects of business agreements including advertisement and marketing, bankruptcy and winding-up, competition and anti-trust, consumer regulation, contracts, customs and free zones, energy , insurance, intellectual property, media and entertainment, licensing and distribution, transportation, telecommunications.
- **Corporate law and mergers and acquisitions:** We strive to be our client's all-purpose corporate legal consultant in Turkey in the fields of due diligence, foreign investment, joint ventures, management buyout, privatization, shareholders' agreement, takeover, venture capital and private equity.
- **Employment law and benefits:** We are a member of Ius Laboris, which is a global alliance of leading law firms providing specialized services in employment and labor law, pensions and employee benefits, covering all legal services related to human resources; compensation and benefits, immigration and nationality, labor law contracts, pensions, work permit.
- **Real estate and construction:** Real estate and construction; engineering, rental and sales, due diligence, FIDIC contracts, investment and planning, real estate finance, turn key projects, use permit, zoning.
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We have a long-standing Islamic finance practice and understand the principles and values underlying Islamic finance. Our Middle East finance practice is the largest among international law firms in the region. Our lawyers have worked with many different Shariah committees and advisers and have access to some of the leading practitioners for discussing new structures. We are familiar with regulatory and service provider institutions in the Islamic finance market.

Clients particularly value our experience in structuring complex transactions, including integrated financings involving both Islamic financing and conventional financing.

Our Islamic specialists regularly work with other finance and industry specialists as well as legal experts from around the firm and local law experts to deliver coordinated and comprehensive advice. We advise a range of clients including Islamic banks, international banks, boutique investment houses, funds, regulators, export credit and multilateral agencies, development banks, central banks, government agencies and corporates.

We advise on Islamic finance around the world but the Middle East is a particularly important region for Islamic finance. We are committed to the Middle East region and have had offices in the region for over 30 years.

continued...

Practice Areas

- Banking, finance and capital markets
- Commercial telecommunications, information technology and e-commerce
- Litigation and dispute resolution
- Privatization, projects and corporate
- Real estate
- Shipping

Awards

Murabahah Deal of the Year & Kuwait Deal of the Year — *Mobile Telecommunications Company Murabahah Facility*

Musharakah Deal of the Year & Qatar Deal of the Year — *Qatar Real Estate Investment Company Sukuk*

Ijarah Deal of the Year & Real Estate Deal of the Year — *Nakheel Sukuk*

Project Finance Deal of the Year — *Al-Waha Petrochemical Project*

Sukuk Deal of the Year & Saudi Arabia Deal of the Year — *Saudi Basic Industries Corporation Sukuk*

Corporate Finance Deal of the Year — *Kuwait Finance House Murabahah Facility*

Deal of the Year & UAE Deal of the Year — *Dubai Ports, Customs & Free Zone Corporation Sukuk*

Sovereign Deal of the Year, Malaysia Deal of the Year & Most Innovative Deal of the Year — *Rafflesia Capital (Khazanah Nasional)*

Trade Finance & Indonesia Deal of the Year — *Pertamina (Persero)*

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With more than 1000 lawyers in 17 cities worldwide, Dechert LLP advises corporations and financial institutions on corporate, transactional, regulatory and litigation matters.

Leading the Islamic finance industry

Dechert's Islamic finance practice comprises some of the world's leading Islamic finance lawyers. We are one of the most active practices in the world in this area. Members of our team have been involved in Islamic finance since 1996 and are well-known for developing Shariah compliant products and structures. We are immersed in, and devoted to, this business and have very strong relationships with leading Shariah scholars. Work flow is handled expeditiously and efficiently; proprietary and custom transactions, including new products and structures, are executed with the assurance that, no matter how novel, the work will be done in a timely manner — with no last-minute surprises. We see each new structure from all perspectives, with informed sensitivity to Shariah issues and the business needs and constraints of our clients and other transactional participants. Our goal is to allow our clients to be competitive with conventional interest-based institutions, as well as other institutions in the Islamic finance markets. Our Islamic finance practice was the recipient of the Best Global Islamic Finance Legal Adviser for the Year 2006-07 award at the annual Euromoney Islamic Finance Conference in London, and the Sheikh Mohammad bin Rashid Al-Makhtoum Award for Special Recognition in Islamic Finance, at The International Islamic Finance Forum, Dubai, UAE the previous year.

