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Standardisation in sukuk

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An increasingly mainstream method of finance for GCC entities as well as Asian entities operating out of Indonesia and Malaysia is the use of Islamic finance solutions rather than conventional. While recent global events have slowed the issue of *sukuk* (*Shari'a* compliant trust certificates), the use of Islamic finance products in the retail sector (for the purchase of consumer goods and homes) and the commercial sector (*takaful*, bank finance and risk management) continues to increase.

As the product area matures, there has been more frequent commentary from industry observers arguing for increased efficiency through standardisation by industry participants, advisors and consumers. While there has been useful developments in this regard, the desire of some commentators to establish a universal approach and promulgate one view of applicable standards may be the result of a lack of understanding of the complexity of such products.

Standard setting bodies do exist

There are currently three standard-setting bodies with industry significance, recognised by Islamic scholars (who often advise the bodies themselves) and industry participants. These are the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI established in 1990 and registered Bahrain), the Islamic Financial Services Board (IFSB established in Kuala Lumpur in 2002) and the International Islamic Financial Market (established in 2002 and based in Bahrain).

Each of these bodies has influence on product development, regulators, and central and commercial banks. In addition, each body is aware of standards set by the other bodies and thus it is possible that each body influences the other in approach. While industry experts acknowledge that the standards published by each of these bodies form an essential point of reference for Islamic structures and products, the same experts acknowledge that the industry does not have (and possibly may never have) unanimous agreement on the adoption and enforcement of one set of standards.

Why has one universal standard not been adopted?

The history of *Shari'a* compliant finance spans hundreds of years and incorporates a wealth of academic and legal jurisprudence. As such, many of the issues that vexed respected scholars in the past still are present today.

Geographical diversity and differing schools of Islamic thought mean that finding consensus for a standard approach to products and structures takes time, and a great deal of effort to find common ground. Even if consensus is achieved, such standards are merely guidelines unless adopted as a law, regulation or policy by governments, regulatory bodies or accounting or legal organisations. While this adoption is on-going and AAOIFI standards have been made mandatory as part of Islamic banking regulations in financial centres such as Bahrain and the Dubai International Financial Centre, the process ultimately requires ratification through legislation or decree.

The nature of development of the industry and the considerable pace at which product innovation and competition amongst product providers is taking place can be difficult for standard setting bodies and regulators to stay abreast of. At this stage of development, the advice and influence of *Shari'a* advisory boards and individual scholars is very important and can lead to a divergence (even if unintended) from the standards published by the aforementioned bodies.

While it may be straightforward to review a *sukuk* structure or proposed product offering for compliance with the standards set by AAOIFI or the IFSB, it can be far more challenging in retail or commercial sectors where there are multiple product offerings and many different market participants within different geographical centres. Whilst the *Shari'a* scholar advising on product development might also advise a standard setting body and therefore assist in this regard, there is no guarantee that is the case.

Does failure to have one common standard matter?

Increased standardisation is likely to have the following positive outcomes:

- easier determination by consumers of risk and reward by reference to comparable products;
- better assessment of the success of large-scale fundraisings due to increased acceptance by a greater number of investors (comforted by compliance with published standards);
- consensus amongst scholars on how best to protect the industry from reputational harm that might arise from products being developed too quickly without properly exploring *Shari'a* compliance; and
- greater transactional efficiency as the providers of financial, legal and accounting services would have the same guidelines for their institutional approach to a particular product.

However, failure to achieve standardisation is less critical at this stage in the development of *sukuk* due to the following:

- rigid adherence to existing standards or not transacting in anticipation of increased standardisation could stifle growth and innovation which is vital to bring *Shari'a* compliant products to the larger world;
- each product, whether or not issued in accordance with the guidance of the aforementioned bodies, typically will require the expertise of a *Shari'a* specialist in order to gain the widest acceptance. This advice, often given in the form of a fatwa, is in itself a practical and tested method of policing *Shari'a* compliance; and
- consumers of any *Shari'a* compliant product must still make their own informed

choice as to whether the product suits their own ethical and commercial risk profile.

