International Journal of Economics, Commerce and Management
United Kingdom Vol. II, Issue 7, 2014
http://ijecm.co.uk/ ISSN 2348 0386

LEGAL AND REGULATORY ISSUES IN ISSUING SUKUK IN SOUTH KOREA LESSONS FROM DEVELOPED COUNTRIES' EXPERIENCE

Khan, Tariqullah
Qatar Faculty of Islamic Studies, Hamad Bin Khalifa University, Qatar
tariqullah.khan@gmail.com

Elsiefy, Elsayed
Qatar Faculty of Islamic Studies, Hamad Bin Khalifa University, Qatar
Faculty of Commerce, Alexandria University, Egypt
ssiefy@gmail.com

EunKyoung, Lee
Qatar Faculty of Islamic Studies, Hamad Bin Khalifa University, Qatar
samiyahlee@hotmail.com

Abstract

Among the many Islamic finance instruments currently in use, Sukuk, commonly referred to as the Islamic bond, has in recent years been considered the most effective mid- and long-term financing method not only in Muslim countries but also in Muslim-minority countries. However, the adoption of Sukuk has faced legal and regulatory problems as most Muslim-minority countries are governed by their own legal systems independent of Shariah. This paper aims to analyze legal and regulatory issues facing Sukuk; specifically, securitization, taxation, bankruptcy, dispute resolution, and trust law in general and also in the context of Korean law. The case studies illustrate the legal dimension of the adoption of Sukuk in the United Kingdom, Singapore, France, and Japan. In the last chapter the experiences of the case study countries are applied to analyze Korea's adoption of Sukuk. This research concludes by suggesting a workable proposal for Korea's adoption of Sukuk—in brief, stating that any certificates that act in a manner similar to that of a foreign currency bond would be under the same regulations and tax policy. Given the global importance and potential of Islamic finance and Sukuk, Korea could reap many benefits, including future economic stability and development, by adopting Sukuk.

Keywords: Islamic finance, Islamic bonds, Sukuk, South Korea, Legal and regulatory issues, Case study

INTRODUCTION

Islamic finance has become increasingly popularin many countries since the financial crisis in 2008 due to its financial stability compared with other conventional financial systems. Among many kinds of Islamic financial instruments*, Sukuk*, commonly called the Islamic bond, has over the past few years been considered the most effective mid-term and long-term financing vehicle and has been one of the fastest growing Islamic financial instruments (RAM, 2013, p.2). As a result, many countries, including non-Muslim countries, are interested in Sukuk, especially for government and private sector financing. In fact, some countries such as the United Kingdom (UK) and Singapore with Muslim-minority populations have already used Islamic finance and Sukuk. Other Muslim-minority countries such as Japan, China, and Taiwan are endeavoring to incorporate Sukuk for the purpose of supporting economic stability and development. However, Sukuk in Muslim-minority countries (including South Korea) faces certain operating legal and regulatory challenges because of Islamic law, which may not be compatible with many countries' existing laws.

Despite these problems, Korea is still paying attention to Islamic finance and in particular to the issue of Sukuk because it has realized the benefits of diversity in its financial system. Moreover, Korean authorities could use more funds to develop the economy without Western restrictions. Above all, Islamic finance is a global finance system that has served many countries well, including many countries in which Islam is not the predominant religion. Therefore Korea needs to recognize that Sukuk is a financing stream that will inevitably be adopted and accessed sooner or later to maximize economic development.

The Research Problem

In Muslim-minority countries, Sukuk confronts certain operating legal and regulatory challenges. This is mainly due to the fact that Islamic law (*Shariah*), which is applied in Islamic finance, may not be compatible with some existing laws, creating potential conflicts.

The South Korea Government submitted to the National Assembly amendments for existing laws in 2009 in order to accommodate and facilitate the issuance of Ijarah and Murabahah Sukuk, which have a great likelihood of success in Korea under the current legal system in Korea. This success is likely because, with these particular Sukuk, higher expenses (in the range of 1.5% to 3.3%) will be imposed as compared with conventional bonds (Park, 2011, p.151). However, this law was opposed by a majority of members in the National Assembly in Korea. As a result, legal impediments for issuing Sukuk continue to exist in South Korea.

Research Objectives and Questions

The main objectives of this research are as follows:

1. To investigate legal and regulatory issues regarding issuance of Sukuk in general, and in Korea in particular;
2. To evaluate Korea's potential adoption of Sukuk (how it will be applied under the current legal system and what changes are necessary); and
3. To suggest a good model for adoptingSukuk derived from other countries' experiences.

This research will address a few specific questions in order to attain these main objectives, including:

1. What are the legal issues in Sukuk?
2. What are the Sukukissues that contradictKorean laws?
3. How did other countries overcome similar difficulties?
4. How can Korea find a solution for adopting Sukuk from the lessons of case studies?

Motivations for and Significance of Research

Very few specialized publications (specifically, literature published in Korean) exist to date that explain Islamic finance. Most of the books that can be found are translated from foreign languages. As a consequence, only a few articles and papers can be found related to legal issues in Islamic finance. The content of these materials is general rather than specific, and is not an in-depth review of the topic. The motivations for writing this paper are:

- To increase the level of research concerning Sukuk in Korea, as Korea has demonstrated a strong interest in Sukuk for more than 5 years. As currently Sukuk is only dealt with in general terms and in a few sources in the Korean literature, in the researcher's opinion Korea needs more in-depth knowledge on Sukuk. In the future, this research will be necessary if and when use of Sukuk as a financial vehicle is fully implemented.
- From a legal point of view, only tax issues are currently being dealt with in Korean research related to Sukuk. However, issues apart from taxation will arise when Sukuk is implemented.

THE SUKUK

Sukuk could be summarized as financial certificates that give real ownership of the underlying asset to the Sukuk holder in order to pool funds (based on Islamic principles) for the originators of the financial instrument. Although Sukuk is commonly known as the 'Islamic bond', Sukuk simultaneously possesses the features of bonds and shares according to the Islamic contracts on which it is based. In fact, the bond-like features are the main and most attractive characteristic of Sukukin its contemporary use, as Ijarah and Murabahah Sukuk have a maturity

and a predetermined return like conventional bonds. However, there are significant differences between Sukuk and bonds. First of all, conventional bonds are based on loans; according to the principles of Shariah, if Sukuk is issued based on a loan contract, then the profit or return cannot be taken out of the Sukukby Sukuk holders due to the prohibition of interest in Islam. For this reason, Sukuk should always be based on real assets—its second distinctive feature. While a bondholder has the right to receive the "indebtedness" from the money borrowed, Sukuk confers on the Sukuk holder a right of ownership to the underlying assets. A real transfer of these assets will be needed whenever the asset is transferred, which is much different than a simple bond transaction; indeed, this is the central aspect of Sukuk's share-like characteristics. Sukuk holders become an owner of the underlying asset or project in this circumstance. However, in practice most Sukuk are hybrids with both sets of characteristics (SCM, 2009, p.19).

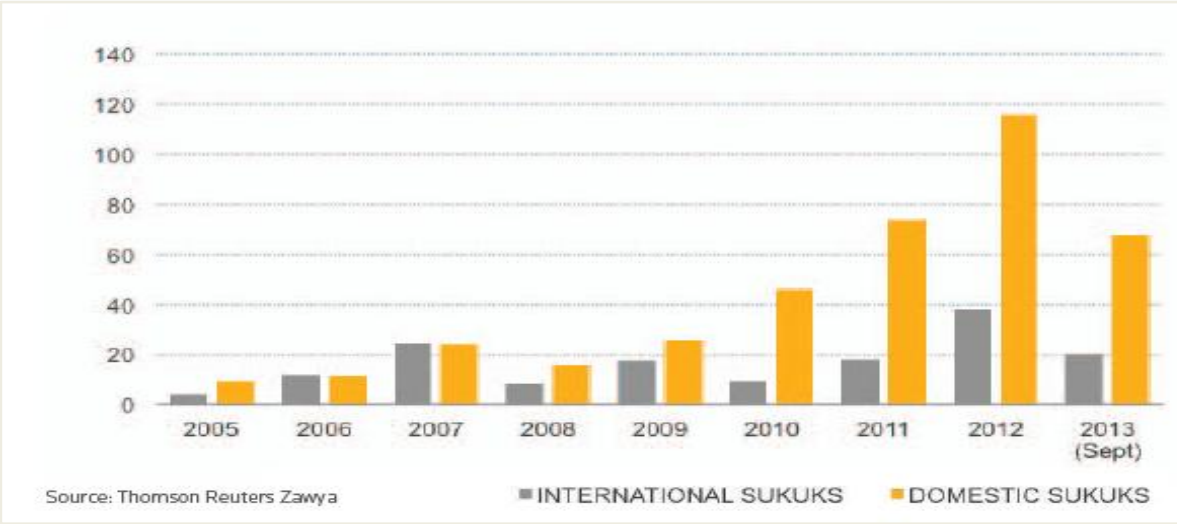
Development of Sukuk

The modern era of Islamic finance began in the 1970s with the establishment of the Islamic Development Bank (IDB), the Dubai Islamic Bank, and Faisal Islamic Bank in Egypt. As time passed, a need arose for a greater diversity of liquidity products in Islamic finance, leading to the development of Sukuk. In 1990, the first Sukuk issuance was created by Shell Group (a Malaysian corporation) for RM 125 million (worth US$30 million).Malaysia is without doubt a pioneering country in terms of the Sukuk market, as the country was involved in a number of milestones in Sukuk issuance(including the world's first Ringgit Sukuk, the world's first global corporate Sukuk, and the world's first global sovereign Sukuk) (IIFM, 1st edition, p.14).After the first issuance of sovereign Sukuk by Malaysia in 2002, other countries' sovereign issuances followed; the governments of Bahrain (US$250 million in 2001) and Qatar (US$700 million in 2003), the IDB (US$400million in 2003 and US$500million in 2005), the German state of Saxony-Anhalt (US$136 million in 2004) (The first sovereign Sukuk issued outside the Organization of the Islamic Conference (OIC) market(SCM, 2009, p. XIII)), Dubai (US$1 billion in 2004), and the government of Pakistan (US$500million in 2005)(SCM, 2009, p. X).

Outside of the Malaysian market, after the first Sukuk issuance of Bahrain the Sukuk market in the Middle East stood at US$1.9 billion in 2003 and then rose to US$6.7 billion by 2004 (Khan, Mansoor & Bhatti, 2008, p.58). In fact, the Sukuk market in the Middle East is a potentially strong market given the strong background of oil money. Not only Muslim countries, but also Muslim-minority countries have tapped into the Sukuk market. The first Muslim-minority country to issue Sukuk was Germany in 2004. Corporations in America have also issued Sukuk, first in 2006 when East Cameron, a Louisiana-based oil and gas company, issued US$167million Musharakah Sukuk (ISRA, 2011, p.394).

The Sukuk market emerged as one of the main sectors of Islamic finance after the issuance of many international Sukuk. The Sukuk market attained its peak during 2007, just before the 2008 economic crisis, with total global Sukuk issuance amounting to nearly US$49 billion (IIFM, 2ndedition, p.7). However, during the years 2008 and 2009, Sukuk market issues declined in worth by US$18.6 billion and US$25.7 billion, respectively (IIFM, 3rd edition, p.9). The following chart shows the trend of Sukuk issuance from 2005-2013, including the impact of the global crisis.

