

## ISLAMIC BONDS (ŞUKŪK) IN MALAYSIA

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**Abstract:** This article introduces the various types of *şukūk* that exist in the Malaysian secondary market. The Malaysian *şukūk* market was initially debt-based which attracted criticism from the Shariah scholars from the Gulf and Middle East. However, the Malaysian *şukūk* market made a turn towards equity and *ijārah şukūk* and ventured into “green *sukuk*” or socially responsible investment (SRI) *sukuk*. To facilitate the financing of sustainable and responsible investment initiatives, the Securities Commission of Malaysia (SC) has launched the Sustainable and Responsible Investment (SRI) *Şukūk* Framework in 2014. The introduction of the SRI *şukūk* framework is seen to be in line with the rising trend of “green bonds” and “social impact bonds” that have been introduced globally to facilitate and promote sustainable and responsible investing. The writer has presented different examples from both regions to show that the gap has been bridged. However, despite this convergence the author recommends a revisit of the controversial debt-based instruments by Malaysian Shariah scholars.

### Introduction

The Arabic word used for Islamic securities is *sukuk* which is the plural of *sakk*. It literally means a claim similar to a note or certificate such as a trust certificate. However, this claim is not limited to a financial claim to a cash flow but includes ownership claim as well.<sup>1</sup> There are several definitions of *sukuk*. However, the Securities Commission (SC) of Malaysia presents a comprehensive definition of *sukuk* as a “document or certificate which represents the value of an asset.”<sup>2</sup> *Sukuk* in general are issued and structured based on different Shariah principles such as the contract of exchange (*‘uqūd al-mu‘awadāt*) comprising *murābahah*, *al-bay‘bithaman ājil*, *bay‘al-‘īnah*, *ijārah* and *istiṣnā‘* which involve the sale and purchase transactions of an underlying Shariah compliant asset; and the contract of participation (*‘uqūd al-ishtirak*) comprising *mudarabah* and *musharakah*.

Although *sukuk* is considered a contemporary investment instrument of Islamic finance, its traditional usage could be traced back to the 1<sup>st</sup> century AH of the Umayyad period. The Umayyad Mosque in Damascus, Syria, was built using *sukuk* during the Umayyad Caliphate.

Since then the Sukuk market became active globally. Malaysia issued its first sukuk in 1990 through Shell MDS (Malaysia) and subsequently its first global Guthrie corporate *sukuk* in 2003. This was followed by Singapore and Bahrain in 2001.<sup>3</sup>

The Malaysian *ṣukūk* market developed rapidly between 2001 and 2008 with an average annual growth rate of 21%. It exceeded the outstanding amount of conventional debt securities issued in the domestic market. In 2008, the amount of corporate *ṣukūk* issued exceeded the value of outstanding corporate bonds. *Ṣukūk* has access to a larger pool of investors from both sides of the investing worlds: it has a confined investor base such as Islamic pension funds and Islamic insurance companies, which can only invest in *sharīʿah*-compliant instruments; whilst those who traditionally invests in conventional bonds are now seeking diversification and investing in *sharīʿah*-compliant instruments.<sup>4</sup>

There is now a rising trend on issuances of “green bonds” and “social impact bonds” in the global *sukuk* market to meet the growing demands for environmental friendly and socially responsible businesses, which are in line with the objectives of the Shariah (*Maqasid-al-Shariah*). To compete with the global *ṣukūk* market, the Securities Commission of Malaysia (SC) launched the Sustainable and Responsible Investment (SRI) *Ṣukūk* Framework in 2014 to facilitate the financing of sustainable and responsible investment initiatives.<sup>5</sup> The SRI *ṣukūk* framework is in line with the initiative set out under the SC’s Capital Market Master Plan II to promote socially responsible financing and investment.

Islamic bonds issuers in Malaysia consist primarily the government, quasi-government and the corporate sector. The ‘Government Investment Issues (GII) which was issued by the government of Malaysia and governed by the Government Investment Act (GIA) 1983 was initially based on debt securities. However, in 2005 the GIA 1983 was amended to include to the deb, equity and *ijarah*.

The Khazanah Bench Mark bond<sup>6</sup> was issued by the Khazanah National Berhad (a quasi-government body) which issued a long term financing and is debt-based as well. Shell MDS RM125 million *sukuk* remains as the historic first corporate *sukuk* in the country.

Islamic bonds in Malaysia are structured as debt-based, asset-based or equity-based. Debt-based structures are most commonly used which are based on fixed or zero rate coupon bonds. Malaysian Government Investment Issues (GII) and Khazanah bonds are based on this principle i.e., debt-based.<sup>7</sup>

The sale based structure of *sukuk* basically overlaps with the debt-based sukuk and are correlated. The sale based *sukuk* are generally debt-based because they represent debt.<sup>8</sup> On the other hand, the equity-based structure of the *sukuk* represents common ownership and entitles the holders a share in a specific

project. Shares of profit are determined beforehand by a definite proportion of the total bond amount. Although it is similar to shares, it has a fixed maturity, which is determined by the tenure or project completion date. This structure normally bears a floating rate.<sup>9</sup> The example of equity based *sukuk* are *sukuk al-muḍārabah* and *sukuk al-mushārakah*.

Lastly there is another group of *sukuk* which is called *ṣukūk al-ijārah*. The structure of *ijārah sukuk* indicates ownership in the assets that generate income. Such assets are normally owned by Special Purpose Vehicle (SPV). The holder of the *sukuk* will benefit from the cash flow generated through the lease.

## Debt based Islamic Bonds

The writer would like to highlight on the contracts of *bay' al-dayn* and *bay' al-īnah* as both these contracts are utilised in debt-based Islamic bonds. Both of these contracts are highly controversial from shariah perspective. The expression *bay' al-dayn* consists of two words that is *bay'* and *dayn*. Literally *bay'* means sale and *dayn* may be defined as debt, pecuniary obligation<sup>10</sup>, liability or obligation. *Bay' al-dayn*, therefore, proposes the sale of a payable right that arise normally from a variety of transactions such as *murābahah*, *bay' bithaman ājil* and *bay' al-istiṣnā'*, if their prices are deferred. The Securities Commission of Malaysia has defined it as a transaction that involves the sale and purchase of securities or debt certificates that are issued by a debtor to a creditor as evidence of indebtedness that complies with the Shariah.<sup>11</sup> In Islamic legal literature, *dayn* has been defined as “a constructive asset in the obligation of the debtor”.<sup>12</sup> It is obvious from this definition that debt (*dayn*) is a type of asset (*māl*), although constructive (*ḥukmī*) or at least, a financial right (*ḥaq mālī*).<sup>13</sup>

On the sale of debt, there are opposing views among classical and contemporary jurists. There are two varieties of sale of debt: *bay' al-dayn naqd* and *bay' al-dayn nasī'ah*, (also known as *bay' al-kalī bi al-kalī*.) Most of the classical jurists did not allow *bay' al-dayn al-nasī'ah*.<sup>14</sup> There were differences among the traditional Muslim jurists regarding (i) the sale of debt from the creditor to the debtor (*bay' al-dayn li al-madīn*) and (ii) the sale of debt from the creditor to a third party (*bay' al-dayn li ghayr al-madīn*).