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- Project and equipment finance
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- Sukuk: Securitizations and bonds
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As one of the top 10 law firms in Indonesia, Hanafiah Ponggawa & Partners' Banking & Finance Practice Group is involved in various transactions providing legal advice in Shariah transactions in Indonesia. The firm has 30 fee earners, which enables the firm to provide the required support to make banking and finance transaction work efficient and legally sound. The firm takes pride in the long-standing relationships which it builds and maintains with its clients.

Working within Indonesia's financial markets requires dealing with both the demands of structuring a framework for economic growth and the regulatory goals of establishing systemic order. In such a context, the role of legal advisers is to assist in providing a transaction structure to reflect the broad policy goals and the needs of the commercial parties. In addition to regulatory and compliance advisement with respect to Indonesian law, the group has represented both overseas and domestic lenders and borrowers in various financings, syndications, export and trade financing, etc. While most of the firm's work has been for domestic and/or overseas project lenders, the firm has also represented borrowers, suppliers and contractors.

With the remarkable growth in the development of Islamic finance in Indonesia, we have had experience assisting clients in Islamic finance-based deals, which include representing **HSBC Amanah Syariah** in their syndicated Murabahah agreement transaction with **Pertamina**, the Indonesian national oil and gas company, as well as their syndicated Murabahah agreement with **PT Krakatau Steel (Persero)**. In addition, the firm was also appointed as legal counsel in a recent **Shariah bond issuance** by a state-owned plantation company.

continued...

The group members have also been regularly participating in Islamic finance courses worldwide to enable the members of the practice group to bring themselves up to date with the latest developments in Shariah financing. In multi-finance transactions, the group assisted various multi-finance companies, and sometimes, the lessees or borrowers, in factoring transactions, lease financing, venture capital transactions, factoring syndications and lease financing syndications.

Hanafiah Ponggawa & Partners is a member of Meritas alliance, an alliance of law firms that has a presence in 60 countries. The firm's history and current existence are evidence of its efforts to provide first-class services to each and every client of the firm.

Practice Areas

- Aviation industry
- Banking and financial services
- Capital markets
- Commercial litigation, arbitration and bankruptcy
- Corporate and commercial law
- Foreign direct investment
- Information technology
- Intellectual property
- International Trade and World Trade Organization
- Mergers and acquisitions and restructuring
- Mining, oil and gas
- Plantation and forestry
- Power and telecommunications
- Project finance
- Real property
- State-owned enterprises
- Shariah transactions

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Jeff Leong, Poon & Wong is one of Malaysia's leading law firms with key strengths and focus practice in Islamic financing, corporate commercial and securities, banking and finance, project and construction, information technology and telecommunications.

The firm's Islamic finance experience includes dealing with all major forms of Islamic finance and investment, including Islamic banking litigation, involving Mudarabah, Murabahah, Musharakah, Istisnah and Ijarah as well as the issuance of Sukuk (corporate bonds). One of the Sukuk programs handled by the firm recently won an award for "Most Innovative Product in Islamic Project Financing" from the Association of Islamic Banking Institutions Malaysia.

The firm works in association with Deacons, a leading full service business law firm with offices in Brisbane, Canberra, Melbourne, Perth, Sydney, China, Hong Kong, Indonesia, Singapore, Thailand, Taiwan and Vietnam. Through Deacons, the firm has access to a major international network of over 900 legal professionals who provide a variety of legal and commercial services to multinational corporations, governments and public authorities, as well as to private business, financial institutions and individuals.

continued...

Practice Areas

- Admiralty and shipping
- Banking and finance
- Islamic banking and capital markets
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- Corporate and commercial
- Corporate finance
- General counsel service
- Foreign investment
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Karawani law firm is one of the leading law firms in Syria. The firm was founded in 1994 by attorney Osama Karawani. We have built our reputation on a commitment to meet the individual needs of each client.