It is this last point which the market must not lose sight of in any debate on standards for *Shari'a* finance. Any standard, no matter how universal, is not a substitute for proper thought as to whether an investor, customer or financial institution is comfortable that the product fits within its own interpretation of *Shari'a* compliance.

The events of 2008 and 2009 clearly illustrate that compliance with existing laws (or achieving a specified rating) does not protect investors should the investment, credit or structure be fundamentally unsound. While market commentators repeatedly argue for the adoption of a universal standard for *Shari'a* products, and more transparent and efficient offerings, it is important to note such guidelines cannot eliminate risk. It is this risk that must be assessed by investors and ultimately is best remembered no matter what the future holds for the adoption of standards in the future.

Capital markets

Recommended firms
Tier 1
Allen & Overy
Clifford Chance
Tier 2
Linklaters
Tier 3
Ashurst
Clyde & Co
Hogan Lovells
Norton Rose
Shearman & Sterling
Simmons & Simmons
Vinson & Elkins
Tier 4
Afridi & Angell
Al Tamimi & Company
Freshfields Bruckhaus Deringer
Hadef & Partners

Banking and project finance

Recommended firms
Tier 1
Allen & Overy
Clifford Chance
Linklaters
Tier 2
Shearman & Sterling
Tier 3
Hogan Lovells
Norton Rose
Tier 4
Afridi & Angell
Al Tamimi & Company
Ashurst
Clyde & Co
Dewey & LeBoeuf
Hadef & Partners
Reed Smith
Simmons & Simmons
SNR Denton
Towers & Hamlins
Vinson & Elkins
White & Case

Mergers and acquisitions

Recommended firms
Tier 1
Allen & Overy
Clifford Chance
Tier 2
Linklaters
Freshfields Bruckhaus Deringer
Shearman & Sterling
Tier 3
Al Tamimi & Company
Ashurst
Clyde & Co
Herbert Smith
Tier 4
DLA Piper
Hadef & Partners
Norton Rose
Simmons & Simmons
SNR Denton
Towers & Hamlins
Vinson & Elkins

Given the crisis in Dubai, the UAE market has been volatile causing uncertainty. "The burst of debt has meant that projects have been put on hold or reviewed or financed in a different way," says one lawyer. "The projects that are needed are so big that they need external debt, bond markets, and it all depends on the appetite for UAE debt and credit. We hope things will improve by end of 2010."

The key concern for banks has been to repair balance sheets and assess capital adequacy and liquidity issues. Some banks have been more successful than others but this alternative focus has, on the transactional side, caused a decrease in conventional lending.

The restructuring of the Dubai World debt has kept both banks and law firms occupied over the past few months and with underlying losses in the market, the number of new money deals has decreased. "Banks are realising losses as customers begin to realise their losses. This means banks need to restructure continuously so the focus is still on restructuring," comments one partner.

Legal practitioners report greater complexity in structured finance. "There are banks that are willing to lend money but in a structured way so might involve derivative arrangements," says one partner.

On the capital markets side there has been an active sovereign bond market, making it the first market to open. The theme was for sovereigns and companies primarily owned by government to benefit from a government guarantee. "Towards the end of the year we saw life in the IPO market and regular corporate bonds," notes one partner.

The second quarter of 2010 marked an increase in "risk appetite and the ability to do IPOs here" says one partner. "For IPOs to float, people need to know that there are not going to be any road bumps along the way. Certainly for the rest of this year the Dubai World restructuring is going well and once that has gone through we will see an uplift."

Allen & Overy

Described as a leading practice that has established a solid reputation, Allen & Overy is one of the key firms in the region. "They are excellent, the people we worked with were professional and knew their subject. They were up to a standard which is important," says one client, adding: "The firm has good competent lawyers like Khalid Garousha. He is very pragmatic and knowledgeable."

Peers praise the firm for its undisputed presence in the market and commend it for its connections in the region. "The firm has top corporate clients and very strong institutional links in Abu Dhabi," says one partner.