The sale of debt to debtor generally takes place when a creditor sells his deferred debt (*dayn mu'ajjal*) to the debtor at a discount but on spot payment basis. The *fuqahā'* are divided on the legality of this discounted sale. According to the Ḥanafīs, Mālikīs, Shāfi'īs and some Ḥanbalīs,<sup>15</sup> the creditor has the right to sell his debt to the debtor at any price he likes as far as the debt is raised from the cost of damage, *qarḍ*, price of commodity, cost of services or dowry of a woman. This is because the creditor has the right to give up or withdraw

his debt at any point in time he wants. On the other hand, the Ḥanbalīs<sup>16</sup> have subjected the authenticity of selling of debt to the debtor to the confirmed and non-confirmed types of debt.<sup>17</sup> They allow the sale of confirmed debt, by the creditor to the debtor. However, they do not allow the sale of non-confirmed debt such as the cost of labour before completion, the dowry of a woman before marital consummation and the capital of salam.<sup>18</sup> The majority of the *fuqahā'* agreed on the permissibility of selling the debt to the debtor for cash, while a minority viewed it as prohibited. The writer is of the view that the opinion of the majority is more appropriate, as their proof is solid and in line with the broader objectives of *Shari'ah*.

The discussion now turns to the sale of debt to a third party. The jurists are not in agreement on the sale of debt to a third party. This disagreement is due to the element of *gharar* which arises over the completion of certain obligations. The sale of debt to a third party means, the sale of debt to a non-debtor at a discounted price, normally on spot payment basis. This suggests that a creditor cannot wait for the due date of his debt and wants to sell it to a third party at a discounted price and on cash basis. This sale may be either with the approval of the debtor or without his approval. The authenticity of this sale has been the subject of divergence among the classical and contemporary jurists. Although majority of them agreed on the legality of selling the confirmed debt to the debtor, they differed on selling the debt to a third party irrespective of the nature of the debt.<sup>19</sup>

It is interesting to note however that the practice of the sale of debt to third parties with discounting has been declared permissible by the SAC of the Malaysian Securities Commission, demonstrating a different point of view from the global juristic approaches.<sup>20</sup> There are two main reasons behind this ruling. The first one is that the characteristic of the securitised debt has changed into an independent financial right (*haqq māli*) that can be bought and sold at a price agreed upon by the contracting parties. It is also argued that "securitised loan" is similar to a "financial right" (*haqq māli 'aynī*), such as shares, copyrights and patent rights. In this sense, the securitised debt is no longer similar to money, and hence not governed by the rule on currency exchange such as the rule of equality.

As far as *bay' al-'inah* is concerned, it has been used significantly in Malaysian Islamic financial markets. It is considered valid (*ṣaḥīḥ*) by the *Shari'ah* Advisory Council of Bank Negara Malaysia<sup>21</sup> and the *Shari'ah* Advisory Council of the Securities Commission of Malaysia.<sup>22</sup> It is argued that *bay' al-'inah* is permitted by the Shafi'i school of *fiqh*, and is therefore used in many banking facilities such as personal financing, overdraft and deposits. A larger application can also be found in the Islamic capital market in the issuance of Islamic private debt securities.

Although, the *Shari'ah* Councils (SAC) of Bank Negara Malaysia and Securities Commission of Malaysia have approved *bay' al-'inah* as a permissible contract, the *Shari'ah* advisors from the Middle East and Gulf region have criticised and considered it as a 'back door' to *ribā*. It is argued that what is practised in Malaysia is not very different from *ribā*.<sup>23</sup> It is also well known that there is no consensus amongst the jurists concerning the legality and validity of *bay' al-'inah*. The controversy on *bay' al-'inah* has been widely debated in many of the Islamic law books.<sup>24</sup> *Bay' al-'inah* takes place in two different types of arrangements: firstly, the seller sells a commodity for credit on a higher price and buys it back for cash at a lower price than the credit price. Secondly, the seller sells a commodity for cash for a lower price and buys it back on credit for a higher price than the cash price. The main purpose of the transaction is to get the needed cash and thereby circumventing *ribā* (interest) through a legal devise (*hilah*). A genuine sale and purchase does not really take place between the parties involved in the transaction.<sup>25</sup>

The government of Malaysia has issued debt-based Islamic bonds which are government guaranteed bonds. The securitisation of Khazanah bonds is analogous to other Islamic bonds in which the contract of *bay' al-'inah* is applied.<sup>26</sup> Securitisation creates a financial right (*haq mālī*), that is the right to sell or purchase a commodity that one owns.<sup>27</sup> This right involves an ability to derive usufruct (*manfa'at*) from it, which qualifies Khazanah bonds to take the role of property (*al-māl*).<sup>28</sup> The usufruct is obtained here from the commodity that is sold and purchased in this transaction.

The issuer in the Khazanah bond would identify the assets followed by the Islamic bank purchasing these assets on competitive tender basis. The profits were then paid out to the issuer. Subsequently, the assets were resold to the issuer on the basis of *bay' al-'inah*.<sup>29</sup> Normally, the issuer sets the buy-back price at par value.<sup>30</sup> The issuer issued the bonds and these bonds are traded in the secondary market on the basis of *bay' al-dayn*.<sup>31</sup> In 2006 Khazanah National Bhd issued its first exchangeable *sukūk* based on *mushārah*.<sup>32</sup> It was believed to be the world's first *Shari'ah* compliant exchangeable trust certificates. The *sukūk*, exchangeable into the equities of Telekom Malaysia, were issued by Rafflesia Capital Ltd, an orphan special purpose company (SPC) incorporated in Labuan (Malaysia), who was to act as the issuer and investment agent of the investor.

The issuer, Rafflesia issued the exchangeable Trust Certificate to the investors in consideration of which, the investors paid the issue proceeds worth USD750 million. Meanwhile, the obligor, Khazanah National Bhd, sold and transferred the 'exchange property' to its wholly owned SPV Orchid. The 'exchange property' consisted of Telecom Malaysia (TM) shares. Orchid then sold and transferred the exchange property to Rafflesia. The issue proceeds were used by Rafflesia to pay

Orchid the consideration for the purchase of exchange property. Orchid then paid the issue proceeds to Khazanah.