Chart 1: Total Sukuk Issuance, 2005-September 2013



Source: Thomson Reuters Zawya, 2014, p.106

The market in 2012 achieved a very respectable Sukuk issuance (IIFM, 3rd, p.10) after recovery from the initial shock of the global crisis. According to KFH research, the total Sukuk issuances for 2013 were about US$120 billion (Hispanic Business News, 2014).More recently, in the two months January and February 2014, total issuances of Sukuk were US$19.92 billion (Zawya News, March 7, 2014)This is possibly a worthy indicator that one could expect high Sukuk issuance in 2014. Some landmark announcements that will support 2014 Sukuk issuance were reported; in October 2013 the British government announced their sovereign Sukuk issuance in 2014. Other countries like Hong Kong, South Africa, Luxembourg and Oman opted for a similar level of sovereign Sukuk issuance (MIFC, 2014, p.1). Recently, Hong Kong legislators passed a Sukuk bill that allows the AAA-rated government to raise around US$500 million via Sukuk. Therefore the issuance of sovereign Sukuk in Hong Kong will soon materialize. (Gulf Daily News, March 28, 2014). In addition, a proposed bill in Luxembourg would allow securitization of three properties for a sovereign Sukuk issue worth 200 million Euros (US $275 million) (REUTERS, April 6, 2014,). Lastly, in November 2013, Oman issued its first Sukuk with

corporate Sukuk by Modern Sukuk SAOC on behalf of Tilal Development Company SAOC (TDC). The Sukuk was Inarch Sukuk and worth OMR 50million (US$130 million) (Zawya News, November 17, 2013).Outside of the sovereign Sukuk arena, some multilateral organizations (such as IDB and the Asian Development Bank) announced issuance of Sukuk in 2014 as well.

There is one undeniable fact, however, which is that Sukuk is starting to resemble conventional finance and its instruments. One of the reasons for this convergence is to avoid legal and regulatory problems under the laws in the countries where Sukuk is issued. Unfortunately, the growing similarity between Sukuk and conventional financial instruments does not benefit the identity of Islamic finance; it also could leave Sukuk vulnerable to the same volatility inherent in certain conventional financial vehicles during a financial crisis. Therefore, looking into the legal and regulatory challenges Sukuk faces is of utmost importance.

LEGAL AND REGULATORY ISSUES RELATED TO SUKUK

The world's capital markets (even in Muslim and Arabic countries) are governed primarily by the conventional finance system. Accordingly, it was inevitable that Sukuk would be governed by the same laws and regulations that govern conventional finance. To make matters worse, most existing laws in different countries do not favor Islamic finance. Obstacles and challenges to the Islamic banking and finance industry have resulted. This research examines the five most relevant laws that tend to create problems or ambiguities with the legality of Sukuk.

Securitization Law

Ayub (2007, p.391) defines general securitization as "a process of pooling/repackaging the nonmarketable and illiquid assets into tradable certificates of investment". Ayub argues that Sukuk could be understand along the same lines of general securitization, as Sukuk makes underlying assets tradable by giving undivided ownership to many Sukuk holders. However, it is necessary to understand the differences between conventional securitization and Sukuk (Only the theoretical difference is discussed in this part). First, theoretically, Islamic securitization (At times in this section, the phrase "Islamic securitization" will be used synonymously with the term "Sukuk") should be on Islamic principles; therefore, anything that contradicts Shariah is not allowed in Sukuk contracts and securitization. Second, Islamic securitization must involve the funding or the production of real assets rather than financial securities (Wilson, 2004, p.165), (Nazar, 2011, p. 6).

The problem, however, is that most countries do not have laws that can be applied to Islamic finance or Islamic securitization. Due to the different natures of Islamic and conventional securitization concepts, conflicts and obstacles in the application of laws related to Islamic securitization exist in many countries. According to Hassan, Kabir and Lewis (2007, p.194),

several different conflicts exist between conventional and Islamic finance. The first conflict involves interest payments. Islamic principles prohibit the payment of interest as part of the return on financial instruments, whereas conventional securitization includes loans, bonds, and other receivables. In short, even though some portfolios or pools of assets with a combination of physical assets and financial claims (such as receivables) are allowed in Islamic finance, these types of vehicles should include a majority of their pooled assets (at least 51%) as physical assets. Second, conventional securitization laws do not take into account prohibited items in Islam (*Haram*) such as alcohol, pork and gambling, which means that under conventional securitization any assets could be securitized without legal restriction. Third, credit enhancement in conventional financing is accompanied by a fee, which is related to the issue of Riba in Islam. Islamic banking, on the other hand, allows credit guarantees that are called *"Kafala"* (without fee).The fourth is that limitations exist in Islamic finance with respect to liquidity enhancement, as this is set in conventional banking with interest-based loans. The Islamic banking system has short-term *Qardhasan* or interest-free loans, meaning that Islamic securitization only occurs when there is no financial reward for the provider. Therefore, Islamic liquidity is supported by *Bai'alInah* and *Tawarruq* in some countries; however, these two ideas are quite controversial among Muslim scholars whether these are allowed or not.

Indonesia, Malaysia: Two Countries' Securitization Laws

The asset securitization law in Indonesia states that securitization can only be structured through debt (Nazar, 2011, p.7). However, the point which makes things better is that at the level of regulations in the capital market file, the Indonesian capital market supervisory agency (BAPEPAM) has issued regulations on asset-backed securitization since 1997 (Ali, S. Nazim, 2007, p.186): According to paragraph b of the Regulation IX.K.1, it is possible to have non-debt financial assets in the portfolio" (Ibid, p.193). This regulation has created conditions under which Indonesia could issue Sukuk; Indonesia has issued Sukuk since 2002 (BAPEPM, n.d).

Malaysia's development of Islamic finance is supported by strong legal and regulatory support. From a securitization point of view, there is the Securities Commission (SC), which makes robust regulatory standards for securitization (Nazar, 2011, p. 7). It was established in 1993 under the Securities Commission Act 1993.

Taxation Law

The high tax problem with respect to Sukuk is one of the most significant challenges and is not only pertinent in Muslim-minority countries but also many Muslim-majority countries under their conventional tax systems. The most significant tax problem related to Sukuk stems from the taxation of the underlying assets. Due to the fact that Islamic finance should be based on

underlying assets, whenever assets are transferred between parties additional tax could be attached (as compared with conventional finance). Detailed tax problems inherent to different Sukuk structures are explored below.

-Ijarah Sukuk

From the perspective of tax considerations, Inarch Sukuk has 3 stages at which tax is attached. The first taxable stage is when the originator sells his or her asset to the SPV issuer to lease back. In the process of sale, asset transfer, registration and acquisition, corporate tax, and value-added tax will be incurred. The second stage comes from the leasing of the asset and the payment of rents. The rental will be subject to withholding tax (including income tax), as it is considered income from a transaction. Therefore, a Sukuk holder could not be excluded from tax attached in every periodic distribution. However, this income tax is already exempted in the conventional bond system, in which bondholders can receive gross interest without withholding tax. Moreover, in this process the corporate tax also comes into play with the rental fee (income), when the SPV issuer receives a rental payment from the originator and then forwards the payment to the Sukuk holder in turn. After the above process, the underlying asset is sold by the SPV issuer back to the original holder. This last step also has the multiple-taxation issues mentioned in the earlier parts of the process.

-Murabahah Sukuk

The first tax-attached stage is when the SPV issuer purchases the commodity as a trustee from a third-party commodity supplier. Second, the originator makes deferred payments on the asset at regular intervals to the SPV issuer. The amount of each deferred price installment is equal to the periodic returns payable under the Sukuk to investors; this could be recognized as income to the Sukuk holder and therefore taxable. Third, according to the Murabahah contract, the commodity will be transferred to the originator. Fourth, in cases where the originator sells this asset to another party, additional corporate and value-added tax will be attached (Kim, Young-Seo, 2012, p.70).

-Mudarabah Sukuk

In a partnership structure, the profit arising from underlying Mudarabah assets is taxable to the Trust. Therefore, 99% of the profit distribution to the Trust under the Mudarabah agreement is not deductible (Dar& Moghul, 2009, p.89). Moreover, MudarabahSukuk also incurs a tax similar to that of Ijarah and MurabahahSukuk, as the proceeds are taxed when the assets are sold to a Mudarib or a sponsoring company when the MudarabahSukuk matures.

Bankruptcy or Insolvency Law

In order to protect the Sukuk holder, bankruptcy and insolvency law becomes very important when the Sukuk originator fails to fulfill their obligations. Tata (2012, pp.4-5) explains that "effective insolvency and creditor rights systems are vital to stability in commercial relationships and financial systems, and [an] effective framework for insolvency regimes of Islamic financial institutions is important to ensure stability of the Islamic financial markets, as well as for sustainable development and growth".

Although this legal issue has not been adequately discussed because cases of default and failure have been relatively rare compared with other legal issues, the 2008 crisis elevated the importance of having an effective bankruptcy law structure in place. In spite of the evident importance, however, countries often do not have codified law regarding insolvency accompanying true sale. Most Sukuk issuances in these instances tend to follow conventional law (that is, are identified as being the same as a conventional bond). As a result of a true sale not occurring, most recently issued Sukuk is *"asset-based Sukuk"* rather than *"asset-backed Sukuk"*.

- Asset-backed and Asset-based Sukuk

Before taking up the main subject of bankruptcy law, it is necessary to differentiate *asset-backed* and *asset-based* Sukuk, as their character is different in case of default. *Asset-backed Sukuk* is directly related to the underlying asset as guided by the Shariah principle; this Sukuk structure is therefore more in accord with Shariah principles, in which any risks related to, and the overall credibility of, the Sukuk are directly related to underlying assets. The risk or loss derived from underlying assets is borne by the Sukuk holder as a real owner of assets (Nazar, 2011, p.6). In line with ownership of underlying asset, the asset-backed Sukuk holder has recourse towards the underlying asset in case of default; the Sukuk holder could take action to keep the underlying asset to cover their losses. Therefore, in an asset-backed structure, true sale should be executive.

Asset-based Sukuk, on the other hand, does not undertake true sale in the structure, but is rather more aligned with conventional bond structures. The Sukuk holder has a right that covers the underlying asset rather than ownership of the underlying asset; accordingly, they have recourse to the originator in case of default. In this regard, the investor's concern will differ depending on whether they are focused on the asset value itself or on the creditworthiness of the obligor.

- NakheelSukuk from the Point of View of Bankruptcy Law

One recent and good example regarding bankruptcy or insolvency law, and in particular demonstrating the existence of insufficient supporting laws in a given country (the United Arab Emirates)with respect to Sukuk, is the case of the *NakheelSukuk*.

NakheelSukuk was listed on the Dubai International Financial Exchange and worth about US$3.52 billion. On November 25, 2009, Dubai world, the parent company of Nakheel, requested restructuring of debt due to outstanding Sukuk worth US$4 billion. The involved amount of money was US$26 billion in debts. This debt became known as the *"Dubai debt crisis"*(Salah, 2010, p.19).