Our firm is available to advise, draft, negotiate and interpret documents in English as well as Arabic. We handle transactions of all sizes and all levels of complexity. The firm serves many of the most successful companies from all over the world. We provide legal services to major financial institutions, Islamic banks, Takaful insurance companies, and accounting and auditing firms.

Karawani law firm provides legal expertise on all national and international business-related matters. We understand our client's key objectives, and we assist them in reaching their goals, by providing our best advice and consultation.

Delivering Success to our Clients

Practice Areas

- ADR and international arbitration
- Construction and oil industry
- Corporations and foreign investment
- Financial services
- Insurance and Takaful
- Intellectual property
- Islamic banking and structuring products
- Licensing and franchising
- Litigation
- Mergers and insolvency
- Real estate law
- Stock market and IPO
- Tax law and regulation
- Tourism projects and regulations

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The law office of Attayyar is a boutique law firm providing high-end legal services to local and international clients, be it corporations, financial institutions or multinational corporations.

Our integrated and efficient services in corporate, banking and finance, mergers and acquisitions, intellectual property, dispute resolution, construction and real estate, aviation, employment and insurance, among others, allow us to meet our clients' business needs with tailor-made solutions in response to legal challenges.

Our service is based on strong local contacts and thorough understanding of the local business practices supported by the expertise and resources of our associated firm, Alem & Associates.

Our firm regularly advises and represents a large number of Islamic and conventional financial institutions and banks. We use the expertise of our team members in order to find appropriate legal answers to the intricacies of structuring similar transactions meeting Shariah requirements.

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Maples and Calder is the world's leading offshore law firm with 190 lawyers and a total staff of 750 worldwide and is the largest law firm in the Cayman Islands.

Maples and Calder acts for leading international and domestic law firms, major financial institutions and high net worth clients in relation to Cayman Islands, British Virgin Islands, Jersey and Irish law.

Practice Areas

- Asset and project financing
- Banking
- Capital markets
- International equity offerings and listings
- Investment funds
- Regulatory and financial services
- Securitization
- Structured debt

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Milbank, Tweed, Hadley & McCloy LLP is an international law firm with approximately 600 lawyers providing a full range of legal services to many of the world's leading financial, industrial and commercial enterprises, as well as governments, institutions and individuals.

Our work reflects a blend of technical excellence, professionalism and detailed industry knowledge with global perspective and creativity.

Our financing capabilities have been utilized in some of the most complicated "first-of-its-kind" financings to date. We understand the complex linkages between legal, regulatory and commercial issues which arise in the context of complex financing transactions.

For over a decade, Milbank has been at the forefront of the Middle Eastern finance market, starting with the first project financing in the region back in 1994. Since then, our finance group has represented clients on a wide variety of project, asset and other financings which have been structured on a Shariah compliant basis and arranged for the benefit of Islamic investors.

In recognition of the growing importance of Islamic banking to our global finance practice, Milbank has established an Islamic Finance Business Unit drawing on the expertise of lawyers from our global finance, project and asset finance, leveraged finance and capital markets groups.

The lawyers in our Islamic Finance Business Unit are ideally positioned for Islamic finance related work and all have well-regarded expertise in this area. As legal advisers we have represented financial institutions and corporates actively involved in the development and documentation of Islamic financing transactions and are familiar with the processes

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necessary to develop and implement structures that meet the approval criteria of Shariah committees. Milbank has advised on the structuring of Ijarah, Istisnah, Murabahah, Musharakah, Sukuk, Wakalah and Mudarabah financings.

One of our key strengths lies in the ability of our lawyers to apply their knowledge and experience of complex structured financing techniques that have evolved in the bank lending and capital markets over recent years, and related industry expertise, in innovative ways in order to adapt them to suit the needs of Islamic institutions providing or requiring finance.

With the significant growth of the Islamic finance market has come the evolution of ever more complex structures. Islamic banks and investors are actively looking to develop and refine the Islamic finance system so that they can manage, allocate and package risk using tools and mechanisms which have evolved in the conventional financing markets. However, these new techniques must be developed so as to comply with Shariah requirements.