Khazanah also made an undertaking to purchase back the exchange property at face value upon maturity. However, the issuer was given the call option to exercise the purchase undertaking after three years. For the purpose of *Shari'ah* compliance, TM business must comply with *Shari'ah* principles to ensure that dividend generated on the shares were *Shari'ah* approved. If this requirement was not met, the investors would have the option to sell the *sukuk* back to the issuer. Impure income from dividends attributable to the exchangeable properties would be purified by the donations to a charitable organization.

Since 2006, the market has witnessed issuances of *Shari'ah* compliant equity-linked products in the Middle East. This shows a move towards debt-based *sukuk* to other forms of *sukuk* like equity and *ijarah sukuk*. Malaysia should follow this trend so as to bring its Islamic financial system at par with the Middle East. There is a need for SAC of Bank Negara Malaysia and SAC of the Securities Commission of Malaysia to revisit their position on *bay'al-inah* and *bay'al dayn* specifically to third parties. The change will augur well for the development and harmonisation of Islamic finance in general.

### 3- Islamic Asset Backed Securities (IABS)<sup>33</sup>

The Securities Commission of Malaysia defines “Asset-Backed Debt Securities as private debt securities or Islamic securities that are issued pursuant to a securitisation transaction”. Such securities shall exclude all debt securities or Islamic securities that are capable of being converted into equity howsoever and whether redeemable or otherwise. Examples of such excluded securities include exchangeable bonds and private debt securities or Islamic securities with attached warrants.<sup>34</sup>

The *Shari'ah* Advisory Council (SAC) of the Securities Commission defines asset securitisation as a process of issuing securities by selling financial assets identified as an underlying asset to a third party. Its purpose is to liquidate financial assets for cash or as an instrument to obtain new funds at a more attractive cost, compared to obtaining funds through direct borrowing from financial institutions. Financial assets which have a future cash flow is sold by a company that needs liquidity or as a new fund, to a third party known as Special Purpose Vehicle (SPV) for cash. To enable the payment for the purchase of the assets, the SPV will issue Asset Backed Debt Securities to investors based on the future cash flow of the assets. Investors will then gain returns through a future cash flow managed by the SPV.<sup>35</sup>

The writer intends to examine the transaction structure of IABS. In such a transaction, the originator will first sell *Shari'ah* compliant assets to an SPV. The

SPV will then issue IABS to the investors. The money paid by the investors will be used to pay the originators as consideration for the transfer of the assets. The IABS represent the investors' undivided proportionate beneficial interest in the assets, thus, entitling them to receive the cash flow stream coming to the assets.<sup>36</sup>

In 2006, *Mushārah One Ṣukūk*, an IABS was issued in Malaysia. In this transaction, the originator, Times System Integrators (TSI) Sdn Bhd wanted to sell its assets in the form of deferred payment receivables from the supply of the computers to certain schools under the Ministry of Education. *Mushārah One Capital Bhd* (SPV) called upon the investors to invest capital by way of *mushārah* amongst themselves to fund the purchase of assets from TSI (originator). The SPV issued *mushārah sukūk* to evidence the capital contribution by the investors.<sup>37</sup>

The SPV then used the issue proceeds to buy the assets from the originator. The assets were sold out at a discount from the total face value of the debt receivables. The sale of the assets from the originator to the SPV was a true sale where there was no recourse to the originator. Thus, the income will come to the investor from the assets backing the *sukūk*.<sup>38</sup>

It is reiterated that the above *sukūk* involve the sale and transfer of assets that consist of receivables. These assets are debts in nature and when they are sold by the originator to the SPV that becomes the sale of debt with discounting. This practice is considered valid in Malaysia but the Middle-Eastern scholars do not consider this as valid. This practice needs to be re-considered.<sup>39</sup>

It would be more appropriate to look at an example from the Middle-East. Although, IABS is rare in the Middle-East but some instances can be found in Saudi Arabia. In July 2003, Islamic Development Bank (IDB) issued *sukūk al-istithmār* worth USD 400 million for the global market. The structure of this *sukūk* includes *ijārah* as well as rights and interests in both *murābahah* and *istiṣna'* contracts. This reflects a mixture of tangible and debt-based assets. However, the asset portfolio was structured to be dominated by tangible assets rather than debt receivables.

The IDB was the originator and the assets were deemed non-debt assets because of the tangible assets that IDB owned. Keeping in view the controversy with regard to the sale of debt with discount, the IDB structured the *sukūk* in a way that *ijārah* assets formed 50% or more of the total portfolio. For this transaction, the *ijārah* assets were more than 60% of the total portfolio which confirmed the domination of tangible assets as compared to debt-based assets, thus allowing its sale with discount.

The IDB sold the assets to Islamic Corporations for the development of the private sector (ICD), a member of the IDB group of companies and institutions. The ICD then sold the assets to the Solidarity Trust Services Limited (STSL).

The SPV entity then issued the *ṣukūk* to the investors. The proceeds from the issuance were paid for the price of the assets bought from the ICD. The ICD further paid the money to IDB as a consideration for the assets bought. There would be periodic distributions of cash flow coming to the assets to the investors throughout the tenure.<sup>40</sup>

The IDB gave a guarantee against any shortfall in the cash flow of the assets. The guarantee gave a right to recourse back to IDB as originator. In this case, it does not fulfil the requirements of a genuine sale that is required in a genuine IABS.<sup>41</sup> On the other hand, the *Mushārah* *One Ṣukūk* involve the sale and transfer of the assets that consist of receivables. These assets are debt in nature and when they are sold by the originator to the SPV that becomes the sale of debt with discounting. This practice is not considered valid by the Middle-Eastern scholars.<sup>42</sup>

The writer now turns to another form of *ṣukūk* available in the Islamic financial market known as equity based *ṣukūk*. The equity based *ṣukūk* are based on the principles of *muḍārah* and *mushārah*. The purpose of the discussion is to show that there is a shifting pattern in the Malaysian secondary market. The market was initially overwhelmed with debt based *ṣukūk* but later on, the equity based *ṣukūk* was starting to be issued.