Many legal problems were revealed with the failure of NakheelSukuk. The first problem was that NakheelSukuk involved no real transfer of assets. This arrangement was a result of the lack of supporting law in the United Arab Emirates for transfer of ownership in Sukuk. Because of this, the Sukuk holder had no real ownership of the underlying asset, even in the case of default. Instead of real ownership, NakheelSukuk involved leasehold rights of the underlying assets. However, United Arab Emirates law still does not recognize leasehold interests as a real right of property. Another problem was in line with the initial issues concerning true sale: namely, United Arab Emirates law does not recognize the concept of trust or beneficial interest under the existing Civil law system. However, the applied concept (e.g., declaration of trust) and the guarantees given by the co-obligors and Dubai World were governed by English law (Salah, 2010, p.26). At this point, the conflict between English law and Civil law arises.

- East Cameron Sukuk from the Point of View of Bankruptcy Law

In contrast to the NakheelSukuk case, the *East Cameron Sukuk* case demonstrates that Sukuk can make adequate provision to repay creditors in cases of default and perhaps provides a justification for the good reputation of Sukuk. This case could be an ideal case for Sukuk default not only in Western jurisdiction countries, but also Muslim countries.

East CameronSukuk was based on MusharakahSukuk that was worth US$167.67 million. This was the first US Sukuk issuance in 2006, and was one of the first true securitizations that complied with Shariah both inside and outside Islamic jurisdictions (Islamic Finance News, 2006).At the origination of the Sukuk, four parties were involved: East Cameron Partners (ECP) as an originator, the US SPV issuer (on-shore SPV), the Cayman Islands SPV issuer (offshore SPV), and Sukuk holders. The US SPV issuer purchased the underlying asset from ECP, and the asset was transferred to the offshore SPV issuer (Cayman SPV),which issued the Sukuk based on underlying assets. The underlying asset included *Overriding Royalty Interest (ORRI)* relating to oil and gas exploration instead of term of ownership of asset, which belonged to Sukuk holders. "The ORRI gives the on-shore SPV the right to receive a certain

volume of production—oil and gas—over the term of the Sukuk" (Goud,n.d., p.36). The profit out of the ORRI deriving from the sale of oil and gas was split between Cameron Partners and the Cayman Islands SPV. The Cayman Islands SPV payment was then transferred to the US SPV before a final transfer to the Sukuk holders.

In 2008, CameronPartners filled Chapter 11 bankruptcy in United States Federal Bankruptcy court in the Western District of Louisiana (McMillen, 2012, p.21).The court decision was interesting and reflected the ideal of Sukuk holder protection. The court insisted that the US SPV issuer had recourse over the asset, as this Sukuk was based on the true sale of the assets. Therefore, the asset was transferred to SPV, and Sukuk holders could have full ownership and possession of the assets (Nethercott & Eisenberg, 2012, p.268). This was derived from well-recognized oil and gas law in the US, in which the law considers oil and gas rights as being severable and alienable real property (Islamic Finance News, 2006);accordingly, holders are protected by property law. The Sukuk holder could be protected by US property law as being the real owners.

Dispute Resolution Systems

Most countries do not have separate Islamic courts. Even scenarios in which Islamic finance cases have gone to "normal" (non-Islamic) court have rarely occurred. Accordingly, the legal risks of Islamic finance are increased due to a lack of court-based enforcement, and normal courts are not familiar with Islamic issues and have provided no precedents in their rulings. In this regard, it is important to consider which law would be enforceable in court between the country's law and Shariah. Not only Muslim-minority countries, but also most courts in Arabic and Muslim countries, govern their own law according to Common or Civil law regimes. Therefore, even though they already use and facilitate Islamic finance and Sukuk, when it comes to court these countries' laws will mediate issues related to Islamic finance regardless of Shariah concerns(Lawrence & Khan, 2012, p.1).In this section, dispute resolution systems in common law and civil law regimes are examined using real cases as examples. As the actual problem related to dispute resolution is with the underlying Islamic contract, rather than the Sukuk certificates, this research looks at Islamic finance transaction cases.

- Common Law Regime (English Common Law)

The first notable difference between common law and civil law is the main source of jurisdiction. While civil law has codified legislation, common law has judicial decisions as a foundational source for law. For example, common law statutes are not formulated from general principles but rather consist of particular rules intended to control certain situations (Dainow, n.d., p.425) through a process of flexible adaptation and change. As there are no national laws governing

specific Islamic financial contracts under the common law system, the interpretation and enforcement of contracts has been through the courts (Wilson, 2012, p.24). The flexibility of this type of law and method of legislation in the presence of new cases(and willingness to make new rules) could help facilitate ease of adoption of Islamic finance.

The second characteristic of common law is its concern with financial contracts. Common law focuses more on the sanctity of the contract itself regardless of religious principles. Accordingly, Islamic finance would be governed by the common law regime, even though the common law of a given country could conflict at time with Shariah principles(Ahmad, Habib, n.d., pp.6-8). In the UK (which is governed by English law), some examples have surfaced in which contradictory rulings regarding overall finance occurred.

Islamic Investment Co. of Gulf (IICG) vs Symphony Gems (SG)

The first case is related to the validity of a Murabahah contract, whether it was properly considered under existing law, and whether it was valid or not under the law. IICG and SG companies entered the revolving Murabahah contract with the agreement that IICG would purchase precious stones from Precious Ltd (the third party).IICG paid for diamonds to Precious Ltd; however, Precious Ltd did not deliver on their obligations. As the diamonds were not delivered, SG did not fulfill its obligation to pay IICG in full. From the Shariah point of view, this Murabahah contract was not valid as a sale contract, because it did not fulfill the delivery, which is the essence of a sale contract. However, the UK Common law perceived Murabahah as a finance contract whereby delivery of goods is not a prerequisite for payment of SG to IICG. In the final court ruling, the case was resolved in favor of IICG, and the SG Company had to pay the balance. Even though two Shariah experts argued that the underlying contract was not based on an actual Murabahah transaction, at the end the contract was judged as valid from the English Common law point of view (Hassan & Asutay, 2011, p.55).

- Civil Law Regime

In a civil law system, all law should be codified.“The courts cannot make laws and are not bound by precedent. Rather their remit is to interpret and apply state laws” (Wilson, 2012, p.28). Therefore, if a given country does not have Islamic banking or finance law, dealing with Islamic finance and Islamic contracts within the confines of the law would be difficult. Furthermore, “even if Islamic banking law is enacted, it has to be comprehensive and include the details of Islamic financial transactions and the administrative procedures for carrying out these activities” (Ahmad, Habib, n.d., pp.6-8). The example below demonstrates the process and the outcome of an Islamic finance case adjudicated by a civil law regime.

Abu Dhabi, the Federal Supreme Court

In the Federal Supreme Court of the United Arab Emirates (in Abu Dhabi), a dispute arose over a *diminishing Musharakah* (partnership) arrangement. In this case, the client had a conventional mortgage loan and wanted to convert it to a financial instrument held by an Islamic bank. Therefore, Dubai Islamic Bank (DIB) decided to Islamize the mortgage loan, so they paid the conventional bank to transfer the mortgage under their name. The Islamic bank and its client then entered a diminishing Musharakah agreement. The customer owed rent that was secured by mortgage to the Islamic financial institution. While the Islamic bank argued that this was a sale contract with diminishing Musharakah in which ownership was conferred, the court considered the proper interpretation of the contract to be as a loan secured by mortgage over land. Concerning this point, the court stated that under current United Arab Emirates law,one holding a mortgage could have a legal title on mortgage land. This signified that the court under United Arab Emirates law does not recognize joint ownership over land, which is a core principle of diminishing Musharakah. Therefore, the court applied the mortgage as a conventional loan (East Law website).

Trust Law

In relation to trusts, the key legal point to consider is whether the country recognized dual ownership or not. The two sides of dual ownership are *legal ownership* and *beneficial ownership*. This concept “is also recognized by the Shariah and may be understood as present in the AAOIFI Sukukstandard relating to the sale of usufruct” (SCM, 2009, p.98). In the Sukuk structure, when an asset is transferred to the SPV issuer from the originator and moved back, there is a transfer of legal ownership and beneficial ownership of the underlying asset. In common law systems, the law only recognizes the transfer of beneficial ownership to theSukuk holder when the asset moves; legal ownership is retained by the originator (original owner of asset).Therefore, the asset is not double-taxed with one legal owner. On the other hand, most civil law regimes do not have a separate ownership concept. The following subsection examines cases adjudicated in different countries with respect to these diverse concepts of ownership, with a focus on trust law.

- United Arab Emirates, France: Two Countries’ Cases

The first country to be examined is the United Arab Emirates. As seen in the NakheelSukuk example, United Arab Emirates law does not recognize legal and beneficiary ownership. That is why the NakheelSukuk was an asset-based Sukuk without true sale of the asset. In addition, the concept of beneficiary rights has not been recognized for sovereign Sukuk issuance, as state

assets needed for government operational activities cannot be transferred to third parties and must be subject to the approval of a government body.

The next significant example (and one which has not yet been covered) related to trust law is France, a pioneering country in facilitating Islamic finance among the civil law countries. Even though France does not have a dual ownership concept in its existing law system, they have tried to find solutions that would allow adoption of Sukuk. For example, the French administration originally intended the amendment of the legal regime of the Fiducie (temporary transfer of ownership), the equivalent of the trust in the common law system.

To sum up, if a country does not have a trust law or recognize dual ownership, the initiation of Sukuk becomes difficult because of tax issues (the double taxation problem) and tax inefficiency. Therefore, most of these regimes do not take part in the issuance of true sale Sukuk, but rather in asset-based Sukuk (as with the NakheelSukuk). As a result of these trust issues, other legal issues arise. Some of these include default (as shown in the NakheelSukuk case) and status of the SPV issuer, because the SPV is established on the basis of the trust law in the country of origination of the Sukuk.

ISLAMIC FINANCE IN THE KOREAN CONTEXT

The history of Islam in Korea is brief (less than 60 years). During the late 1960s, when the price of oil started to inflate and construction boomed in the Middle East, Korea's interest in reaching out to Islamic countries increased (Naver Encyclopedia website).To provide an example of this, in October 1964 the Korean Muslim Federation (KMF) was established as the sole Islamic missionary organization in Korea (This is the executive organization of the Korea Islamic Foundation (KIF)) (Korean Muslim Federation website).Today 8 mosques exist in Korea (all in different cities), and more than 60 *Musalah* are being operated (Korean Muslim Federation website). The Muslim population of Korea remains at a low level: the Muslim Population website announced that, as of 2014, the whole Muslim population in Korea is 450,000. However, this figure counts most of the foreign Muslim population, including temporary residents. Therefore, the practical number of Muslims in Korea is much less than the population that's officially announced.

Islamic Finance in Korea

Korean interest in Islamic finance started in 2007 among domestic corporations, especially securities companies. During 2007 and 2008, many companies established strategic partnerships with Muslim countries. The first example of this was the partnership between Good Morning Shin-Han Securities Co., Ltd and KIBB (Kenanga Investment Bank Bhd) in Malaysia for the purpose of entering the Islamic finance market (Money Today news, September 11, 2007).In

the same year, Korea Investment Co.,Ltd entered a cooperative arrangement with Malaysia Berjaya Land Berhadin the process of joining the Islamic market in 2008. Daewoo Securities Co.,Ltd entered into a cooperative arrangement with CIMB Investment bank Berhad and was trying to issue Sukuk. Woori Investment Securities Co., Ltd entered a partnership with Am Bank Group in 2007 and created a foundation to issue Sukuk, establishing their office in Malaysia in 2008 (Lee, Lee &Jei, 2011, p.228). More recently, in 2010, the same company entered a Memorandum of Understanding (MOU) with Qatar Islamic Bank for business in corporate finance and investment banking (Kim & Kim, 2012, p. 97) (Money Today News, March 10, 2010).