It is in this respect that Milbank lawyers have demonstrated their ability to add value and assist international and Islamic banks and investors in the development of Shariah compliant products. Our lawyers have a deep understanding of the relevant Islamic principles and are able to combine this with extensive knowledge gained from our sophisticated conventional financing practice.

Our Islamic Finance Business Unit has significant experience in the structuring and documenting of Shariah compliant structures in the following areas:

- Asset finance
- Acquisition finance
- Banking
- Capital markets
- Project finance
- Securitization
- Hedging

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We are a boutique legal firm handling various areas of the law, namely Islamic banking and finance, Islamic capital markets, corporate commercial, corporate banking, projects, construction law, oil and gas and real estate. We serve clients in domestic, regional and also international jurisdictions, namely Europe and the Middle East.

We are trained in Shariah as well as common law and advise clients locally and internationally on various aspects of Islamic banking and finance utilizing various Shariah concepts like Al-Bai Bithamin Ajil, Ijarah, Istisnah, Bai' Inah, Bai' Al-Dayn, Murabahah, Mudarabah, Musharakah and the issuance of Islamic private debt securities using Murabahah, Ijarah, Mudarabah and Musharakah.

Practice Areas

- Islamic capital market
- Islamic banking
- Islamic finance
- Corporate commercial
- Projects
- Construction law
- Oil and gas
- Real estate

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Nasirs® was established in Hong Kong in 1992 under the name AB Nasir & Co®. In 2003, the separate firm of Nasirs® was established in London. Nasirs® is a solution-oriented firm dedicated to quality service through independent professional legal advice and representation with commitment and passion to its clients' goals.

We have served the needs of our local and international clients through a range of services. Our lawyers have been committed to supporting the legal profession through participation in Law Society committees and mandatory professional development training programs as well as supporting local communities in social and religious programs.

The partners have been involved in establishing trusts in accordance with Shariah as well advising on financial structures, documentation and Qardan Hasanah schemes since 1982. Dr Firoz Nasir has been on the governing board of Muslim associations and trusts in Hong Kong.

A B Nasir has been on the board of Islamic trustees and on the managing committee of Islamic governing bodies in London and Hong Kong. He was chairman of the Board of Trustees, and trustee for over 10 years of the Incorporated Trustees of the Islamic Community Fund of Hong Kong, which coordinates religious affairs and manages masajid and Muslim cemeteries in Hong Kong.

Practice Areas

- Islamic banking, finance and Takaful
- Shariah audit and compliance
- Shariah consultation
- Intellectual property
- Agency and distribution
- Insurance
- Shipping
- Disciplinary tribunal proceedings
- Administrative law
- Employment
- Dispute resolution
- Real estate
- Trusts and probate
- Commercial
- Company formations
- Family law

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Norton Rose Group is a leading international legal practice. We offer a full business law service from our offices across Europe, the Middle East and Asia. We are strong in corporate finance, financial institutions, energy and infrastructure, transport and technology. Knowing how our clients' businesses work and understanding what drives their industries is fundamental to us. Our lawyers share industry knowledge and sector-specific expertise across borders, enabling us to support our clients anywhere in the world.

Our award-winning Islamic finance team continues to be at the forefront of the development of Islamic finance worldwide. We started practising in the Islamic finance area in the 1970s and have been involved in Islamic financings throughout the world, including the Middle East, the UK, Europe, Malaysia, Indonesia, Turkey, Pakistan and North Africa. We have been involved in structuring, advising on and documenting a wide variety of financings arranged for the benefit of Islamic institutions and investors. Our team has *continued...*

played a major role in the important developments in the Islamic banking sector and continues to drive innovation with involvement in nearly all new product development in the market.