On the capital markets side, Anzal Mohammed and Ibrahim Mubaydeen have been representing Abu Dhabi Commercial Bank, First Gulf Bank, National Bank of Abu Dhabi and Union National Bank in relation to their cash boosts. These were four out of the five financial institutions to benefits from a Dh16 billion ($4.36 billion) Tier I capital injection from the government of Abu Dhabi. The deal was a key transaction positioned by the government as a strategic initiative to ensure the continuation of confidence in Abu Dhabi's financial institutions.

Another transaction involved Mohammed acting on behalf of General Electric Capital Corporation in connection with its inaugural *sukuk* (Islamic bond). The *sukuk* issue was the first by a US corporate, paving the way for other Western companies to tap Islamic investors in the Middle East.

The firm has also been active in M&A with Andrew Schoorlemmer and Chris Thornes acting on behalf of AES Corporation and IDB Infrastructure Fund in relation to the competitive sales process for the disposal of their power generating assets held through AES Oasis. Assets held as 61% by AES Corporation and 39% by IDB Infrastructure Fund. In addition, the firm represents AES Corporation in its disposal of another interest in the Middle East.

Thornes, together with corporate partner Pervez Akhtar, also advised Eaton Corporation on its acquisition of a 49% stake in SEG Middle East Power Solutions and Switchboard Manufacture from Al Tawasoul Power Services. Al Tawasoul remains a 51% shareholder.

Leading lawyers

Pervez Akhtar
Bimal Desai
Khalid Garousha
Duncan Macnab
Simon Roderick

Clifford Chance

"The benefit for Clifford Chance in the UAE is that they tend to have a better relationship with the key decision makers in the market and that adds value," says one client.

Clients also praise the firm as one with strength in the Dubai market, acting for significant government entities. "They work for important government entities and get their fair share," says one peer.

In one of the more noteworthy partner moves in the region, Simon Clinton shifted across to the Singapore office in July 2010, and was replaced by the well-regarded Guy Norman from the London office.

Robin Abraham is highly regarded by clients for his capacity to operate in a way that produces results. "He is professional and delivers on deadlines, helpful and precise," says one. Simon Clinton is also highlighted by peers. One says: "He is someone we come across a lot and like and respect."

The firm has been visible across a range of deals over the past 12 months. Abraham and Peter Avery led a team advising Dubai World and several of its subsidiaries in relation to its restructuring. This was the largest and most complex restructuring in the Middle East in 2010. The deal value amounts to $26 billion and is expected to close in late 2010.

Qudeer Latif has been active leading a team advising Zain Saudi Arabia in connection with its *shariah*-compliant profit rate swaps with a syndicate of hedging banks on an aggregate notional amount of $2.2 billion. The syndication closed in November 2009.

On the M&A side, Clinton and Mike Taylor acted on behalf of Dubai Holding in connection with the merger of the real-estate businesses Dubai Properties, Sama Dubai, Tatweer and Emaar Properties. The deal value ranges between $55 billion and $60 billion.

On a further highlight, John Graham led a team advising Abu Dhabi Group and Warid Telecom on their $300 million sale of a controlling interest in Warid Bangladesh to Bharti Airtel.

In April 2009, Christopher Walsh led a team advising the government of Abu Dhabi, as purchaser of notes, and JPMorgan, as structurer of the programme, in connection with the establishment of a Tier I capital programme for the government in order to provide further liquidity and support to other Abu Dhabi banks.

On a further capital markets deal, Debashis Dey represented Tourism Development & Investment Company on its $1.45 billion *sukuk* (Islamic bond) trust certificate issuance programme, established in October 2009.

Leading lawyers

Robin Abraham
Peter Avery
Qudeer Latif
Guy Norman

Linklaters

"They are one of the premiere firms that we use for legal services and I think they are brilliant," says one client. "They took the time to understand our business quite well and know the intricacy of the people involved and how a business operates. The difference is that they cared to know."

Peers also praise the firm for its success in the region. "In Dubai, we regard Linklaters as our number one competition and we increasingly see them as our competition," says one.