At the governmental level, the global financial crisis precipitated the movement towards Islamic finance on the part of Korea (Table 1).

Table 1: Actions of the Korean Government Toward Incorporation and Use of Islamic Finance

Years	**Activities**
August 2008	Became an observer member of the Islamic Financial Services Board (ISFB)
January 2009	Ministry of Strategy and Finance; Financial Services Commission; the Financial Supervisory Service held a joint seminar for Islamic finance with IFSB.
March 2009	Islamic finance vitalization T/F (The TF was a conference during whichmethods for facilitating the adoption of Islamic finance in Korea were discussed (Lee, Lee &Jei, 2011, p.244)) has been operating (organized by the Ministry of Strategy and Finance; Financial Services Commission; Ministry of Public Administration and Security; the Financial Supervisory Service; and many domestic financial institutions).
May 2009	Korea showcases in the 6th Islamic Financial Services Board Summit hosted in Singapore.
September 2009	The Ministry of Strategy and Finance submitted the revised bill of the special tax treatment control law to the National Assembly.
November 2009	The revised bill foundered during the process of being brought to the tax subcommittee.
December 2010	The revised bill passed the tax subcommittee.
February 2011	The revised bill was brought into a provisional session of the National Assembly but did not pass.
June 2013	The Korean federation of banks joins the Islamic finance workshop held by the Qatar Central Bank.
March 2014	Becoming an associate member of IFSB.

September 2009 was a particularly significant month (during a significant year) for tackling the legal issues related to Sukuk in Korea. The Ministry of Strategy and Finance submitted a revised bill (to be explained in detail in the following section) to the National Assembly to facilitate the adoption of Sukuk in Korea. However, this revised bill was rejected 6 times over 2 years (Lee, Lee &Jei, 2011, p.244). As a result, some corporations planning to issue Sukuk with corporations in Malaysia took a big hit (Kim, Bo-Young, 2010, p.1). Unfortunately, to date no revised bills or arguments of change related to the original bill have been submitted.

After recovery from the global financial crisis and denial of revised bill, the interest of Korea in Islamic finance has decreased. However, some significant activity continues. In 2010, it is noteworthy that a domestic corporation named Dong-Hwa Holdings pooled funds from Murabahah, through Dong-Hwa GH international in Malaysia (Lee, Lee &Jei, 2011, p.231). This was the first reported case in which a Korean company used Islamic finance, even though these methods were not in line with Sukuk but rather more resembled a conventional loan.

The most recent news is very interesting and looks the most practical movement of Korea into the Islamic finance market. The Bank of Korea was admitted as Associate member of IFSB at the 24th meeting of the IFSB Council in March 2014. This movement is expected to create a link between Korea and Islamic finance hubs in Southeast Asia (REUTERS, March 29, 2014).

- Amendment Law of the Special Tax Treatment Control Act

Under current law system, if Sukuk is issued, additional costs will be attached (worth 1.5%-3.3%) as compared with a conventional bond. Therefore, the Korean government tried to change the law to adopt Sukuk through a revised bill in 2009. The Ministry of Strategy and Finance tried to add new articles to the Special Tax Treatment section of the law; the proposed law was outlined with respect to Sukuk and the concept of its eventual adoption. The current Special Tax Treatment Control Act, Article No. 21, (Korea Ministry of Government Legislation website) defines tax exemption of interest income for foreign currency bonds. At the same time, the Ministry of Strategy and Finance tried to add No. 2 to article 21.

The revised bill can be summarized as follows: domestic corporations would issue the Sukuk with foreign currency through a foreign corporate body, and the income from Sukukwould be considered as interest income (The National Assembly of the Republic of Korea website).To be specific, the additional argument considers Ijarah and MurabahahSukuk.

The tax treatment for InarchSukuk can be summarized as follows:

- Exemption on withholding tax: from consideration of rental as interest, corporate tax will be exempt.

- Exemption on transfer, registration, and acquisition taxes: when the underlying asset is transferred for sale and resale, the transfer, registration, and acquisition taxes will be exempt. Moreover, in case of sale and resale and payment of rental value-added tax also will be exempt.

The tax treatment for MurabahahSukukcan be summed up as follows:

- Exemption on withholding tax: the profit margin paid by domestic corporations to SPV will be considered as interest, and corporate tax will be exempt.
- Exemption on value-added tax: when the domestic corporation and the SPV sell the underlying asset, value-added tax will be exempt (Kim, Young-Seo, 2012, pp. 67-70; Park, 2011, pp. 160-162; Choi, Jae-Gun&Seo, Hee-Yul, 2011, pp.163-175).

Legal and Regulatory Issues in Issuing Sukuk in Korea

This section examines the legal issues that have arisen around Sukuk in Korea as a result of the delays that led to expiration of the 2009 bill.

- Korean Tax Law Issue in Sukuk

The tax problem is the largest hurdle in Korea so far. According to National Accounting Law, while the interest from conventional bonds is considered as an expense and could be a tax exemption, dividends from Sukuk are subject to tax (Suh, 2011, p.75). Due to non-tax neutrality, in practice there is a low possibility of Sukuk being issued in Korea. In this section the Ijarah and MurabahahSukukare examined in detail with respect to the tax issue.

Taxation of InarchSukuk can be divided into three phases. The first phase is when the originator transfers the underlying asset to the SPV. At this level, according to Value-added Tax Act, Article 1 (taxable objects) (Korea Ministry of Government Legislation website), when the asset is transferred to the SPV, this supply of goods is taxable. At the same time, ownership will be transferred, so that income directed to the originator is subject to corporate tax according to Corporate Tax, Article 3 (Scope of Taxable Income) (Korea Ministry of Government Legislation website).Additionally, registration and acquisition tax will result from the asset transfer (Choi, Jae-Gun&Seo, Hee-Yul, 2011, p.171). To be specific, Park (2011, p.160) explains as follows:

According to Article 55 of the Corporate Tax Act, corporate tax on the income of a domestic corporation for each business year shall be as follows: 10 percent for the cases in which the tax base is less than 200 million won(US$ 0.2 million); and 22 percent for the cases in which the tax base is more than that specified amount (20 percent after 2012). In addition, an SPV acquiring real estate shall pay the following: 2 percent of the acquisition value as an acquisition tax, according to Article 11 of the Local Tax Act, and 10 percent of the supplied value (value of

transfer), which includes all of the monetary value except for items such as land and houses subject to exemptions in accordance with Article 12 and Article 13 of the Value-Added Tax Act.
The second taxation phase is when the SPV leases back the asset to the originator, and the originator pays rental to SPV. The rental fee is taxable as it conforms to supply of services, according to Value-added Tax Act, article 7 (Supply of Services) (Korea Ministry of Government Legislation website), and according to Article 16 (Tax Invoice) (Choi, Jae-Gun&Seo, Hee-Yul, 2011, p.171). In addition, when the SPV receives rental fees from the originator, it is considered as an income of lease, which is subject to corporate tax. The profit is moved to the Sukuk holder as a periodic distribution; they are also subject to pay the corporate tax of investment income (Park, 2011, p.160). The last phase is the maturity date. The SPV sells back the underlying asset to the originator. This time, the same tax that was incurred in the first phase will be attached.

In the case of MurabahahSukuk, taxation can also be divided into three phases where tax is attached. First, when the SPV sells the underlying asset to originator, the SPV will be subject to corporate tax and value-added tax due to sale of the asset. Second, when the originator sells the asset to a third party, corporate tax and value-added tax will be attached. Third, when the originator pays the principle and mark-up of the asset, the mark-up will be considered as income from Sukuk. In this case, corporate tax will be attached to the SPV and the Sukuk holder (Park, 2011, p.162).

- Korean Trust Law Issue in Sukuk

Korea also does not recognize the separation of ownership in the process of asset transfer. Therefore, both when the asset is transferred to SPV and when it is moved back to the originator leads to the transfer of legal ownership. Movements of the asset are accompanied by taxes: transfer-of-asset tax, value-added tax, and registration and acquisition taxes. Originally, Korean trust law saw all economic interest as belonging to beneficiary, not to the trustee; accordingly, only the beneficiary is the tax payer, according to Income Tax Act, Article 2 (Scope of Tax Liability)(Kim, Young-Seo, 2012, p. 75) (Korea Ministry of Government Legislation website).

- Korean Securitization Law Issue in Sukuk

Sukuk could be considered as being the same as asset securitization in Asset-backed Securitization Act, Article 2 (Definitions) (Korea Ministry of Government Legislation website). However even though asset-backed securitization in a conventional banking system is most similar to Sukuk, according to Young-Seo Kim (2012, pp.78-80) there are some significant differences that lead to difficulties related to the application of the current law to Sukuk.

- First, at the maturity date, asset securitization has a “buy-back” option over asset ownership. The buy-back option could be applied when real estate is sold; if, after some period, there were no profits, the seller must promise to the buyer to buy back the asset. However, with Sukuk the originator can only buy back the asset at maturity, and the price of the asset will be the same as it was in the beginning.
- Second, asset securitization allows the leasee and investor to establish SPV, while with Sukuk the issuer has the entire share of the SPV due to the fact that the issuer of Sukuk has higher responsibility.
- Third (and most important in applying the law) is that asset securitization in conventional banking and Sukuk have different scopes for the underlying assets. Asset securitization includes all tangible and intangible assets, including real estate and secured bonds (Asset-Backed Securitization act, Article 2 (Definitions)).However, Sukuk only allows tangible assets.

With regards to asset securitization, current banking law also is not in favor of Sukuk issuance. Domestic banks and financial institutions are not allowed to deal with real assets except for the purpose of business (Choi, Jae-Gun&Seo, Hee-Yul, 2011, p.163). In the Enforcement Decree of Banking, sale of real assets is not included Enforcement Decree of Banking, Article 18 (Scope, etc. of Incidental Services).Moreover, according to Banking Act, article 28, banks cannot own non-business real estate except in cases for security; business real estate could be owned if it comprises less than 60% of the total capital (Lee, Sang-Tak, 2012, p.96). Therefore, domestic banks will face difficulty when they issue corporate Sukuk due to the difficulty in adequately backing the Sukuk with real assets (Lee, Jae-Sung, 2012, p.60).

CASE STUDIES

A previous section of this work discussed the ramifications of the two types of law systems (common law and civil law) and their role in ensuring ease of bankruptcy and insolvency proceedings with respect to Sukuk. In these case studies, the cases are again divided according to these regimes due to the fact that they are primary determiners in the resolution of cases.

In particular, this research focuses on law and regulation changes made to overcome legal problems faced in Islamic finance in general and Sukuk in particular; as noted, the countries are divided according to whether they operate under common law or civil law regimes.

Under Common Law Regimes

As mentioned in chapter 2, the characteristics of common law allow for favorable circumstances in the development of Islamic finance. A common law regime is more inclined to see the case and the contract itself, which results from the fact that the regime makes a decision derived from

a perspective based on economic substance as opposed to a legal perspective based on form. In fact, most countries employing a common law system do not stress or mention Shariah principles in legislation.