#### **4-Muḍārah or Muqārah Ṣukūk**

The word *muqārah* has been taken from the word *qirād*, which is synonymous with *muḍārah* that is commonly used by the Ḥanafī and Ḥanbalī schools of Islamic law, while *qirād* is being used by the Mālikīs and Shafī'īs.<sup>43</sup> *Muḍārah* or *Muqārah* means an agreement between two parties, where one of the parties provides capital for the other to work on the condition that the profit is to be shared between them according to an agreed ratio. Keeping in view this definition, *muqārah* is considered as an Islamic method of financing that is totally different from the *ribā* mode of financing which is based on a prearranged rate of interest.<sup>44</sup>

The Council of the Islamic Fiqh Academy of the Organization of Islamic Countries (OIC) during its fifth conference in Jeddah in February 1988 approved the mode of *muqārah* by issuing *fatwā* after evaluating various studies on *muqārah* bonds. *Muqārah* bonds are based on the conclusion of a lawful *muḍārah* contract with the capital provided by one party and labour by the other, while the shares of profit are determined in advance by a specific percentage of the total.<sup>45</sup>

*Muḍārah* bonds bear close similarity to revenue bond financing in the conventional system.<sup>46</sup> Revenue bonds are generally backed by revenue generated



by the project funded by the bond issuer. For instance, the local government of a city wants to build a new airport considering that the new facility will attract trade to the area. The local government issues revenue bonds to finance the construction of the airport. The money for the periodic dividend payment and ultimate retirement of the bonds come from the revenue generated by the airport. If the airport generates enough revenue to reimburse the bonds, then bondholders will receive their interest and principal in full on due time. However, if the airport does not generate enough revenue, bondholders either receive their interest and principal later or nothing at all. The bondholders do not have the right to claim from the local government's general treasury fund and are exclusively dependent on the revenue generated by the project being financed.<sup>47</sup>

Likewise, the *muqāraḍah* bonds provide its owner the right to obtain his capital and an annual amount of the recognised profits as agreed earlier at the time the bonds are submitted. It means that at maturity, the owner will get his capital apart from the profit that he has earned during the tenure of the contract. The *muqāraḍah* bonds can play an essential role in the process of developmental projects because it is associated with the profitability of the projects. Financing by way of *muqāraḍah* is more efficient in terms of the allocation of resources, compared with financing based on the interest which does not reflect the profitability of projects.<sup>48</sup>

The writer concludes that *muqāraḍah* bond is based on the lawful contract of *muḍārabah* which is an approved *Sharī'ah* compliant contract. No doubt that *muqāraḍah* bonds have similarities with the conventional revenue bonds as both can be utilised in the financing of the projects. Nonetheless, *muqāraḍah* bond is more secured as it provides to its owner the right to obtain his capital and an annual amount of the recognised profit. On the other hand, the bondholders in the revenue bond do not have the right to claim from the local government's general treasury and are dependent on the revenue generated by the project being financed.

#### **4.1 Guarantee<sup>49</sup> of the *Muqāraḍah Sukūk***

It is allowed for a third party completely different in personality and financial capacity such as the government to promise to compensate for any losses persistent in a specific project. Nonetheless, this guarantee should not become a part of the main contract of *muqāraḍah* bonds but should be carried out as a separate contract. This is the position taken by the Securities Commission of Malaysia. The legitimacy of the *muqāraḍah* bonds contract should also not be linked to this guarantee. Hence, it is not permitted for the issuer to guarantee the capital of the *muḍārabah*.<sup>50</sup>

This position is being sanctioned by the Jordanian Ministry of Endowment, which is the first body that issued *muqāraḍah* bonds. The Jordanian government

guarantees the full settlement of the nominal value of the bonds on maturity.<sup>51</sup> Nonetheless, it is worth mentioning that in the case of the Jordanian *muqāraḍah* bonds, the government views the amount paid as a loan on the liability of the *Awqāf* Ministry that should be repaid as it is stated in section 12 of the “*Muqāraḍah* Act”. This section of the Act, among other issues, has been discussed in the Islamic Fiqh Academy’s debate on *muqāraḍah*. It was decided as revealed in the resolution that guarantee should be in the form of *tabarru’* or voluntary commitment and not as a loan, otherwise it will convert the *muqāraḍah* bond into an interest-based loan.<sup>52</sup>

It is also allowed for the *muḍārib* and the investors to agree to specify a definite amount of money or certain profit as reserves to provide protection or to meet any losses that may arise during the course of business.<sup>53</sup> Furthermore, the Jordanian Ministry of Endowment has been criticised<sup>54</sup> for the fact that it does not endorse any right to bond holders concerning the project ownership. The amount that is being paid out by the bond holders is kept in trust, which is returned to them at their value at the time of redemption. Moreover, the bonds holders get their share of any recognised profits. Nonetheless, they do not sustain any losses and are entitled to their principal amount in full in all situations.

This is in contrast with the *muḍārabah* contract as the actual *muḍārabah* contract does not burden the *muḍārib* to guarantee full repayment of the principal to the fund provider. Abdul Rahman Yousri Ahmed<sup>55</sup> asserts that the jurists consider guaranteeing repayment of the nominal value of bonds as a violation of the *muḍārabah* contract in which the principal cannot be guaranteed along with the right to share in the realised profit. However, he defends the *fatwā* issued in Jordan allowing such a guarantee with the observation that Islamic economists have to evaluate the implications of these different analyses.

Abdul Rahman Yousri further adds that guaranteeing repayment of the principal amount along with the payment of profits discourage the principle of *al-kharāj bi al-ḍamān*<sup>56</sup> (gain accompanies liability for loss), but asserts that Islamic economic products and transactions are lacking in the contemporary Islamic societies and are being dominated by the conventional banking system that deal in interest based-transactions and bonds. Therefore, he claims that when a government of an Islamic country offers guarantee to any Islamic security issued by one of its official entities, this will yield into the acceptance of the “new instrument” by the masses.<sup>57</sup>

The writer supports Yusri opinion as it will encourage people to buy an Islamic security and will help them to refrain from dealing with interest based financial institutions. However, the resolution of the *Fiqh* academy as mentioned above should also be taken into account because the resolution accepted that the government could guarantee the repayment of the nominal value of the

*muḍārabah* bonds only as a kind of *tabarru'* or voluntary commitment and not as a loan which the ministry of *Awqāf* should repay.<sup>58</sup>

In Malaysia, the first *muḍārabah ṣukūk*, that is, Pasir Gudang Municipal *muḍārabah ṣukūk* was issued in February 2005. The issuer in this transaction was an SPV, PG Municipal Assets Bhd. The issuer would first enter into a *muḍārabah* contract with the investors, whereby the investors contributed RM80 million as capital. The issuer issued the *ṣukūk* to evidence the investors proportionate capital contribution in the *muḍārabah* contract and their subsequent rights in the assets.