The firm has had a strong year and won praise from a number of competitors who say it has been visible on a number of transactions. Ewan Cameron advised the Ministry of Finance-led federal restructuring committee in connection with a creditor standstill for Amlak Finance and Tamweel, the two largest UAE mortgage finance companies. The deal involved various aspects including advice on merger options and a post-merger corporate structure as well as the injection of new equity.

The firm was also involved in a merger deal between Orbit Group and Showtime Arabia. Cameron led a team advising Orbit Group, plus the Mawarid Group, on its $2 billion cross-border merger with the pay TV operation.

On the debt capital markets side, associates Deborah Smith and Justine Holdcroft acted on behalf of Citigroup Global Markets, Deutsche Bank, Deutsche Bank Securities and JPMorgan. Smith and Holdcroft advised on the establishment of a global MTN programme, and the first issue of notes, listed on the regulated market of the LSE. The programme value amounts to $10 billion while the issue volume is $3 billion.

Another highlight for the firm includes representing Standard Chartered Bank on its $30 million commodity *murabaha* (deferred sale) financing for the benefit of various Abraaj Capital vehicles, secured on a margin basis against publicly listed shares. The deal was significant as it combined an Islamic structure with collateralisation and margining provisions.

Sarosh Mewawalla took the lead in advising JPMorgan, Deutsche Bank, Nomura International and Société Générale on two financings for Waha Capital in connection with the purchases of military aircraft for the UAE armed forces. The deal included the acquisition of six Boeing C-17A Globemaster III aircraft as well as the finance and purchase of 25 Pilatus PC21 trainer aircraft. This was the first key finance transaction for the UAE since the indebtedness announcement relating to Dubai World.

On a further significant project finance deal, counsel David Charlier took the lead in representing sponsors on the financing of a solar project in Abu Dhabi. The firm advised a consortium of Total Gas & Power and Abengoa Solar, as preferred bidder in connection the 100MW solar-thermal project.

Leading lawyers

Ewan Cameron
Sarosh Mewawalla

Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer had a change at the top in June 2010, with the firm's Middle East and North Africa head David Higgins returning to London and Bertrand Pellet coming across from the Paris office to replace him. The move follows on from

Middle East and North Africa head of corporate Bruce Embley's move back to London in January 2009.

Despite the recent movements, lawyers retain strong links to their Middle East clients and still appear on a number of the UAE deal submissions.

The firm is widely respected in the market and continues to be active on a range of transactions. "Freshfields came here recently and has had a number of additions on the corporate side. They have increased their presence in the region and are doing well," says one peer.

Patrick Ko, who is also active on Saudi Arabia related deals, is praised by peers. "He is active in the UAE market and does a lot of work in Saudi as well, he is an excellent operator and works well," says one competitor.

Joseph Huse, who heads the banking and project finance division, has been active together with London-based partner Robert Murphy and Dubai counsel William Coleman in connection with a cross-border financing of a new portfolio of B737 aircraft. The deal involves advising on the leasing of one B737-800 to Virgin Blue, as well as the financing for the lease of a B737-800 to Blue Air Transport Aerian, a Romanian operator.

On a further transaction, Charles July (who has since moved to Watson Farley & Williams' London office), senior associate William Breeze and counsel Marc Fèvre acted on behalf of the lenders to one of the bidding consortia in connection with the construction of the Mafraq to Ghweifat public-private partnership (PPP) project. The project is procured by the Abu Dhabi Department of Transport and is the first transport PPP in the UAE.

The firm has also been active on M&A transactions. London-based David Higgins and Dubai associate Miriam Caley acted on behalf of Abu Dhabi Commercial Bank on its bid for the acquisition of the Royal Bank of Scotland's retail banking business in the UAE.

Caley, Ko and senior counsel Aryan Schoorl (who has since moved across to DLA Piper in Amsterdam) were also active representing ABN Amro on the UAE elements of its merger with Fortis Bank.