United Kingdom

The UK is the greatest pioneer in the Islamic finance area in the western world; this is supported by the fact that the UK is the ninth-largest global location for managing Islamic financial assets. The assets under managements total US $19 billion. To date, the UK has more than 20 banks, six of which are entirely Shariah-compliant banks (UKIFS, 2013, pp.1-2). In terms of Sukuk, also known as 'Alternative Finance Investment Bonds', "in budget 2007, the UK government announced a package of measures reflecting market developments, including a new framework on listed Sukuk to have them managed and structured like corporate bonds" (SCM, 2009, p. 85). In the same year, the first Sukuk were issued by the National Central Cooling Company, worth US$200 million (UKTI, 2007, p.10). This development of the Islamic finance field is mostly derived from the UK's strong government support and their robust regulatory body.

- Financial Regulatory Body in UK

UK has three main regulating bodies—the Bank of England (the UK's Central bank), HM Treasury (The government's economic and finance ministry), and the FSA (The Financial Service Authority (or FSA) is a single regulatory body that governs all financial activity in the UK). In 1997, the FSA acquired full power as a single regulator, supported by the enactment of two pieces of legislation: the Bank of England Act 1998, and the Financial Services and Markets Act (FSMA) 2000 (Aldohni, 2011, p.133). The principle of the FSA regarding Islamic finance is "no obstacles, no special favors" (Aldohni, 2011, p.158). Regardless of religious matters, Islamic finance is subject to the same standards with existing finance without any discrimination and special treatment.

- UK's Regulatory Changes in Islamic Finance

Many examples of law reform relevant to Islamic finance have been noted since 2003. Table 2 summarizes the significant points.

Table 2: Changes in UK Law Relevant to Islamic Finance

Year	**Description**
2003	The first tax legislation; removal of Stamp Duty Land Tax (SDLT) on Murabahah.
2005	- The alternative financial arrangement concept ("Alternative Finance Investment Bonds") was introduced in the Finance Act 2005. - The removal of SDLT was extended to Ijarah and diminishing Musharakah. - The tax on profit loss sharing savings accounts on company dividend payments is removed.
2006	- Removal of SDLT was extended to all entities (companies). - Available use of *Inarchwaiqtina* (Islamic lease for asset financing).
2007	The treatment of "alternative finance investment bonds" (Sukuk) was introduced. Tax relief is applied to Sukuk, with the same consideration for conventional bonds.

In 2005, the Finance Act introduced the concept of alternative financial arrangements. In further changes, the "government created a 'level playing field' for tax purposes for Mudarabahand Murabahah products that are equivalent to deposits and loan financing" (Schoon, 2009, p.158). In the Finance Act 2007, the significant changes for facilitating Sukukwere noticed. This is mentioned in section 53 of the 2007 act (Finance Act 2007, Part 3, Section 53, which inserts sections A48 and A51 into the Finance Act 2005; section A48 defines the Islamic bonds as 'finance investment bonds,' while section A51 states that the return of Islamic bonds will not be treated as taxable distribution(UK Legislation website)); however, there is no mention of or terminology related to Sukuk or Islamic bonds. Instead, Sukuk are termed as "Alternative Finance Investment Bonds" (SCM, 2009, p.86). Through this act, Sukuk became subject to the same taxes as conventional bonds, with income from Sukuk being considered in the same fashion as that from conventional bonds. Previously, profit from Sukuk was considered as a business expense that was subject to taxes.

- Current Status of Sukuk in the UK (After Changes in the Law)

A notable volume of Sukuk issuances has taken place in the UK since the 2007 changes in the law. To date, more than US$34 billion has been raised through 49 issued Sukuk listed on the London Stock Exchange (LSE), a key global venue for the issuance of Sukuk in the UK (UKTI, 2013, p.2). In the area of sovereign Sukuk, although the British government has considered issuance of sovereign Sukuk since 2007, it was not implemented, as the country's debt management office decided the structure was too expensive. Nevertheless, at the 9th Annual World Islamic Economic Forum in London in October 2013, British Prime Minister David Cameron announced the UK's plan to issue first sovereign Sukuk in the Western world in 2014. This issuance will be worth UK£200 million (US$335 million) (Arab News, January 23, 2014).

Singapore

When compared with neighboring countries like Malaysia and Indonesia, Singapore does not represent a Muslim-majority country; its Muslim population accounts for only 16% of the country's total population (Muslim Population website). However, as Singapore aims to be a financial center in Asia along with Hong Kong, Singapore is endeavoring to enter into Islamic finance.

Singapore's initial experience with Islamic finance was in 1999 and originated in parliamentary stress related to debates on the benefits of introducing alternative banking products based on Islamic principles (Saw&Wang, 2008, p.65). At that time, the Singapore government outlined Singapore's strategy and named it the Monetary Authority of Singapore (MAS).MAS's strategy has contributed to the development of Islamic finance in Singapore. It has accommodated Islamic finance within its existing single regulatory and supervisory framework. MAS seeks to ensure that Shariah-compliant products are not disadvantaged in terms of taxes when compared to conventional products (MAS, 2011). In the area of Sukuk, Singapore has seen early issuance since 2001. However, a more important milestone occurred among the Muslim-minority countries. In 2009, the MAS established its SG$200 million (US$160 million) Sukuk al-InarchTrust Certificate Issuance Program. The program marked the "first issuance in the Islamic finance market of Sukuk with the highest credit quality" (Islamic Finance News, August 10, 2010).The Sukuk was the Shariah-compliant equivalent of Singapore Government Securities (SGS), and is given the same regulatory treatment as SGS. This Sukuk issuance has some important implications:

- It is the first Sukuk program to be established by a statutory board in Singapore;
- It is the first local currency Sukuk to be established by a central bank of a non-Muslim majority jurisdiction (Ibid).

- Singapore's Regulatory Change in Islamic Finance

In 2005, Singapore waived the imposition of double stamp duties on Islamic transactions involving real estate, and they accorded the same concessionary tax treatment to income from Islamic bonds that was accorded to conventional bonds (Saw&Wang, 2008, p.69) with exemptions for corporate tax, acquisition, and registration tax on Sukuk. Moreover, banks in Singapore are allowed to offer Murabahah financing through regulation 22 of the banking regulations (Attorney General's Chambers, AGC Singapore website**)**.This means that the MAS gave its approval to banks to engage in non-financial activities (commodity trading). After the amendment of banking regulations allowing Murabahah, in the area of wholesale banking, many Islamic finance transactions have taken place at Standard Chartered Bank and Citibank (Etsyaki, 2008, p.132).

In 2007, “retail Murabahah investors were accorded the same regulatory protection as conventional depositors” (MAS, 2011). In the next year, a concessionary tax rate was introduced for qualifying Shariah-compliant lending, fund management, Takaful, and re-Takaful activities (Ibid).

In 2009, banks were allowed to enter into Ijarah financing arrangements through regulation 23B of the banking regulations, and in 2010 the MAS issued regulations to clarify that banks may enter into Istisna with amendments to the banking regulations in Singapore. With these changes, the MAS has extended Islamic finance in Singapore into the field of project finance. The purpose of these adjustments was to allow for Islamic infrastructural project finance transactions, an area that has significant growth potential in Asia (Islamic Finance News, August 10, 2010).

Under Civil Law Regimes

With codified law as a main source of law, the court under civil law does not have as much freedom to interpret laws via judicial rulings (ISRA, p. 738). The issue related to Islamic finance under a civil law system is the concept of trust. The absence of property duality of trust law in civil law makes facilitating financial transactions based on Islamic finance vehicles more difficult, as a double tax is attached to transactions that include real asset transaction at every stage.

France

France not only has a developed finance system (The French financial market has high annual growth and represents a well-developed financial transaction market; it is the fourth-ranked financial market worldwide and first in the Euro zone (Lee, Lee &Jei, 2011, p.216)), but also has the largest Muslim population among all the Western Countries: 6 million,or 9.6% of the total population (3 times that of the UK population) (Muslim Population website).Such a population should lend potential to the development of Islamic finance in the retail market. In spite of the potential described above, however, France’s development of Islamic finance has occurred via slow, incremental steps. Reasons for this include France’s conservative attitude toward Islam (which is rooted in socio-cultural and political persuasions).Nevertheless, France has endeavored to incorporate Islamic finance into its financial systems starting several years ago. From this point forward, a large amount of financial activity has centered on Islamic finance, and the government’s effort and support relevant to Islamic finance has been discussed, including concerns related to the law.

In terms of the Sukuk market, the first French Sukuk was launched in 2011 in the French food sector. The Euro 5 million Sukuk(US$6 million) (collected by 15 private investors) was issued to open their first halal fast-food restaurant in Alfortville (Zawya News, December 17,

2012). In November 2011, Paris EUROPLACE (The independent body representing the Paris financial center) launched the French Sukuk guidebook to assist Sukuk issuance in France (Zawya News, December 26, 2013).This guide explains how the legal, regulatory, and tax frameworks operate with French Sukuk, and also what is required by the French market authority (AMF). Later on, two more Sukuk issues followed in 2012 for both individual and institutional investors(Islamic Finance News, April 25, 2013).

- France's Amendments to the Law Regarding Islamic Finance

Islamic financial transactions in France were adopted under the existing laws of France by finding existing law articles in French legislation that could be made compliant with Islamic financial principles. The first regulatory change took place in July 2008. The changes were related to the listing of Sukuk on a French regulated market. The French ministry of Economy, Industry and Employment and the Autorite des Marches Financiers (AMF)(The French financial markets' regulatory authority) simultaneously announced the implementation of significant tax and regulatory changes aimed at boosting Islamic finance in France by creating a level playing ground(Zawya News, April 17, 2012).

In 2009, the French tax administration issued an instruction to define the legal concepts and clarify the tax treatment applicable to Sukuk. This instruction has been provided for both sides (the Sukuk issuers and the investors).For issuers, the sums paid could be deducted in the same manner as conventional loan interest. For investors, the legislature has also provided for the absence of deduction at the source on the sum paid to French Sukuk-holding non-residents. In July 2010, the French government finally confirmed an amendment relating to removal of Double Stamp Duty(ECB, 2013, p.24). From that time forward, expenses related to Islamic financial contracts could be exempted in France from the double tax. Now, the income originating as a result of Sukuk is considered to be interest, and the tax is exempt (Zawya News, December 17, 2012).

- Fiducie

As mentioned earlier, the most problematic issue in a civil law regime is trust law. France does not have a trust law that approves dual ownership as Common law regime countries do.To solve this problem, the French administration intended the amendment of the legal regime of the Fiducie (temporary transfer of ownership).This amendment was adopted by the French Assembly in September 17, 2009. However, later on in December, the French constitutional Court opposed adoption of this amendment (Zawya News, December 17, 2012). In spite of opposition, currently, "the amendment of Article 2011 of the French Civil Code relating to the

formation of trusts was interpreted as an important step towards permitting the issuance of Sukuk out of France"(Zawya News, April 17, 2012).

It is worth noting that one year after the rejection of Fiducie in 2009, the French government finally removed Double Stamp Duty. From that time, expenses related to Islamic financial contracts were exempt from double taxation. The removal of the double taxation issue in France without trust law in place was possible by considering Sukuk from a financial transaction standpoint in the same way that conventional bonds were considered.

Japan

Japan is the country that is most similar to Korea in terms of social and cultural environment, and also in terms of awareness of Islam. However, in the area of Islamic finance, they are more advanced than Korea. The reason is that, while Islam does not represent a big influence in Japan as a religion due to a fairly small Muslim population (Muslims in Japan only comprise 0.14% of the total population (0.18million), which is less than Korean Muslim population (Muslim population website)) and lack of awareness of Islam and Muslim in the society, Japan recognizes the economic value of Islamic finance. Accordingly, the government of Japan has created initiatives and given support for Islamic finance for its facilitation inside Japan.