The main reason of this *muḍārabah* contract was to authorise the issuer to enter into a second *muḍārabah* contract with the local authority of Pasir Gudang (PG). Under the second *muḍārabah* contract, the issuer invested the whole capital of RM80 million in the Pasir Gudang local authority as *muḍārib*. Profits were expected as the local authorities of the PG started using the *muḍārabah* capital in managing the property taxes collection. The profits from the property taxes would then be channelled to the SPV. The SPV will provide the profit share of the investors to the Security Trustee, who would then distribute it amongst the investors as per the agreed profit rate.<sup>59</sup>

It should be noted that PG *ṣukūk* relied solely on the strength of the cash flow coming to the *muḍārabah* project. There was no recourse to the issuer but limited recourse to the *muḍārabah* project. There was no guarantee from the *muḍārib* (issuer) as the structure is in agreement with the *Shari'ah* principles. On the other hand, the Jordanian *muqāraḍah* bond is guaranteed by the Jordanian Government which results in the encouragement of the investors. This approach had also been endorsed by the OIC *Fiqh* Academy with a modification that the guarantee should be made in the form of voluntary commitment and not as a loan. In the case of Jordanian *muqāraḍah* bond, the guarantee is provided by the government and not by the Ministry of Endowment. This may not be considered a third party guarantee as the government and the Ministry of Endowment may be perceived as one entity. However, the writer is of the view that the Ministry of Endowment is an autonomous entity in terms of financial obligations and therefore, the Jordanian government and the Ministry of Endowment are separate entities. Now the writer turns to another segment of the equity *ṣukūk* known as *mushārah* *ṣukūk*.

#### 4.2 *Mushārah* *Ṣukūk*

*Mushārah* *ṣukūk* involve the merger of the capital between the issuer and the investors. It is a partnership between two parties where both provide capital towards the financing of a project. Both parties share profit on a pre-agreed ratio but losses are shared on the basis of equity participation. Management of the project may be carried out by either party. This partnership is very flexible in

nature, where the sharing of the profits and management can be negotiated and pre-agreed by all parties.<sup>60</sup>

There are a number of *mushārahah shukūk* that have been issued in Malaysia and the Middle East. The writer intends to examine at least one *shukūk* from each side. Assar Chemicals *shukūk* worth RM150 million was issued in Malaysia in 2005. In Assar Chemicals *shukūk*, the company cum issuer entered into user agreements with some oil companies. The user agreements essentially required the company to operate an Independent Oil Company (IOT) for the use of the oil company.

The issuer called for the contribution of capital and the investors provided 87 percent of the capital while the rest was invested by the issuer. Accordingly, the issuer issued the *mushārahah shukūk* to evidence the investors proportionate capital contribution to the venture. The *mushārahah* capital would be used for the construction of IOT. The issuer was the project manager and upon completion of the IOT, it would be leased out to the company.<sup>61</sup>

The lease rentals paid by the company would be distributed to the investors as periodic distribution upon an agreed profit ratio. The company would use the terminal to meet its obligations under the user agreements with the oil companies. The oil companies would pay the amount agreed for using the IOT to the company. Upon maturity, the company would redeem the *shukūk* from the investors and would return their capital investment.

On the other hand, Dubai Metal and Commodity Centre (DMCC) issued USD200 million *mushārahah shukūk* in 2005. In this transaction, the corporate and the Special Purpose Company (SPC) entered into a *mushārahah* agreement for a period of five years. The SPC was acting as the investment agent of the investors. The corporate contributed land and other assets equal to USD100 million, while the SPC added cash amount of USD200 million to the *mushārahah*. The agreed profit sharing ratio between the SPC and the corporate was 80:20.

The corporate was appointed as an agent to develop the land or other physical assets with the invested cash. After that, the developed assets would be sold or leased out to the end users which were DMCC licensed companies in the diamond, gold and metal trades. The net profit was to be divided according to the agreed ratio of 80:20. The agent would get a fixed agency fee plus a variable incentive fee payable semi-annually. The corporate irrevocably undertook to buy the *mushārahah* shares of the SPC at an agreed price on semi-annual basis. Therefore, the SPC would no longer have any shares at the end of five years.<sup>62</sup>

Before going to the discussion on *ijārah shukūk*, the writer would like to discuss green *shukūk*. Green *shukūk* is a new phenomenon in the Islamic capital market introduced in 2008 by the World Bank in the shape of Green Bonds. The earnings of the green bond are tied to environment friendly investment. Since

then, the World Bank has raised US\$6.4 billion in green bonds. This was raised in 67 transactions in 17 different currencies funding a diverse range of projects. It started from drinking water projects in Tunisia to the treatment of wastewater project in China. Market participants expect the issuance of green bonds to exceed US\$100 billion by the end of 2015.<sup>63</sup>

The principles of Islamic finance emphasise on ethical investment, and green bond is an environment friendly product, therefore, green ṣukūk falls within the ambit of the objectives of *Shari'ah*. Recognising the need for green Ṣukūk, the SC of Malaysia issued SRI framework to facilitate the SRI financing and investment initiative. The SRI ṣukūk framework is an extension of the existing ṣukūk framework and therefore, all the other requirements in the Guidelines on Ṣukūk continue to apply. The additional areas addressed in the framework for the issuance of SRI ṣukūk include utilisation of proceeds, eligible SRI projects, disclosure requirement, appointment of independent party and reporting requirement.<sup>64</sup> Similarly, the UAE Securities and Commodities Authority's recent regulatory reform for ṣukūk is a positive step for the development of ṣukūk regime. This could equally be used for the development of green ṣukūk framework.<sup>65</sup>

Green Ṣukūk has picked up momentum in recent years, with a number of green ṣukūk launched since the first issuance of a green ṣukūk in France in 2012. In the Islamic finance market, Islamic Development Bank is already a major player in clean-sector investments with more than US\$1 billion spent in countries such as Morocco, Pakistan, Egypt, Tunisia and Syria.<sup>66</sup> In Malaysia, Khazanah Nasional Bhd has successfully offered a RM100 million seven-year Sustainable and Responsible Investment (SRI) ṣukūk to be issued via a Malaysian incorporated independent special purpose vehicle (SPV), that is Ihsan Ṣukūk Bhd. This issuance is pursuant to Ihsan's RM1.0 billion ṣukūk programme, the first programme approved under the Securities Commission Malaysia's SRI ṣukūk framework. There was participation from a diverse investor group including corporations, banks, pension fund and asset management companies. The issuance proceeds would be used to fund schools under the Yayasan AMIR Trust School Programme identified for 2015. Yayasan AMIR is a not-for-profit foundation incorporated by Khazanah to improve the accessibility of quality education in Malaysian Government schools through a Public-Private Partnership with the Ministry of Education. The structure of this ṣukūk is in accordance with the Islamic principle of *Wakalah bil Istithmār*.<sup>67</sup>

## 5- *Ijārah Šukūk*

In *ijārah šukūk* the issuer in need of financing will first sell its asset to the investors to get the required amount of money. The same asset is then leased back to the issuer for a lease rental. The periodic lease rental will constitute the periodic distribution of payments to the investors. The issuer will then issue *šukūk al-ijārah* to the investors cum lessors. The *šukūk* represents undivided proportionate ownership by the investors cum lessors in the leased asset that gives them the right to the lease rental. Therefore, the trading of *šukūk al-ijārah* in the secondary market is backed by the real tangible asset. This is one of the reasons of the better global acceptance of *šukūk al-ijārah*.