On a further highlight, Higgins and associate Charles Hayes took the lead in advising Dubai International Capital, a Dubai-based international investment company focusing on private and public equity, on the selling down of shares in Merlin Entertainments.

Leading lawyers

Patrick Ko

Shearman & Sterling

"Shearman & Sterling is very strong on the oil and gas side," says one competitor. The firm has continued to impress competitors in the market who praise the firm for its work in the Abu Dhabi region. "They have an office in Abu Dhabi and we see them as our main competitors here. They are present here and effectively involved in many deals. They have a good offering in Abu Dhabi," notes one peer.

The firm has been active in the banking and corporate sectors on a range of deals. One of the key clients for Shearman & Sterling over the past 12 months has been Aabar Investments which has mandated the firm on a range of deals. Philip Dundas led a team advising Aabar Investments and International Petroleum Investment Company (Ipic) on the financing of the acquisition of a 9.1% shareholding in Daimler. The deal involved new shares issued following a capital increase. The financing includes a €500 million conventional bridge loan to Ipic, a subscription to Aabar Investments' mandatorily convertible bonds as well as a €891 million conventional bridge loan.

On a separate deal, Dundas advised Aabar Investment in connection with its acquisition of a majority shareholding in Brawn GP. Aabar, together with Daimler, acquired 75.1% of the Brawn GP team. The acquisition is based on a 60/40 ownership basis with Daimler holding 45.1% and Aabar Investments holding 30% of the target.

Brian Clayton has also been active advising more than 20 lenders including Al Rajhi, Arab Bank, Arab National Bank, Bank of Tokyo Mitsubishi, Banque Saudi Fransi and Bayern in connection with the $2.1 billion Al Dur project consisting of a 1,234 MW independent water and power facility in Bahrain.

In February 2010, Manuel Orillac and Iain Goalen led a team advising Mubadala Development Company and the Olayan Group on the sale of their 25% stakes in Global Mobility Holding, which owns 97.9% of LeasePlan Corporation, to Volkswagen. The combined value amounts to €1.38 billion. Volkswagen simultaneously sold its 50% stake to Fleet Investment.

Leading lawyers

Iain Elder
Iain Goalen

Other ranked firms

Al Tamimi & Company is led by Husam Hourani who is highly respected in the market. "Al Tamimi are probably the leading local firm and are certainly making a splash in terms of becoming a regional firm. They are certainly seen by the market as a leading firm," says one peer.

Hourani this year has been active in representing Damas International and Damas Jewellery on the first comprehensive standstill agreement to be agreed in the UAE. The $926 million deal closed in March 2010.

On a further transaction, Mamoon Khan and Hufriz Wadia acted on behalf of JBF RAK, United Arab Bank, Bank of Baroda and State Bank of India. The deal related to the restructuring of a $60 million syndicate project finance facility as well as a further syndicated project finance facility to the value of $35 million to JBF RAK. The financing relates to the commissioning of a polymer chip plant in Ras Al Khaimah.

Alfridi & Angell is led by Amjad Ali Khan who has been active on a number of deals over the past 12 months. Khan has advised United Bank in relation to its debt financing of a 75MW diesel-fuelled power station in Mukalla Province, Yemen, by Hadramount Investment Power Company. The financing sum amounts to $20 million and the total project cost is $75 million.

Masood Afridi also led a team advising Creative Energy Resources Corporation on the acquisition of a substantial interest in an existing 586MW gas-fired power plant from GE Capital. The deal also involved a subsequent agreement to develop a greenfield project to expand capacity by a further 400MW. The $600 million deal reached financial close in February 2010.

Ashurst has been active on a range of deals in both the corporate and finance sectors. Nick Williamson led a team advising Emirates Conversion Industries on its joint venture in Abu Dhabi with Radius Systems of the UK in May 2010. A further highlight involved Williamson acting on behalf of Etisalat in connection with its acquisition of Tigo Sri Lanka from Millicom for $207 million.

David Wadham has also been active on a deal advising a financial institution in relation to the financing of the construction of a new vessel by a significant UAE corporation for $100 million.