In the latter part of 2006 and during 2007, our lawyers were involved in several ground-breaking deals, including the **US\$1 billion Al-Waha Petrochemical Project** where we advised a consortium of major GCC banks. Al-Waha was the first project where commercial lenders have structured a project financing with both the financing and security packages on an entirely Islamic basis. Another transaction was the **US\$580 million Albaraka Banking Group (ABG) initial public offering** where we acted for the issuer on this first dual listing of shares on the Bahrain Stock Exchange (BSE) and the Dubai International Financial Exchange (DIFX). We also advised on the **US\$5 billion trust certificate issuance program for Abu Dhabi Islamic Bank PJSC**, which was the second trust certificate programme launched by an Islamic financial institution and the first program to be listed on the London Stock Exchange. Another award-winning transaction was the **Mobile Telecommunications Company International BV (MTC) US\$1.2 billion syndicated Murabahah facility** where we advised the mandated lead arrangers on what was, at the time of its commercial close on 14th December 2006, the largest Murabahah facility for a Kuwaiti group and one of the largest Islamic facilities in the market.

Norton Rose Group is the only legal practice ranked in the top tier of the *Legal 500* and *Chambers & Partners* for Islamic finance, and was awarded the “Islamic Finance Law Firm of the Year 2006” award in an independent poll conducted by *Islamic Finance news*, and the “Best Legal Adviser in Islamic Banking” by *Euromoney*. For the last two years, *Legal 500* has ranked Norton Rose Group “the leader in this sector by a substantial margin”.

Practice Areas

- Banking and finance
- Competition regulatory & EU
- Corporate finance
- Dispute resolution
- Employment
- Energy and infrastructure
- Financial institutions
- Insurance
- Intellectual property and technology
- Real estate
- Tax
- Transportation

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Patton Boggs is a renowned leader in business law, public policy and litigation. We are at the forefront of American law firms working in the complex field of Shariah compliant finance and investment, as attorneys in our Middle East and business practices work together to develop strategies to assist our clients with projects and financings that comply with Islamic law.

The firm's experience includes dealings in all Middle East countries with all the major forms of Islamic finance and investing, including Murabahah, Mudarabah, Mu'ajjal, Salaam, Istisnah, Ijarah and Ju'ala, as well as with the issuance of Sukuk (corporate bonds). Our practice has served as counsel to a number of Shariah compliant funds and capital providers for businesses controlled by such funds on a broad range of projects, including:

- Obtaining construction financing for major real estate developments in the US, Europe and the Middle East.
- Establishing an Islamic bank.
- Developing Islamic investment funds for overseas investors.
- Providing acquisition and working capital financing, including the investment of US\$250 million in multi-tranched debt using Murabahah.
- Representing issuers of Sukuk for large-scale development projects, including a US\$270 million Sukuk for property development and US\$85 million Sukuk for a "green-field" hotel development project.

Practice Areas

- Islamic finance
- Real estate
- Energy

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Qays H Zu'bi Attorneys & Legal Consultants is a leading international Bahraini law firm providing legal services in the banking and finance, corporate and commercial, litigation and arbitration sectors. We are committed to providing our clients with the highest quality legal advice. We have an exceptional reputation for dealing with unconventional issues and providing innovative solutions specifically tailored to meet our clients' legal and commercial needs.

Since its establishment, the firm has been consistently listed in the top tier of law firms in the region by all leading legal directories and periodicals.

Our success is reflected in the quality of the client base which we have built over the years. Our clients are leaders in their fields frequently spearheading the boom in commercial and financial developments throughout the region. We are often involved in high-profile and complex matters and proudly act for major corporations and banks, private and public institutions, high net worth individuals as well as government and quasi-government bodies.

At Qays H Zu'bi Attorneys & Legal Consultants, there is a synergy between local and international legal issues, and the firm has been described as "one of the few local firms in Bahrain with international capability" (Chambers, UK, 2005). We have a highly regarded team of local law experts specializing in litigation, arbitration and local court proceedings, and which provides specialist legal advice in respect of all our practice areas.

This team is complemented by our varied team of international lawyers who have been admitted to practice in Bahrain, from Sudan, Egypt, the UK, Australia, the US and India. They come from major international law firms and are members of local and international bar associations. Our lawyers are multicultural and multilingual. They understand the needs of our clients, and act not only as legal representatives but as trusted business advisers. All our lawyers are able to provide clients with clear, efficient advice based on a real understanding of the issues and the local laws.