The Malaysian Global Sovereign *šukūk* 2002 was based on the principle of *ijārah*. The Malaysian Global *Šukūk* Inc, was a Special Purpose Vehicle (SPV) which was incorporated for the sole purpose of the *šukūk* issuance. The SPV first purchased a number of identified land parcels from the Federal Lands Commissioner (FLC). Due to legal constraints in Malaysia, the FLC retained the legal titles on the land parcels and only transferred the beneficial titles to the SPV. The SPV then leased out the land parcels through a series of *ijārah* arrangement to the Malaysian Government for periodic rental payments.

The SPV issued the *ijārah šukūk* to the investors. The investors paid the *šukūk* proceeds amounting to USD600 million. The *šukūk* represent undivided proportionate ownership over the land parcels. The *šukūk* proceeds were the purchase price of the land parcels that the investors bought from the SPV. The SPV then paid the *šukūk* proceeds to the FLC as the purchase price of the land parcels. The Malaysian government made an irrevocable promise to buy back the land parcels from the investors upon maturity of the *ijārah* agreement. The *šukūk* holders would be entitled to receive the lease rentals as their periodic profit distribution. The lease rentals represented profit to the investors. The principal investment would only be redeemed upon maturity of the *ijārah* agreement.<sup>68</sup>

In addition, the current 5-year \$1.5 billion *šukūk al-ijārah* (leasing *šukūk*) issued by Malaysian state oil company, Petroliaam Nasional Bhd (Petronas), marks a new period of *šukūk* (Islamic securities) issuance in the country. The Petronas Emas \$1.5 billion *šukūk* together with the 4 billion ringgit *šukūk al-mushārah* issued by Cagamas in 2010 are listed on Bursa Malaysia, the local stock exchange, for the first time, as well as on the Labuan International Financial Exchange (LFX) and the Luxembourg Stock Exchange.<sup>69</sup>

## 6- Conclusion

The writer concludes that there is an overlap between debt and sale based structure of the *ṣukūk*. The relationship of the buyer and seller is created as a result of the contract of sale by deferred payment. Likewise, a debt obligation is created before the issuer can issue bonds to the investors. This obligation takes place in the second transaction between the issuer and the investor when the former buys back the assets from the latter at a profit margin and on deferred payment basis. On the other hand, the *ijārah* based structure indicates ownership in the assets that generate income and normally owned by the SPV. Unlike equity bonds, a steady Islamic income stream is required to back the issuance of the bonds in ABS.

Equity bonds are based on the concept of *mushārah* and *muḍārah*. The equity-based structure of the *ṣukūk* represent common ownership and entitles the holders shares in a specific project. In contrast with debt-based structure, no indebtedness is created in equity bond market. The issuer will simply issue bonds to raise funds. In order to attract and inspire the confidence of the investors, there are some positive factors behind the issuance of the bonds. For instance, in Jordanian *muqāraḍah* bonds, the government of Jordan guarantees the settlement of the nominal value of the bond, which provides support to the investor.

As the principles of Islamic finance emphasises ethical investment, green bonds are environment-friendly and thus green *ṣukūk* fall within the ambit of the objectives of *Sharī'ah*. Recognising the need for green *Ṣukūk*, the SC of Malaysia issued SRI framework to facilitate the SRI financing and investment initiatives. The SRI *ṣukūk* framework is an extension of the existing *ṣukūk* framework and therefore, all the other requirements in the Guidelines on *Ṣukūk* continue to apply. This initiative has put Malaysia at par with the rest of the world in the field of Islamic finance.

Lastly the introduction of equity based *ṣukūk* i.e., (*mushārah* and *muḍārah ṣukūk*) and *ijārah ṣukūk* in the Malaysian secondary market indicates a move from debt based *ṣukūk* to equity and *ijārah ṣukūk*. This trend will bridge the existing gap between Malaysia and the Middle East and thus facilitate the flow of investment from Middle East to Malaysia. The writer recommends that, despite this initiative, the *Sharī'ah* scholars need to revisit the controversial debt based instruments so that a coordinated and harmonised approach can be achieved in the near future.

## Notes

- \* Inam Ullah Khan has graduated from International Islamic University Islamabad from the faculty of Shariah and Law in 1994-1995. Thereafter, he qualified a provincial competitive examination and was appointed as Magistrate with the Gov't of KPK, Pakistan. He used to make judgments on the basis of Shariah principles. He worked there for seven years. He did his Master in Comparative Laws from International Islamic University Malaysia in 2003. Simultaneously, he did his PHD from International Islamic University Malaysia in 2011. He wrote a thesis on the differences of Shariah principles between the scholars of Malaysia and Middle-East in the sphere of Islamic banking and finance.
1. Nathif J. Adam and Abdulkader Thomas, *Islamic Bonds, Your Guide to Issuing, Structuring and Investing in Sukūk*, London, Euromoney Books, 2004 at 42.
  2. Securities Commission, *Guidelines on Islamic Securities*, Kuala Lumpur, 2004 as mentioned in *Islamic Financial System: Principles and Operations*, Kuala Lumpur: ISRA, 2012 at 390.
  3. *Islamic Financial System: Principles and Operations*, KL, ISRA, 2012 at 389.
  4. [http://www.sc.com.my/wcontent/uploads/eng/html/bondmkt/MalaysianDebtSecuritiesSukuk\\_2009.pdf](http://www.sc.com.my/wcontent/uploads/eng/html/bondmkt/MalaysianDebtSecuritiesSukuk_2009.pdf) (accessed on 30/06/2015).
  5. [http://www.sc.com.my/post\\_archive/sc-introduces-sustainable-and-responsible-investment-sukuk-framework](http://www.sc.com.my/post_archive/sc-introduces-sustainable-and-responsible-investment-sukuk-framework) (accessed on 10/07/2015).
  6. Khazanah bonds are issued by Khazanah Nasional Berhad under the principle of *murābahah*. The Khazanah bonds have the benefit of a guarantee by the Government of Malaysia whereby the Government of Malaysia guarantees payment of face value of the outstanding bonds or if any of the bonds become due and payable before their maturity date, the fair value of such bonds. The secondary market trading of this bond is based on the principle *bay' al dayn*. See <http://www.midf.com.my/our-product-a-services/midf-amanah-investment-bank-berhad/khazanah-bond> (accessed on 4/06/2015). Please note that the two words bonds and *sukūk* are used synonymously.
  7. See <<http://iimm.bnm.gov.my>> (accessed on 4 June 2015).
  8. Securities Commission Malaysia, *The Islamic Securities (Sukūk) Market*, Petaling Jaya Selangor, Lexis Nexis, 2009), at 47.
  9. <<http://iimm.bnm.gov.my>> (accessed on 6/12/2010).
  10. Wehr, Hans, *A Dictionary of Modern written Arabic*, Cowan, J. Milton (ed.), Bayrūt, Library Du Liban, 1980, at 305.
  11. <[http://www.sc.com.my/eng/html/bondmkt/Guidelines-Islamic\\_PDF.pdf](http://www.sc.com.my/eng/html/bondmkt/Guidelines-Islamic_PDF.pdf)>.
  12. In Arabic this reads as: “*māl hukmī fi al dhimmah*”; See Al Kāsānī, *Badai' al-Sanai'*, Qāhirah, Maṭba'ah al-Jamālīyah, 1910, V, at 148, Please also see Engku Rabiah, *Securitization in Islamic Contract*, paper presented at Colloquium on Islamic Bonds, jointly organized by the Securities Commission of Malaysia and International Islamic University Malaysia; Kuala Lumpur, 24<sup>th</sup> June 2004.
  13. Rabiah, *Securitization in Islamic Contract*, at 34.
  14. It is said that there is *ijmā'* (a general consensus) on the prohibition of *bay' al-Kalī' bi al-Kalī'*, whether the debt is sold to the debtor or to the third party. See Wahbah al Zuḥaylī, “Financial Transactions in Islamic Jurisprudence”, Bayrūt, Dār al-Fikr, vol. I, 2007, at 79. However, this claim is rebutted by some other



