

CONTENTS

Acknowledgements	ix
Abbreviations	xi
Glossary of Arabic Terms	xiii
Introduction	1
I. Islamic Finance Development and Growth.....	9
Growth of Islamic Finance in Western Economies	14
Growth of Islamic Finance in Asian Financial Centres	21
Debt Market and the Need for Funds	29
Overview of Regional Conventional Debt Market	29
Need for Funding and the Islamic Capital Market	45
II. Concept and Development of the <i>Şukūk</i> Market	57
Concept and Types of <i>Şukūk</i>	57
Development of the <i>Şukūk</i> Market.....	61
Reasons for Growth.....	68
Main <i>Şukūk</i> Market.....	70
<i>Şukūk</i> and Liquidity.....	79
<i>Şukūk</i> and Credit Crunch	81
Currency Denomination in <i>Şukūk</i>	84
<i>Şukūk</i> Dominant Structures	86
Sovereign <i>Şukūk</i>	88
Corporate <i>Şukūk</i>	92
<i>Şukūk</i> versus Conventional Bonds.....	95
Benefits of Investing in <i>Şukūk</i>	98
III. Shari'ah Basis for the Development of <i>Şukūk</i> Structures	101
OIC <i>Fiqh</i> Academy Resolution	101
AAOIFI Shari'ah Standard on Investment <i>Şukūk</i>	111
Sheikh Taqi Statement on <i>Şukūk</i> :	115
Sheikh Taqi paper on <i>Şukūk</i> : A Brief Analysis.....	118
AAOIFI's Reaction to Market Concern and	
Recommendations.....	133
The Statement and its Implications.....	135
Specific Comments on the Statement.....	138
<i>Şukūk</i> Pronouncements or <i>Fatwās</i>	142

IV. <i>Şukūk</i> , Structures and Case Studies	
(<i>Ijārah Şukūk</i>)	145
Definition of <i>Ijārah</i>	145
The Concept of Sale and Lease Back.....	146
Differences between Islamic and Conventional Lease	149
Basic Requirements for <i>Ijārah Şukūk</i> Structuring	150
General Characteristics of Modern <i>Ijārah Şukūk</i>	150
Rules Governing the Leased Property in <i>Şukūk</i>	151
Maintenance and Insurance of Asset in <i>Ijārah Şukūk</i>	152
Lease period in <i>Ijārah Şukūk</i>	153
Pricing <i>Şukūk</i> : Using LIBOR as a Benchmark.....	155
Guarantee in <i>Şukūk</i> Issues.....	163
Purchase Undertaking as a kind of Guarantee.....	166
Shortcomings of the <i>Ijārah Şukūk</i> Structure.....	167
Types of Global <i>Ijārah Şukūk</i> Structures.....	168
Malaysia Global <i>Şukūk</i>	168
Qatar Global <i>Şukūk</i>	173
EMAAR Properties PJSC <i>Şukūk</i> ,	175
Government of Dubai <i>Şukūk</i>	176
Pakistan International <i>Şukūk</i>	177
Sarawak <i>Şukūk</i>	179
DAAR <i>Şukūk</i> al- <i>Ijārah</i> I & II.....	181
Head Lease <i>Şukūk</i>	183
Bahrain International <i>Şukūk</i>	184
German - Saxony-Anhalt - <i>Şukūk</i>	186
Global Hybrid <i>Şukūk</i> Structures	188
The IDB <i>Şukūk</i> Trust Certificates	188
Tabreed Financing Corporation Trust Certificates	195
<i>Şukūk al-Intifā'</i>	200
V. Global Profit- Loss Sharing <i>Şukūk</i> Structures	
(<i>Mushārahah Muḍārahah Wakālah</i>).....	205
<i>Mushārahah Şukūk</i> Structures	205
General Structure of a <i>Mushārahah Şukūk</i>	211
Gold <i>Şukūk</i> DMCC.....	214
Emirates <i>Şukūk</i>	217
Dubai Port <i>Şukūk</i>	222
Global Muḍārahah <i>Şukūk</i>	226
Global Wakālah <i>Şukūk</i>	233
Services <i>Şukūk</i>	236
Convertible <i>Şukūk</i>	238

VI. Securitisation and <i>Şukūk</i>	243
Main Securitisation Principles.....	246
Benefits of Securitisation	252
General and Legal Obstacles to Securitisation	253
Securitisation and Tranching issues.....	257
Islamic Securitisation and Overcollateralisation.....	259
Islamic Securitisation Credit Crunch and Default.....	260
Islamic Securitisation: Case studies.....	262
Caravan I <i>Şukūk</i>	262
Tamweel <i>Şukūk</i>	268
East Cameron <i>Şukūk</i>	271
Sun Finance Limited Sorouh.....	274
VII. Governing Law in <i>Şukūk</i> Structures.....	279
The Problem.....	283
Litigation before the English Court.....	291
Shamil Bank of Bahrain vs. Beximo Pharmaceuticals Ltd & Others case	291
Background of Shamil Bank Case	292
TID vs. Blom Case	297
Consequences of the Case	300
Decision Implications on <i>Wakālah</i>	301
Decision General Implications	302
Arbitration and Islamic Financial Litigations	306
Binding Effect of Arbitration	309
Scope of Arbitration	310
Codification of Islamic Law.....	312
VIII. Shari‘ah Compliance Harmonisation and Governance	315
Shari‘ah Endorsement Process	318
Shari‘ah Divergence of Opinion.....	319
Causes for Divergence of Opinion	319
Non-Application of Islamic Law during the Colonial Period and Thereafter	325
Influence of <i>Madhāhib</i>	325
Non-institutionalisation of Shari‘ah practices.....	328
Practical Steps Undertaken Towards Harmonisation.....	328
Efforts by the OIC and Rābiṭah Fiqh Academies	329
Shortcomings of the OIC and Rābiṭah Fiqh Academies	329

Contribution of AAOIFI Standards.....	331
AAOIFI's Shari'ah Board Shortcomings.....	332
Towards an International Shari'ah Board.....	334
Characteristics of the International Shari'ah Board.....	335
Objectives of the International Shari'ah Board	337
Government Backing	337
Shari'ah Review Companies	340
External Shari'ah Audit Companies.....	341
IX. Risk Factors in <i>Shukūk</i> Structures	343
Rate of Return Risk.....	343
Currency Risk.....	345
Shari'ah Compliance Risk.....	346
<i>Shukūk</i> Issuance and Legal Risk Issues	349
Enforcing Foreign Judgments	350
Non-Recognition of Precedent Judgment.....	354
Credit Risk.....	355
Credit Risk and <i>Shukūk</i> Default.....	360
Legal Ownership and Flow in Legal Documentation.....	365
<i>Shukūk</i> and Tax Framework	373
X. Rating <i>Shukūk</i>	385
Role and Use of Credit Rating.....	385
Rating of Islamic Financial Institutions.....	386
Rating <i>Shukūk</i> Methodologies.....	395
Islamic Law Principles and their Implications on	
Rating <i>Shukūk</i>	398
Rating and the Legal Basis.....	399
<i>Shukūk</i> Rating Classification by Rating Agencies.....	400
Classification by Standard & Poor's.....	400
Classification by Moody's	401
Fitch's Classification	402
Criteria and Guidelines in Rating Ijārah <i>Shukūk</i>	404
Fundamentals in the rating of a Specific Ijārah Issue.....	406
Rating Asset versus Originator	409
Rating Mushārahah <i>Shukūk</i>	411
Rating <i>Shukūk</i> and Shari'ah Evaluation.....	416
Conclusion	423
Bibliography	447
Index	463