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Practice Areas

- Banking and finance
- Commercial
- Insurance and risk
- Investment funds
- Projects and construction
- Communications, media and entertainment
- Corporate law and equity finance
- Litigation, arbitration and dispute resolution (ADR)
- Non-government Organizations (NGOs)
- Employment and labor
- Energy and resources
- Intellectual property
- Telecommunications

Clients

The firm acts as regional counsel for several foreign and local companies and we represent clients across the globe from the US to the UK, Syria, Azerbaijan, and throughout Asia. To implement our global strategy we have forged strategic relationships with leading regional and international law firms, specialist entities and bodies worldwide. We regularly advise international independent law firms seeking our partnership and local expertise, among them White and Case LLP, Clifford Chance, Skadden Arps and Freshfields. We are able to provide our legal services throughout the Arabian Gulf region and worldwide, applying a single fee and a single point of contact.

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Shahrizat Rashid & Lee was formed as a result of a merger between legal firms Rashid & Lee and Shahrizat & Tan (the firm) in July 2003. Following the merger, the firm has, in addition to its main office in Kuala Lumpur, branches in Penang and Johor Baru in the north and south of Peninsular Malaysia, respectively. The firm began as a general practice and evolved into an established law firm actively involved in specific practice areas ranging from privatizations, telecommunications, mergers and acquisitions, oil and gas, information technology and intellectual property to capital markets, corporate banking structured finance, Islamic capital market and Islamic finance, arbitration and corporate litigation.

The firm has considerable experience in offshore financing techniques and instruments and has advised on the documentation for structured finance, ship and aircraft financing.

It has worked and advised on public flotation and the issue of bonds, loan certificates, short- and medium-term notes, commercial papers and other private debt instruments and in particular, the initial public offering and listing of an integrated telecommunications group of 2.5 billion shares

On securities law aspects, the firm has advised and acted as counsel for Eurobond and Yankee bond issues and other instruments in the US and Europe as well as share offerings in Malaysia by multinational corporations.

The firm was also the principal adviser in respect of infrastructure projects of national importance including the North South Highway and Light Rail Transit (LRT) System2 in Kuala Lumpur.

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It provides comprehensive services across all areas of Islamic capital market and Islamic finance transactions/products. The firm has extensive experience in Islamic banking and Islamic capital market products, including project financing under the Islamic principles of Al-Musharakah, Mudarabah and Istisnah, debt financing under the Islamic principles of Bai' Bithaman Ajil and Bai'inah, trade financing under the Islamic principles of Wakalah, Al-Murabahah and Al-Kafalah and Islamic capital market instruments such as Sukuk Al-Ijarah, Islamic Commercial Papers, Islamic Medium Term Notes, Murabahah Underwritten Notes as well as Bai' Bithaman Ajil Islamic Debt Securities.

The firm was the first to negotiate and draft a hybrid Islamic and conventional fixed rate financing structure for one of the largest commercial retail complexes in Southeast Asia and was involved in the project financing for a major telecommunications network operator and for the Kuala Lumpur City Center project. The firm was also the first to undertake an Islamic private sector driven asset backed securitization programme (ABS) in the property sector.

The firm has entered into strategic alliances with Messrs KhattarWong of Singapore, Messrs Eversheds of Europe and Messrs Adnan Kelana Haryanto of Indonesia to provide seamless quality service to clients looking to Europe, the Middle East, China and Southeast Asia for cross-border transactions.

Practice Areas

- Administrative law
- Asset backed securitization
- Communications, information technology and intellectual property
- Commercial litigation and arbitration
- Construction and energy
- Conveyancing and property development
- Corporate banking and capital markets
- Corporate reorganization and debt restructuring
- General corporate and commercial law
- Defamation, labor and employment law
- Initial public offering and flotations
- Islamic banking and capital markets
- Litigation and arbitration
- Private debt and securitization
- Privatization
- Commercial litigation

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From its humble origins as a sole practitioner, the firm has grown into one of the top three largest and oldest law firms in Malaysia today. From a litigation-oriented practice, it has evolved into a leading full service firm that offers a comprehensive range of legal services to clients spanning the globe.