Japan's interest in Islamic finance started in 2005. Japanese financial institutions cooperated with Islamic financial institutions in Malaysia and the United Arab Emirates as a means of indirect expansion, and Islamic finance has been used as one of the means to attract investment from Islamic investors in Japan (JSDA, n.d.). Japanese companies have been in the Sukuk market since 2007, when they started to finance their funds through Sukuk by a subsidiary company overseas. The first Sukuk was issued by Aeon Credit Service in Malaysia. In 2010, Nomura Investment Company issued Sukuk, which was the first issuance in US$ (Ishikawa, 2012, p.3).

- Regulatory Framework Change Regarding Islamic Finance in Japan

Table 3: Japan's Regulatory Framework Change Regarding Islamic Finance

Year	**Type of Law**	**Description**
2007	Financial Instrument and Exchange Law(FIEL)	Japanese overseas subsidiaries of financial institutions can facilitate Islamic finance business.(Kim, Han-Soo& Kim, Bo-Young,2012, p.78)
2008	Banking Law and Insurance Business Law	Subsidiaries of Japanese banks and insurance companies can provide certain Islamic finance services, including Murabahah or InarchSukuk (Ishikawa, 2011).
2009	Tax-free	Interest income is tax-free when an overseas sovereign fund invests in Japanese bonds or deposits (Kim, Han-Soo& Kim, Bo-Young,2012, p.83).
2011	Asset Securitization Act	The issuance of InarchSukuk was made available in Japan and could be considered as a "special bond-type beneficial interest" issued by SPT (Specified Purposed Trust) (Kim, Han-Soo& Kim, Bo-Young, 2012, p.82).
2011	Reform of tax system	Reforms were specifically tailored to the purpose of "special bond-type beneficial interest" issuance.
Mar 31, 2013	Sunset provision	The tax exemption for the distribution amounts of Sukuk received by foreign investors and exemption of registration tax on the repurchase of the real estate for the same Sukuk thereafter expired on that day (Financial Services Agency, 2012, p.7).

- Japan's Tax Treatment for Sukuk

According to Japan's tax reforms, the below taxes would be exempt with Sukuk:

- Income tax for dividends paid by SPT to foreign investors
- Withholding tax on profit distributions and gains on redemption
- Property registration and acquisition tax for transfer of assets
- Capital gains arising from the disposal of Bond-Type Beneficial Interest by a foreign company or a non-resident individual
- Status of SPT: an SPT will effectively be a tax pass-through vehicle.

- Current Status of Islamic Finance in Japan After Changes in the Law

After the amendment to the law, Islamic finance was actively developed in Japan. In 2007 and 2008, after Japan amended FIEL and the banking and insurance law, subsidiaries of Islamic financial institutions and banks can engage in Islamic financial transactions. In addition, in the new amendment to the law, although Murabahah and Ijarah structures are considered different from the existing lending structure, if the purpose is “money lending” (Ibid, p.81), Japan considers those new structures in the same way they consider conventional lending.I n addition, by reforming the tax status they removed any impediment to Sukuk in the Japanese market.

LESSONS FROM CASE STUDIES: LEGAL IMPLICATIONS

The first common thing this research discovered among the case studies is that the case study countries all adopted an economic approach when they took up amendment of the legal system, regardless of the natures of their regimes. All of the countries discussed take the economic approach of recognizing Islamic finance in the same way they recognize conventional finance. By applying the principle of substantial taxation on Sukuk, the income from Sukuk could be acknowledged as bond interest, which is already stipulated internationally. These are related to the changes recommended by the annual general meeting of the Committee of Experts on International Cooperation in Tax Matters (under the UN Economic and Social Council). These changes are recorded in the 2007, 3rd and the 2008, 4th meetings. During the 4th meeting, the UN Economic and Social Council decided in Article 11 to allow the income from Sukuk to be recorded as interest (from the United Nations Model Double Taxation Convention between developed and developing countries)(Choi, Jae-Gun&Seo, Hee-Yul,2011,p.178).The same concept will also be included in the Commentary on the Organization of Economic Cooperation and Development (OECD)model (Yang, 2012, p.87).

The second common thing among the countries is their strategy towards Islamic finance, which can be summed up by the phrase “no obstacles, no special favors”. With this principle, countries try to remove the tax disadvantage from Islamic finance compared with conventional finance in order to make one’s preference “tax-neutral”.

All of the countries in the case studies also shared the fact that they adopted Islamic finance under currently existing laws and regulations without separating Islamic banking or capital law, as they represent Muslim minority countries. Along with this, the countries describe Islamic finance or Sukuk as “alternative finance investment bonds,”“special bond-type beneficial interest,” or “alternative banking products” rather than mentioning specific Islamic words. These descriptions can allow for easier incorporation of Islamic finance and help avoid religious hostility or misunderstandings. To be specific, the case study will provide some implications

(including legal and other implications)that will be applicable to Korea's specific issues with Islamic finance and some suggestions related to that experience.

Banking Law Implication From Case Studies

Banking law represents the first legal problem with respect to Islamic finance adoption in Korea, as currently banks and financial institutions in Korea cannot deal with real assets except for the purpose of business. This issue was also problematic in other countries, and many examples exist of other countries amending relevant laws in order to allow asset transactions for Islamic finance instruments such as Murabahah and Ijarah:

- Singapore: Since 2005, banks have been allowed to enter into Murabahah and Ijarah financing through Banking Regulations 2005 article 22 and 23B. In 2010, banks could enter into Istisna.
- Japan: Starting in 2007-2008, Japan amended their Financial Instrument and Exchange Law (FIEL) and their Banking and Insurance Business Law (Park, 2011, p.168). After these amendments, subsidiaries of bank and insurance companies could adopt Islamic finance through forms including Murabahah or Ijarah. In 2011, reform of the Asset Securitization Act allowed issuance of InarchSukuk in Japan as a "special bond-type beneficial interest" issued by SPT.

Tax Law Implication From Case Studies

Even though some countries were slow to adopt and facilitate Islamic finance (France and Japan), they have been quickly coping with the tax problem as a first step toward adopting Islamic finance. This is because the tax problem is the most significant impediment in facilitating Islamic finance or Sukuk even in Korea. In the context of Korea, Korea cannot give a tax premium to Islamic finance because the conception of what Sukuk is (conventional bond, beneficiary certificate, and/or something else) remains unclear. Even though the common characteristics between Sukuk and bonds lead to Sukuk being more often than not classified as bonds in most countries, Sukuk in Korea cannot be considered a bond because it is not in accord from a legal perspective with Commercial Law and the Capital Market Act in Korea. However, if Korea applies an economic perspective as other countries do, Sukuk could basically be considered a type of bond when Sukuk is analyzed by the real purpose of the transaction (Ibid, p.188).

- Tax Systems in Other Countries

The UK, Singapore and France apply the principle of substantial taxation and United Nations Model Convention Article 11 (Ibid, p.190); the countries thereby remove the double tax gradually from Islamic financial transactions.

The following section details tax reform in each country:

- The UK: In 2003, they removed the Stamp Duty Land Tax; this removal was expanded to Ijarah and diminishing Musharakah and was extended to all entities (from only individuals). In 2005, the UK finally recognized the income of Sukuk as interest from bonds and applied the same tax regulations on it. In terms of Sukuk, in 2007 tax relief was applied to Sukuk (that is, the same considerations were applied as for conventional bonds).
- Singapore: Since 2005, Singapore has been reforming laws related to Islamic finance. The first alteration was removal of double stamp duties on Islamic transactions involving real estate. The same year, they accorded the same concessionary tax treatment to income from Sukuk that was accorded to conventional bonds. In 2008, a concessionary tax rate was introduced for qualifying Shariah-compliant lending, fund management, Takaful (Islamic insurance), and re-Takaful activities (MAS, 2011).
- France: In 2009, the French tax administration issued an instruction to define the legal concepts and clarify the tax treatment applicable to Sukuk. This instruction has been provided for both sides. For issuers, the sums paid could be deducted in the same manner as conventional loan interest. For investors, the legislature has also provided for the absence of deduction at the source on the sum paid to French Sukuk-holding non-residents(Zawya News, December 17, 2012).In July 2010, the French government confirmed an amendment relating to removal of double stamp duty (ECB, 2013, p.24). Now, the income originating as a result of Sukuk is considered to be interest, and the tax is exempt (including Murabahah, Ijarah and IstisnaSukuk) (Park, 2011, p.167).
- Japan: In 2011 they allow income for Islamic investors to be exempted (Choi, Jae-Gun & Seo, Hee-Yul, 2011, p.179), and tax reform was undertaken for “special bond-type beneficiary interest” issuance, including exemption of income, withholding tax on profit distributions and gains on redemption, property registration, and acquisition tax.

All of the afore mentioned countries recognize Sukuk in the same manner as they would bonds. Therefore, income from Sukuk and bond interest could be compatible under the same tax regulations. If Korea also recognizes Sukuk as a bond, the same tax attachment could be applied in Sukuk, with exemption from additional tax attached.

Trust Law Implication from Case Studies

To adopt Islamic finance without high expenses, adoption of a new trust law (or changes in currently existing law) is necessary. Even Korea does not separate ownership in a manner whereby double tax could be avoided. Korea can adopt the concept under existing law as seen in France's example.

- France: the French administration included the amendment of the legal regime of the Fiducie (temporary transfer of ownership). This amendment was adopted by the French Assembly in September 17, 2009. However, later on in December, the French Constitutional Court opposed adoption of this amendment (Zawya News, December 17, 2012).Even though the Fiducie was rejected by the French Constitutional Court, it does provide an idea of how trust law is a necessary concept in Islamic finance, even in civil law countries, and of how civil law regimes may accommodate Islamic finance.

Other than legal implications, the countries that were the subjects of the case studies give other problem implications including religious, educational and Shariah issues. In fact, the religious element of Islamic finance is the first and most significant problem, primarily due to lack of awareness of Islam and Islamic finance in Muslim-minority countries.

Currently, Korea is in need of human resources in its education system that could help people have a better understanding of Shariah and Islam in general. Examples of this sort of education can be found currently in the UK, Singapore, and France, which have a number of educational institutions and programs relevant to Islamic finance and banking in addition to Shariah specialists(UKIFS, 2013, p.7), (Saw& Wang, 2008, p.78), (Etsyaki, 2008, p.132), (Venardos, 2006, pp. 208-209), (Khan, Habibullah & Bashar, Omar K. M. R., 2008, p.5).

EVALUATION OF KOREA'S ADOPTION OF SUKUK

In this chapter, the research evaluating Korea's adoption of Sukuk is reviewed in order to develop proposals derived from the implications of the case studies.

Existing Propositions

Two primary propositions exist for the adoption of Sukuk into the Korean financial system. The first (matching that of other countries) is arguing that Sukuk should be considered as a conventional bond. Most researchers in Korea agree with this approach, and this would allow Sukuk to be taxed in the same way that bonds currently are. Moreover, the proposed amendment law submitted to the Korean National Assembly in 2009 stated that Sukuk should be admitted as a bond. In fact, these law changes mirror what most countries have done for Islamic finance (adding an article under existing laws or changing some tax article to remove impediments to Islamic finance).