Other ranked firms

With two regional bases, **Hadef & Partners** in Dubai is led by Sadiq Jafar while the Abu Dhabi office is led by Faraj Ahnish.

Partner Murad Abida departed the firm this year, but before leaving he, along with, Alan Rodgers and Michael Lunjevich advised Nakheel in connection with its first infrastructure fund, and a residential real-estate investment trust on a dual listing on the Dubai International Financial Exchange and the Singapore Stock Exchange. The transaction involved conventional bank debts and debt capital markets and is valued at $2.5 billion.

Rodgers has also been active leading a team in connection with the Zayed University public-private partnership (PPP) project. The deal includes conventional, Islamic and mezzanine debt tranches and is the largest infrastructure PPP in the Middle East to date.

On a further deal, Sameer Huda led a team advising Shuaa Capital on the conversion of a bond issued to Dubai Banking Group. At Dh1.5 billion ($408 million), this was one of the largest capital bonds ever in the UAE markets. The deal closed in February 2010.

In speaking of **Hogan Lovells**, one client says: "We have had a long relationship with them on multiple transactions and I think that their service has been excellent. The quality of the advice has been excellent and the execution was excellent and from a fee perspective they have been competitive too."

The client adds: "We worked with them on Islamic finance and they have an excellent depth of knowledge in the subject."

Led by Rahail Ali, Hogan Lovells has been involved on a range of financing deals. Rustum Shah led a team advising Emirates NBD, a mezzanine agent and lender, in connection with a $226 million mezzanine facility for Dubai Aerospace Enterprise. The transaction, which closed in November 2009, was complex due to the inter-creditor relationships that existed.

Ali also advised International Finance Corporation (IFC) and World Bank Group on a $100 million *sukuk* (Islamic bond) due in 2014. The sukuk was issued by Hilal Sukuk Company, an SPV incorporated in the Cayman Islands. IFC is acting as managing agent in connection with the asset portfolio which mainly consists of ijara (capital leasing) assets sold by IFC to Hilal Sukuk Company. The deal closed in November 2009.

In speaking of **Norton Rose**, one client says: "I thought their knowledge of Islamic finance was better than any other law firm I have dealt with before. They were very proactive and always available on call."

Clients also singled out Anthony Pallett saying: "He was so switched on and had a hands on approach. He is extremely talented and knows exactly what clients want and delivered all the time."

Pallett advised HSBC, Deutsche Bank, UniCredit Mediocredito Centrale and Intesa Sanpaolo in relation to a conventional facility. The $9.7 million loan facility to Rak Investment Authority for the development of the Al Marjan Island Project was supported by Sace Group. The deal closed in September 2009.

On a further deal, Abu Dhabi-based Alan Bainbridge advised on the UAE aspects of client AIG's aborted disposal of its Asian life insurance business AIA to Prudential, the UK listed life assurer.

Simmons & Simmons is a respected firm in the market. One highlight this year saw Muneer Khan advise Dubai Islamic Bank as lead arranger in a syndicated SR3.1 billion ($827 million) multi-purpose Islamic facility to the Saudi Binladin Group. The funds are to finance the development of an all-girls university project in Riyadh, Saudi Arabia.

Nick Watson has also been active, advising an international hedge fund on its acquisition of shares in a rights issue made by a Gulf Cooperation Council company.

Vinson & Elkins represented TID in structuring and negotiating an agreement with its investors and creditors on standstill arrangements, as well as the restructuring of $3.5 billion of obligations owed to its investors.

Rindala Beydoun and Lewis Jones have also been active advising The Investment Dar on the restructure of $3.5 billion of shariah-compliant debt.

White & Case operates out of its Abu Dhabi office and has been active on a number of deals over the past 12 months. In relation to public deals, Andrew O'Keeffe led a team advising Deutsche Bank on the Emirati issues relating to trade finance documents.

Jason Kerr and Saul Daniel have also been active in advising Abu Dhabi Water and Electricity Authority in connection with the financing for a $2.6 billion, 1,500MW power generation plant and a 100 million gallons-per-day seawater desalination plant.