The firm has distinguished itself in its commitment to the highest standards of professionalism and integrity over nine decades. It has built on that heritage and continues to invest in the development of its human resources, team of legal practitioners and infrastructural resources, including the latest technological systems, for the benefit of its clients. The latest in online legal research facilities enhances and complements one of the most comprehensive traditional library facilities in the country, enabling the firm to deliver on its mission of service with effectiveness and efficiency.

The firm has 12 departments representing major, though not exclusive, practice areas, which combine in a complementary and multidisciplinary practice to serve the needs of clients.

Practice Areas

Banking and finance

The firm provides comprehensive services across all areas of transactions and products in Islamic finance. Our team has experience in the negotiation, preparation and structuring of various documentation relating to Islamic finance, including the following:

- Islamic private debt securities;
- Ijarah for project financing;
- Musharakah notes issuance programs;
- Istisnah project financing;
- Murabahah notes issuance program;
- Limited recourse project financing.
- Corporate
- Property and conveyancing
- Insurance, shipping and aviation
- Banking and finance litigation
- Construction, engineering and arbitration
- General and civil litigation
- Intellectual property, information technology and licensing
- Probate and administration
- Employment and labor
- Tax advisory and compliance
- Company secretarial services

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The Syrian Legal Bureau (SLB) has its head office in the capital city of Damascus and another office in Tartous, which is the second most important Syrian port.

SLB is one of the few law offices in Syria equipped with internationally trained and qualified lawyers who are both experienced with international institutions and familiar with western legal and professional practices. Both offices provide a full range of local and international legal services through links to correspondent offices around the world. The result is that clients are provided with a comprehensive set of services to meet all their legal needs in Syria and abroad.

Our team consists of five attorneys in Damascus office and four in Tartous, who work hard to earn the confidence and trust of many of our clients, some of whom are the biggest corporate names in the world.

Among the services that our law office provides are international trade, maritime law, administrative law and IP law, in addition to litigation, mediation and arbitration (domestically and internationally), corporate and business law, and Islamic banking and insurance.

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Trowers & Hamblins is a long established city and international law firm. We provide the full range of corporate, business and commercial legal services and have a substantial client base in both the private and public sectors.

Our principal office is located in the City of London. Our international practice is particular closely associated with the Middle East, where the firm has been active for over 40 years, but also undertakes work around the globe. We have long established links with firms in Singapore, Germany and France. In addition to our five offices in the region, we work in cooperation with the law firm of Feras Alshawaf in Saudi Arabia and Senguler & Senguler in Turkey.

The firm has been advising on Islamic finance transactions through its London and Middle East offices for well over 10 years. We advise Islamic finance institutions and others in relation to a wide range of transactions including projects, real estate investment and development, investment funds, private equity, asset finance, working capital and trade finance and regulatory issues.

Trowers & Hamblins was the winner of the "Finance Team of the Year — Capital Markets/ Structured Finance" at the Lawyer Awards 2005 for our work on the Etisalat Mobily transaction which funded the creation of Mobily, a major new player in Saudi Arabia's telecommunications market. Trowers & Hamblins was also winner of "Law Firm of the Year" 2007 at the Lawyer Awards 2007.

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Practice Areas

- Banking and finance including:
 - Asset finance
 - Capital markets
 - Project finance
 - Property finance
- Construction
- Commercial property
- Corporate finance
- Mergers and acquisitions
- Private equity
- Dispute resolution and litigation
- Projects
- Public sector
- Housing
- Telecommunications
- Trusts and private client services

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Vinson & Elkins LLP (V&E) is a full service law firm with over 750 lawyers located in Austin, Beijing, Dallas, Dubai, Hong Kong, Houston, London, Moscow, New York, Shanghai, Tokyo and Washington, DC.