Kang (2012, p.104) provides a contrary opinion in his belief that the income of Sukuk should be differentiated from bond interest because the two concepts are different from their principle and the way they are financed. Therefore, his argument is that Sukuk and income from Sukuk should be defined into new categories. Additionally, Kang details the problems associated with the proposition that Sukuk should be treated like conventional bonds. First, he argues that overlooking the different characteristics of Sukuk versus bond issuances could lead to more legal problems later on. This is because, according to the situation and different Islamic contracts, income cannot be seen as bond interest (unlike Ijarah and Murabahah), creating more of a case-by-case tax burden. The second opposing argument of Kang's research is that the previous new amendment only defined Ijarah and Murabahah. Kang argued that, by defining Sukuk properly and differentiating it from other existing financial vehicles, Korea can (and needs to) open the door for other Islamic transactions beyond Ijarah and Murabahah (Choi, Jae-Gun&Seo, Hee-Yul, 2011, p.106).

Study Proposal to Solve the Sukuk Issuance Problem in South Korea

This researcher agrees that Sukuk should be considered as a bond. However, Korea needs to consider another change in the law in order to incorporate Sukuk in practice. This research suggests another way derived from the examples in the case studies and the ideas in the Korean references (Sohn, 2012, p.241), (Choi, Jae-Gun&Seo, Hee-Yul, 2011, p.174/p.184) and(Kim, Young-Seo, 2012, p.74). Instead of strictly defining Islamic finance via an amendment to the law, which could draw hostility from the public due to specific mentions of religion, Korea can just add an article saying that if any certificates act in the same fashion as does a foreign currency bond, the same regulation and tax policy would be applied. This article would be fair to Sukuk and to other financial vehicles. Once the Sukuk is considered as belonging to existing Special Tax Treatment Control Law article 21, as a conventional bond, the issuance of Sukuk could be easier than creating a new amendment or additional article that specifically mentions the relationship between Sukuk and Islamic finance.

This proposal works in a way that is compatible with the example set by other countries. The UK, Singapore, and Japan term Islamic finance and Sukuk as alternative finance investment bonds, special bond-type beneficial interest, or alternative banking products in order to incorporate Islamic finance easily and avoid religious hostility. To go into detail, Korea can apply the principle of substantial taxation in the case of the tax problem; this is actually defined in Korean law under the Framework Act on National Taxes (National Tax Framework Act). This is the source of interpretation of tax, which says that regardless of form, tax should be interpreted in a practical way.

Korea has already succeeded in the adoption of asset securitization laws after the foreign exchange crisis in 1998; adoption of the relevant PEF (Private Equity Fund) law allowed Korea to overcome the crisis (Choi, Doo-Yul, 2011, p. 12). Along the same lines, Korea can consider Islamic finance as an alternative way—as a way of overcoming crisis, and preventing a coming crisis. Moreover, the exemption of interest from bonds was adopted in December 1998 in order to recover from the 1997 financial crisis and the lack of foreign currency; this exemption also allowed the adoption of foreign funds to Korea's domestic market, with the original aim of developing the domestic economy (Park, 2011, p.162).

The case study countries provide good examples for how legal and regulatory problems could be overcome in Korea. Other countries beyond those used in the case studies in this research also provide helpful examples. Hong Kong,a Muslim-minority country and one of Korea's neighbors, passed a Sukuk bill on March 26, 2014 that will allow the AAA-rated government to raise about US $500 million via Sukuk. The Hong Kong Monetary Authority is tasked to issue the Sukuk under the Government Bond Program, which has a borrowing ceiling of HK$200 billion (US$25.8 billion)(REUTERS, March 27, 2014).A US$500 million Sukuk issue would be larger than debut sovereign issues planned by Luxembourg and the UK. Legal filings describe the proposed Sukuk issuance as "inaugural" and suggest that it would not be a one-off like the UK's plan for a $333 million Sukuk issue(Gulf Daily News, March 28, 2014). This suggests that supporting legal infrastructure will promise long-term and stable development as well rather than one-off changes from the legal point of view. In this regard, Korea looks to be moving in the right direction, although other countries are either currently ahead or passing in front and progressing faster. Recently, the Bank of Korea joined the IFSB as an associate member; hereby Korea ranks with the central banks of Luxembourg and Japan and the monetary authorities of Hong Kong and Singapore. This recent joining of the IFSB implies the practical potential of the development of Islamic finance in Korea in the near future.

SUMMARY AND RECOMMENDATIONS

A well-developed legal framework is necessary for effective functioning of financial markets, according to Ahmad, Habib (n.d., p.2). A pioneer in Islamic finance, Malaysia has comprehensive regulations (qualifying as a "well-developed legal framework") and a favorable tax regime that work in tandem to ease Sukuk issuances. The example of Malaysia reveals that a proper legal and regulatory regime can play an important role in the development of Islamic finance and the process of issuing Sukuk. However, due to lack of proper legal infrastructure, current Sukuk issuance in most countries looks similar to issuance of conventional bond issues to avoid legal problems. The growing similarity between Sukuk and more conventional finance instruments has no benefit for the identity of Islamic finance, as it could also leave Sukuk

vulnerable to the same volatility inherent in certain conventional financial vehicles during a financial crisis.

This study aimed to examine the legal problems in general with respect to Sukuk and in Korea in particular. Moreover, this research intended to draw lessons from case study countries that could benefit the potential adoption of Sukuk in Korea, and to find possible resolution to the legal and other problems described above. The case study countries have been selected among only Muslim-minority countries and were divided according to civil law versus common law regime according to the hypothesis that the degree of development or adoption of Sukuk could differ according to different regimes. However, while this research did find some influence on Sukuk adoption from the law regime practiced, the hypothesis was rejected. Regardless of different regimes, all countries in the case studies adopted an economic approach to Islamic finance, whereby the Sukuk is compatible with a conventional bond in terms of its characteristics. This resulted in Sukuk being treated as conventional bonds are in these countries.

In the context of Korea, in spite of the smaller Muslim population in Korea Sukuk has received serious attention not only from the Korean government but also from Korean financial institutions. In 2009, the Ministry of Strategy and Finance submitted a revised bill to the National Assembly to facilitate Sukuk in Korea. This revised bill included recognition of income of Sukuk as bond interest and amendment of the tax law applied to Sukuk so it is exempt in the same manner as are conventional bonds. However, in 2012 the bill was repealed due to term expiration without approval. Along with the failure to introduce a revised bill, some legal and regulatory problems in issuance with Sukuk have arisen in Korea.

Korea can take some important lessons away from other countries' implementation of Sukuk—primarily the recognition of Sukuk as conventional bond with an economic approach. In line with this approach, a probable proposition to adopt Sukuk is suggested by this research. Korea can add articles to the current law that state, in effect, that if any financial certificates act in the same way as foreign currency bonds, the same regulations and tax policies will be applied. Such a law would not have any hostility or opposition from public and would not go into the details related to Islamic finance to avoid overt mentioning of religious principles. Additionally, this study is confident that Korea can also solve other problems (not just legal problems) with this approach. If Korea accepts the aforementioned proposition and adopts Sukuk, Korea could obtain many benefits, such as economic stability and development that is compartmental with conventional finance.

Adopting Islamic finance is inevitable in a globalized world market. Persistence in not adopting Islamic finance as an option would exclude Korea from vital sectors of the international finance market. Therefore, as soon as possible Korea needs to consider a practical application

plan for Islamic finance with consideration of further problems after adoption of Islamic finance with relevant development of infrastructure.

FUTURE RESEARCH

For further research, examination of the legal mechanisms in each of the case study countries is recommended, with particular attention to how these mechanisms have been adapted in order to make them more compatible with Islamic finance.

Moreover, in order to more accurately depict the diverse legal problems that could occur in a Korean context, it is highly recommended that future research examines all five relevant law problems, including bankruptcy and dispute resolution systems, which were excluded in the Korean context in the current research.

REFERENCES

Ahmad, Habib (n.d.), *Legal Environment for Islamic Banks: Status in Selected GCC Countries* in Mehmet Asutay and Abdullah Turkistani (ed.), *Islamic finance: political economy, values and innovation*, Grelach Press, Berlin.

Ahmad, Waseem (2008), *Islamic Banking in the United Kingdom: opportunities and challenges*, Kingston Business School: Kingston University, London

Aldohni, Abdul Karim (2011), Legal *and Regulatory Aspects of Islamic Banking: A Comparative Look at the United Kingdom and Malaysia*, Routledge Research in Finance and Banking Law.

Ali, Rahail (ed.) (2008), *Islamic Finance*, Globe Law and Business

Ali, S. Nazim (ed.) (2007), *Integrating Islamic Finance into the Mainstream; regulation, standardization and transparency*, Islamic finance project, Islamic legal studies program, Harvard law school.

Al-Roubaie,Amer&Alvi, Shafiq(ed.) (2010), *Islamic Banking and Finance: Current Islamic Finance*, Routledge

Anwar,Habiba (ed.) (2008), *Islamic Finance; a Guide for International Business and Investment*, GIMB.

Arab News, *a British Sukuk at Last*, November 12, 2013, viewed January 23, 2014, http://www.arabnews.com/news/475926

Attorney General's Chambers, AGC Singapore website, viewed February 2, 2014, <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3Ab957b865-e164-4f2a-abbd-9470d561f0cc%20Depth%3A0%20Status%3Ainforce;rec=0;whole=yes>)

Ayub, Muhammad (2007), *Understanding Islamic Finance*, Wiley Finance

BAPEPAM (Financial Institutions Supervisory Board in Indonesia) (2013), *Shariah Capital Market Statistics*, viewed January 23, 2014, <http://www.bapepam.go.id/syariah/eng/statistic/pdf/2013/Stock_Sharia_March.pdf>

BAPEPAM (Financial Institutions Supervisory Board in Indonesia), *Shariah Capital Market Statistics*, viewed January 23, 2014, http://www.bapepam.go.id/syariah/eng/statistic/pdf/2013/Stock_Sharia_March.pdf

Chang, Jennifer (2010), *Tax neutrality-the way forward for Islamic finance*, the Edge Malaysia, October 11, 2010, viewed December 12, 2013, <http://www.pwc.com/my/en/assets/press/101011-theedge-tax-neutrality.pdf>

Clifford Chance (2007), *NakheelSukuk: world's largest single Sukuk issue*, viewed December 26, 2013, <http://www.kantakji.com/fiqh/Files/Markets/f198.pdf>

Clifford Chance (2011), *Islamic finance- Japanese law reforms*, viewed April 4, 2013, <http://www.cliffordchance.com>

Dainow, Joseph (n.d.), *the Civil Law and the Common Law: some points of comparison*, American Society of Comparative Law

Dar,Humayon A.& Moghul, Umar F. (ed.) (2009), *the Chancellor Guide to the Legal and Shari'a Aspects of Islamic finance*, Harriman House.

Djojosugito, Reza Adirahman (2007), *Legal Aspects of Islamic Project Finance and Asset Securitization in Indonesia: a vehicle for the development of Islamic banking in Islamic banking and finance: fundamentals and contemporary issues*, IRTI: Jeddah.

Dubai International Financial Centre (DIFC) (2009), *Sukuk Guidebook*.