- jurists. Please see Kamali, *Islamic Commercial Law: An Analysis of Futures and Options*, Petaling Jaya, Ilmiah Publisher, 2002, at 127-128.
15. Al-Kāsānī, *Badā'ī' al-Sanā'ī'*, Meşir, Dār al-Ma'rifah, 1326H, V, at 148.
  16. Mansūr ibn Yūnus al-Bahūtī, *Kashāf al-Qanā'an Matn al-Iqnā'*, Bayrūt, Dār al-Fikr, 1982, III, at 294 in Sano Koutoub Moustapha, *The Sale of Debt as Implemented by the Islamic Financial Institutions in Malaysia*, Kuala Lumpur, Research Centre IIUM, 2001, at 46.
  17. Confirmed debt is the debt where the sale of the commodity has taken place. For instance, the sale of the commodity in *murābahah* is a confirm debt. In the case of non-confirm debt, the transaction is not yet complete such as the cost of labour before completion. Please see Sano Koutoub Moustapha, *The Sale of Debt as Implemented by the Islamic Financial Institutions in Malaysia*, Kuala Lumpur, Research Centre IIUM, 2001, at 46.
  18. Capital of *salam* refers to the cost of a commodity, which is paid in advance but the commodity is delivered later in the future. This is an exception from the general rule of Islamic commercial law which requires that commodity should be present at the time of the contract. This was allowed keeping in view the need of the people.
  19. Sano Koutoub Moustapha, *The Sale of Debt as Implemented by the Islamic Financial Institutions in Malaysia*, Kuala Lumpur, Research Centre IIUM, 2001, at 49.
  20. Securities Commission Resolutions, at 16-19. For a detailed discussion on the reasons for the decision, see the paper written by Suhaimi Mohd Yusuf, entitled, "*Bay' al-dayn*: Keputusan Majlis Penasihat Syariah Suruhanjaya Sekuriti", presented at Muzakarah *Bay' al-dayn* organized by Bank Negara Malaysia, 4 July 2002, Kuala Lumpur, at 14-19.
  21. Resolution of *Sharī'ah* Advisory Council, Bank Negara Malaysia, 2006 at 14.
  22. Resolution of *Sharī'ah* Advisory Council, Securities Commission of Malaysia, 2007 at 20; also Saiful Azhar Rosly and Azizi Che Seman, Juristic Viewpoints on *Bay'al-Īnah* in Malaysia: A Survey, *IIUM Journal of Economics and Management* 11, no.1 (2003), at 87-88.
  23. Mohammad Hashim Kamali, Debt, Debt Securities and deferred Sales: An Islamic Legal Analysis, paper presented to the Colloquium on Islamic Private Debt Securities, Jointly organised by the International Islamic University Malaysia and the Securities Commission, Kuala Lumpur, 24 June, 2004.
  24. Engku Rabiah Adawiah Engku Ali, *Bay' al-Īnah and Tawarruq: Mechanism and Solutions*, Muzakarah Cendekiawan Syariah Nusantara, *Bay'al-Īnah Dan Tawarruq: Isu-Isu Dan Penyelesaiannya dalam Konteks Kewangan Islam*, Organized by Bank Negara Malaysia, 28-29 Jun 2006. For instance, see Al-Zuhaylī, *Financial Transactions in Islamic Jurisprudence*, Bayrūt, Dār al-Fikr, Translated by Maḥmūd A. El-Gamal, 2007.
  25. For details see Wahbah al-Zuhaylī, *al-Mu'amalāt al-Maliyyah al-Mu'asirah*, Bayrūt, Dār al-Fikr al-Mu'asir, n.d., at 45. See also Al-Zuhaylī, *Financial Transactions in Islamic Jurisprudence*, Bayrūt, Dār al-Fikr, Translated by Maḥmūd A. El-Gamal, 2007, vol.1 at 114-115;
  26. For instance Government Investment Issue (GI). It is issued by the government of Malaysia to finance the country's development programme. It is basically