In 2003, V&E opened an office in Dubai, becoming one of the first international law firms in the region to do so. V&E offers a broad range of legal services, including US, English and international legal advice. Our Dubai office offers an excellent business climate and a geographically centralized hub for serving the needs of our clients throughout the Middle East and North Africa (MENA). Our lawyers assist clients in developing, structuring and documenting innovative Islamic and investment products involving assets in MENA, the US and the European Union. They recently advised leading Islamic investment banks on the following:

- (i) US\$180 million Sukuk backed by Gulf of Mexico assets, including an overriding royalty interest and advised on Shariah compliance of related hedges. This deal was named “Most Innovative Islamic Finance Deal of the Year” by *Euromoney*, as well as “Best Structured Finance Deal of the Year” and “Best USA Deal of the Year” by *Islamic Finance NEWS*;
- (ii) US\$150 million variable rate, semi-annual return Islamic Musharakah trust Sukuk (backed by assets consisting primarily of vehicles and properties) for a Kuwait investment company;
- (iii) US\$200 million Sukuk transaction with proceeds used to finance a Kuwait real estate development project; and
- (iv) US\$150 million Shariah compliant private equity fund regulated by the Bahrain Monetary Agency.

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Practice Areas

- Islamic finance and investment
- Corporate finance
- Energy
- Project development and finance
- Mergers and acquisitions
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- Healthcare
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From our offices in the Cayman Islands, British Virgin Islands, Dubai, Hong Kong, Jersey, London and Tokyo, the Walkers Group provides legal and management services to the leading FORTUNE 100 and FTSE 100 global corporations and financial institutions, capital markets participants, investment fund managers and growth and middle market companies.

Walkers focuses principally on corporate and international finance law with an emphasis on capital markets and structured finance, asset finance, hedge funds and private equity. The firm delivers clear, concise and practical advice based on an in-depth knowledge of the legal, regulatory and commercial environment in the Cayman Islands, British Virgin Islands and Jersey.

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- Commercial litigation and dispute resolution
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- Crime
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- Investment funds
- Islamic finance
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- Real estate
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Advocates & Solicitors, Notary Public, Trademark Agent

Zul Rafique & partners is a Kuala Lumpur-based law firm formed in December 1999. Dato' Zulkifly Rafique, the managing partner, leads this large, broad-based commercial legal practice that now boasts 21 partners, a consultant and 50 associates. Dato' Zulkifly, together with our consultant Dato' Cecil Abraham and two senior partners, Shahul Hameed Amirudin and Wilfred Abraham, has been in active legal practice since the 1970s.

The firm is strategically divided into specialized practice groups. This is to maximise the depth of the expertise and experience. Although the firm is known for its expertise in various aspects of corporate and commercial law, dispute resolution is another niche area of the firm, with emphasis on alternative dispute resolution, corporate litigation and employment law.

Practice Areas

- Banking and finance
- Capital markets and corporate advisory
- Communications and multimedia
- Dispute resolution
- Energy and utilities
- Industrial relations
- Infrastructure and construction
- Intellectual property
- Knowledge management, research and training
- Mergers and acquisitions
- Oil and gas
- Privatization and corporatization
- Property and conveyancing
- Shipping and aviation

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As testament to our commitment to quality and excellence, Zul Rafique & partners was declared *National Law Firm of the Year* by the International Financial Law Review (IFLR) in 2002, 2005 and 2006, and by Asian Legal Business in 2005. Our success in 2006 was based on our participation in corporate law, namely Malaysia's First Hybrid Tier-1 transaction. Our expertise in Islamic and corporate finance clinched the award in 2005 while the catalyst for the recognition in 2002 was due to our involvement in the World's First Global Islamic Securities Issue.

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Index by Country

	Asia	Europe	Middle East	America
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Albar & Partners				
Bener Law	•			
Clifford Chance				
Dechert LLP				•
Hanafiah Ponggawa & Partners				
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Karawani Law Firm				
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Nasirs Lawyers & Notaries				
Norton Rose				
Patton Boggs LLP				
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Shahrizat Rashid & Lee				
Shook Lin & Bok				
Syrian Legal Bureau				
Trowers & Hamlins				
Vinson & Elkins LLP				
Walkers				
Zul Rafique & Co				
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	Hong Kong	Finland	Lebanon	Cayman Islands
	Indonesia	France	Oman	UAE
	Japan	Germany	Saudi Arabia	Syria
	Malaysia	Greece	Qatar	
	Singapore	Ireland		
	Thailand	Italy		
		Ireland		
		Poland		
		Russia		
		Slovakia		
		Sweden		
		Turkey		
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