- an Islamic bond structured on the concept of *bay' al-ʿīnah* and can be traded in the secondary market. In this transaction, the government undertakes to sell an asset on cash basis at a discount and buys it back at a higher price on the basis of credit. A debt is created here which is securitised through the issuance of GII.
27. Hasan Ahmad, Fiqh methodology for the Creation of the Benchmark Bonds in Islam, *Seminar on Islamic Bonds*, Kuala Lumpur, 1998.
  28. Abdur Rashid Hussain, "Malaysia's Khazanah Benchmark Bonds," *Islāmic Banker*, April 1998, at 9-11.
  29. <<http://iimm.bnm.gov.my/index.php?ch=1&pg=42>> (accessed on 15/02/2010).
  30. Saiful Azhar Rosly and Mahmood M. Sanusi, *The application of Bay' al-ʿīnah and bay' al-Dayn in Malaysians Islamic Bonds: An Islamic Analysis*, International Journal of Islamic Financial Services Vol. I, no.2, Oct-Dec 1999.
  31. <<http://iimm.bnm.gov.my/index.php?ch=1&pg=42>> (accessed on 15/02/2010).
  32. Securities Commission Malaysia, *The Islamic Securities (Ṣukūk) Market*, Petaling Jaya Selangor, Lexis Nexis, 2009, at 75.
  33. It is appropriate to differentiate between asset backed and asset based *ṣukūk*. Asset backed *ṣukūk* are similar to asset backed securities with the presence of a necessary element of securitisation. The originator who wants to raise funds sells the income generating asset to a special purpose vehicle (SPV) under a legal true sale. Consequently, the investors (*ṣukūk* holders) enjoy bankruptcy remoteness and the creditors of the originator cannot take back the asset from the investors if the originator is facing bankruptcy. The payment to the investors depends upon the actual performance of the underlying asset. On the other hand, in asset based *ṣukūk*, the asset is present for the purpose to fulfill *Sharīʿah* requirement rather than a source of profit and capital payments. The credit risk assessment is directed towards the entity with the obligation to redeem the *ṣukūk*. Normally, this will be the issuer. However, in some cases it may fall on the originator. For details see *Islamic Financial System: Principles and Operations*, KL, ISRA, 2012 at 400-401.
  34. Securities Commission, *Guidelines on the Offering of Asset-Backed Securities*, Kuala Lumpur, 2004, at 1.
  35. Securities Commission, *Resolutions of the Securities Commission Sharīʿah Advisory Council*, Kuala Lumpur, 2002, at 47.
  36. Securities Commission Malaysia, *The Islamic Securities (Ṣukūk) Market*, Petaling Jaya Selangor, Lexis Nexis, 2009, at 87.
  37. The SPV was only the investment agent of the investors.
  38. Securities Commission of Malaysia, *The Islamic Securities (Ṣukūk) Market*, at 91.
  39. The *sharīʿah* issues on this matter have been discussed in the preceding pages.
  40. Securities Commission Malaysia, *The Islamic Securities (Ṣukūk) Market*, Petaling Jaya Selangor, Lexis Nexis, 2009, at 95.
  41. There must be an asset and this asset must generate cash flow. With regard to genuine sale criteria, there should be an independence of the SPV with no recourse to the originator. This is to ensure adequate bankruptcy remoteness. Furthermore, the asset must not be based on solely monetary debts and receivables. The asset can be solely tangible asset (*ijārah* asset) linked with rental income for the purpose of cash flow generation. Or the asset can be the hybrid between tangible

- assets and debts (with a ratio of at least 30:70; previously 51:49). Some other assets can also be used such as usufruct/services that generate cash flow.
42. The *shari'ah* issues on this matter have been discussed in the preceding pages.
  43. Walid Khayrullah, "Al-Muqāraḍah Bonds as the Basis of Profit Sharing", *Islamic Economic Studies*, vol.1, no.2, June 1994, at 80.
  44. Ibid.
  45. Saiful Azhar Rosly and Mahmood M. Sanusi, "Financial Instruments for Project Financing in Malaysia and Arab Countries: A Comparative Analysis", at 11.
  46. Frank E. Vogel and Samuel L. Hayes, *Islamic Law and Finance, Religion, Risk and Return*, The Hague, Kluwer Law International, 1998, at 191.
  47. Please see Stuart R. Veale (editor), *Stocks, Bonds, Options, Futures, Investment and their Markets*, New York Institute of Finance, at 113-115.
  48. Muhammad al-Bashir Muhammad al-Amine, *The Islamic Bonds Market: Possibilities and Challenges*, *International Journal of Islamic Financial Services*, Vol. III, No.1, July-Sep 2001, at 8.
  49. Guarantee (*kafalah*) can be divided into two different types such as *kafalah bi al-mal* and *kafalah bi al-nafs*. *Kafalah bi al-mal* means a guarantee to return an asset to its owner, while *kafalah bi al-nafs* means a guarantee to bring someone to a specific authority such as before a court of law. For details see Al-Zuhaylī, *Financial Transactions in Islamic Jurisprudence*, Vol. 2 at 5-13.
  50. Ibid at 9.
  51. The writer is of the opinion that government is the executive head of the country which carries executive responsibility of the whole country. The Ministry of Endowment is an entity of the Government which looks after the affairs of the Endowment. It has full financial independence and in this way can fulfill its financial obligations. However, it may not be considered by others a genuine transaction as the government and the Ministry of Endowment may be perceived as the same entity and not different and third parties.
  52. Islamic Fiqh Academy Resolution No. (5) d 4/08/88 on *Sanadāt al-Muqāraḍah*, *Majallah Majma al-Fiqh al-Islāmī*, No. 4, Vol. III, at 1821-2165.
  53. Ibid. 2164.
  54. As mentioned in Muhammad al-Bashir Muhammad al-Amine, at 9.
  55. Abdul Rahman Yousri Ahmad, "Islamic Securities in Muslim Countries Stock Markets and an assessment of the need for Islamic Secondary Market," *Islamic Economic Studies*, vol.3, no.1 December 1995, at 7-9.
  56. Aḥmad Zarqā, *Sharḥ al-Qawā'id al-Fiqhīyyah*, Bayrūt, Dār al-Gharb al-Islāmī, 1983, at 361.
  57. Abdul Rahman Yousri Ahmad, "Islamic Securities in Muslim Countries Stock Markets and an Assessment of the Need for Islamic Secondary Market," *Islamic Economic Studies*, Vol. 3, No.1 December 1995, at 7-9.
  58. Islamic Fiqh Academy Resolution no. (5) d 4/08/88 on *Sanadāt al-Muqāraḍah*, *Majallah Majma al-Fiqh al-Islāmī*, No.4, Vol. III, at 1821-2165.
  59. Securities Commission Malaysia, *The Islamic Securities (Ṣukūk) Market*, at 73-74.
  60. *Islamic Banker*, Issue 61, February 2001, at 28.
  61. Securities Commission Malaysia, *The Islamic Securities (Ṣukūk) Market*, at 78-79.

62. Ibid at 81- 82.
63. Lee Irvine, Michael P Griffy and Alice Cowman, Green Sukuk: The race to be first, Special Report, *Islamic Finance News*, 5<sup>th</sup> Nov 2014 at 28-30.
64. [http://www.sc.com.my/post\\_archive/sc-introduces-sustainable-and-responsible-investment-sukuk-framework](http://www.sc.com.my/post_archive/sc-introduces-sustainable-and-responsible-investment-sukuk-framework) (accessed on 10/07/2015).
65. Lee Irvine, Michael P Griffy and Alice Cowman, Green Sukuk: The race to be first, Special Report, at 29.
66. <http://www.thestar.com.my/Business/Business-News/2014/09/03/Green-Sukuk> (accessed on 11/7/2015).
67. Ihsan Sukuk Bhd <http://www.sukuk.com/sukuk-new-profile/ihsan-sukuk-bhd> (accessed on 10/07/2015).
68. Securities Commission Malaysia, *The Islamic Securities (Sukūk) Market*, at 66.
69. <[www.zawya.com/middle-east/sidZAWYA20090824034601.htm](http://www.zawya.com/middle-east/sidZAWYA20090824034601.htm)> (accessed on 15/08/10).