East Law website, viewed January 17, 2014, <http://www. Eastlaws.com>

El Shazly, Mona R. (2013), *Sukuk Structures, Profiles and Risks*, Columbia College

El Tiby, Amr Mohamed (2011), *Islamic Banking; How to Manage Risk and Improve Profitability*, John Wiley & Sons, Inc., Hoboken, New Jersey.

ElGammal, Mahmoud A. (2006), *Islamic Finance Law, Economics and Practice*, New York: Cambridge University Press.

European Central Bank(ECB) (2013), *Islamic Finance in Europe*, occasional paper series No.146

Financial Services Agency (2012), *Taxation of J-Sukuk Q&A*

Goud, Blake (n.d.), *East Cameron gas Sukuk*, ZawyaCollaborative SukukReport

Gulf Daily News, *Hong Kong passes key Sukuk bill*, March 28, 2014, viewed March 28, 2014, < http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=373708>

Haron, Sudin (2009), *Islamic Finance and Banking System; Philosophies, Principles & Practices*, McGraw-Hill.

Hassan, M. Kabir& Lewis, Mervyn K. (ed.) (2007), *Handbook of Islamic Banking*, Edward Elgar Publishing Limited.

Hassan, Rusni (2011), *Islamic Banking and Takaful*, Person Malaysia SdnBhd

Hassan, Zulkifli (2012), *Shari'ah Governance in Islamic Banks*, Edingurgh University Press Ltd.

Hassan, Zulkifli&Asutay, Mehmet (2011), *an analysis of the courts' decisions on Islamic finance disputes*, ISRA international journal of Islamic finance, vol.3, issue 2, pp. 41-71

HispanicBusiness News, *"KFH Research": USD 120 bln Sukuk issuances in 2013*, January 8, 2014, viewed February 18, 2014, <http://www.hispanicbusiness.com/2014/1/8/kfh_research_usd_120_bln_Sukuk.htm>

HM Treasury (2007), *Government Sterling Sukuk Issuance: a consultation*

HM Treasury (2008), *the Development of Islamic Finance in the UK: the government's perspective*

Housby, Elanie (2011), C*ase Study of the Role of the Islamic Sector in Increasing Access to Financial Services: the United Kingdom*, International conference on Islamic Economics and Finance.

International Islamic Financial Market (IIFM), *Sukuk Report 1st Edition; A comprehensive study of the Global Sukuk Market*.

IIFM, *Sukuk Report 2nd Edition; A comprehensive study of the Global Sukuk Market*.

IIFM, *Sukuk Report 3rd Edition; A comprehensive study of the Global Sukuk Market*.

International Shari'ah Research Academy for Islamic Finance (ISRA) (2011), *Islamic Financial System; Principles & operations*

Ishikawa, Naoki (2011), *New horizons of Islamic finance in Japan*, Finance Asia Japan Report

Ishikawa, Naoki (2012), *Islamic Finance in Japan: New Legislative Framework for Sukuk Issuance*, Paper presented at the 22nd Annual meeting & conference Islamic Financial International Trade-Challenges & Issues, Inter-Pacific Bar Association.

Islamic Finance News (2006), East Cameron Gas Sukuk: the Dawn of a New Frontier, p.34, viewed December 26, 2013, http://www.ashtonstewart.com/case/CaseStudy3.pdf

Islamic Finance News, *Singapore: Monetary Authority of Singapore Sukuk Program*, August 10, 2010, viewed December 24, 2013, <http://www.mondaq.com/article.asp?article_id=104716&signup=true>

Islamic Finance News, *The First French Sukuk,* December 20, 2012, views April 25, 2013, <http://www.Islamicfinance.de/?q=node/4306>

Japan Securities Dealers Association (JSDA) (n.d.), *Basic Data on Islamic Finance and Japan*

Jobst, Andreas A. (2007), *the Economics of Islamic Finance &Securitisation*, IMF Working Paper WP/07/117

Kahf, Monzer& Khan, Tariqullah (1988), Principles of Islamic Financing: A survey, Jeddah: Islamic Research and Training Institute (IRTI).

Khan, M. Mansoor& Bhatti, M. Ishaq (2008), *Developments in Islamic Banking; the case of Pakistan*, Palgrave Macmillan

Khan,Habibullah& Bashar, Omar K. M. R. (2008), *Islamic Finance: growth and prospects in Singapore*, U21 Global working paper, No. 001/2008

Kuwait Finance House (KFH) (2013), *Islamic Finance Regulatory Developments and Updates*, KFH Research Ltd.

Lawrence, Jonathan& Khan, Hussain (2012), *Dispute Resolution in Islamic Finance*, global Islamic finance report 2012

Malaysia International Islamic Financial Centre (MIFC) (2014), *Global Sukuk Begins 2014 with momentum*

MAS (2011*), Islamic Finance in Asia: Singapore*

MAS (2014), *Singapore Government Securities* 2014, *The Singapore Economy*, viewed December 23, 2013, <http://www.sgs.gov.sg/The-SGS-Market/The-Singapore-Economy.aspx>

McMillen, Michael J.T. (2012), *an Introduction to Shariah Considerations in Bankruptcy and Insolvency Contexts and Islamic Finance's First Bankruptcy (East Cameron)*, University of Pennsylvania Law School

Media Planet (2012), *Islamic Finance,* viewed December 23, 2013, <http://doc.mediaplanet.com/all_projects/9499.pdf>

MIFC (2013), *Global Sukuk Report 2Q 2013*

Monetary Authority of Singapore (MAS),*Annual Report 2005/2006*, viewed October 12, 2013, <http://www.mas.gov.sg/annual_reports/annual20052006/index.htm>

Morrison, Scott (2013), *Islamic bonds Unbounds: Japan's Samurai Sukuk*, The Newsletter No.65

Muslim population website, viewed December 21, 2013, http://www.Muslimpopulation.com/asia/

Nazar,JhordyKashoogie(2011), *Regulatory and Financial Implication of Sukuk's Legal Challenges for Sustainable Sukuk Development in Islamic Capital Market*, 8th international conference on Islamic economics and finance, center for Islamic economics and finance, Qatar faculty of Islamic studies, Qatar foundation.

Nethercott, Craig R.& Eisenberg, David M. (ed.) (2012), *Islamic Finance; law and practice*, Oxford University Press.

Paris Europlace (2010), *Islamic Finance in France: new developments*

Paris Europlace (2011), *Issuing and Listing Sukuk in France, How to take advantage of the attractive French legal and tax environment*, French Sukuk guidebook.

Pistor, Katharina& Xu, Chenggeng(2003), *Incomplete Law – a conceptual and analytical framework and its application to the evolution of financial market regulation*, Journal of international law and politics, 35 (4), pp. 931-1013.

Pramanik, AtaulHuq(ed.) (2009), *Islamic Banking How Far Have We Gone*, IIUM Press.

Qatar Islamic Bank(QIB) (2008), *the Regulation of Globalized Islamic Finance*

RAM Rating Services Berhad (2013), *Sukuk Focus*

Raza,Kashif (2007), *Nakheel Pre IPO Sukuk issue-a case study*, Dubai Islamic bank, Millennium capital, viewed December 23, 2013,

REUTERS, *Bank of Korea joins Islamic finance body IFSB*, March 28, 2014, viewed March 29, 2014, <http://www.reuters.com/article/2014/03/28/islamic-finance-korea-idUSL5N0MP0RF20140328>

REUTERS, *Hong Kong passes Islamic bond bill, paves way for $500 million Sukuk*, March 27, 2014, viewed March 28, 2014, http://www.reuters.com/article/2014/03/27/islamic-finance-hongkong-idUSL5N0MN0QH20140327

REUTERS, *Sukuk pipeline-Issue plans around the world*, April 6, 2014, viewed April 6, 2014, <http://uk.reuters.com/article/2014/04/06/sukuk-pipeline-idUKL5N0MW0OJ20140406>

Saito, So& Igarashi, Chika (2010), *Islamic Finance in Japan*, viewed April 4, 2013, <http://www.Islamicfinancenews.com>

Salah, Omar (2010), *Dubai Debt Crisis: a legal analysis of the NakheelSukuk*, BERKELEY J. INT'L L. PUBLICIST

Salah, Omar (2012), *Legal Infrastructure of Sukuk Structures-part1*, faculty of law, Tilburg University.

Saw,SweeHock& Wang, Karyn (2008), *Introduction to Islamic Finance*, Saw Centre for Financial Studies, NUS Business School, Singapore

Schoon, Natalie (2009), *Islamic Banking and Finance*, Spiramus Press Ltd.

Securities Commission Malaysia (SCM) (2009), *Sukuk*, Sweet&Maxwell Asia

Tata, Vijay (2012), *Development of Effective Insolvency Regimes for Islamic Financial Institutions*, fifth Islamic financial stability forum, IFSB

Thomson Reuters Zawya (2014), *Sukuk Perceptions and Forecast Study 2014*

UK Islamic Finance Secretariat (UKIFS) (2012), *Islamic Finance*

UK Islamic Finance Secretariat (UKIFS) (2013), *UK, the Leading Western Center for Islamic Finan*ce

UK Legislation website, viewed January 12, 2014, http://www.legislation.gov.uk/ukpga/2007/11/contents

UK Trade& Investment (UKTI) (2007), *UK Excellence in Islamic Finance*

UK Trade& Investment (UKTI) (2013), *UK Excellence in Islamic Finance*

Venardos, A. M. (2006), Islamic Banking and Finance in South-east Asia: Its Developments and Future, Asia-Pacific Business Series Vol.3

Wilson, Rodney (2012), Legal*, Regulatory and Governance Issues in Islamic Finance*, Edingurgh University Press Ltd.

Yahaya, Ismail Oriyomi (2012), *Profit-sharing Investment Accounts: Implications for Liquidity Risk Management*, Master Thesis in Qatar Faculty of Islamic Studies, Hamad bin Khalifa University, Qatar.

Yahia, Abdul-Rahman (2010), *the Art of Islamic Banking and Finance: Tools & Techniques for Community-Based Banking,* New Jersey: John Wiley & Sons.

Zawya News, *"KFH Research: USD 9.07 bn Total Sukuk Issuances in February",* March 7, 2014, viewed March 14, 2014, http://www.zawya.com/story/KFHResearch_USD907bn_total_Sukuk_issuances_in_February-ZAWYA20140307061716/

Zawya News, *First Sukuk in Oman Issued*, November 17, 2013, viewed March 14, 2014, <http://www.zawya.com/story/First_Sukuk_in_Oman_Issued-ZAWYA20131118133244/>

Zawya News, *Paris Seeks to Become Islamic Finance Hub in Europe*, April 17, 2012, viewed December 26, 2013, <http://www.zawya.com/story/Paris_seeks_to_become_Islamic_finance_hub_in_Europe-ZAWYA20120418054458/>

Zawya News, *The First French Sukuk*, December 17, 2012, viewed December 26, 2013, <http://www.zawya.com/story/The_first_French_Sukuk-ZAWYA20121217115458/>

Korean References

Choi, Doo-Yul (2011), *Introduction Plan for Sukuk Bill,* KERI 11-05, Korea Economic Research Institute

최두열 (2011), *이슬람채권법안도입방안*, 한국경제연구원

Choi, Jae-Gun&Seo, Hee-Yul (2011), *the Issues of Taxation for Islamic Bond – A Study on Introduction of Sukuk*, Korea Institute of Public Finance, Vol.11, No.3

최재건/서희열 (2011), *이슬람채권에대한과세문제*, 조세연구제 11권, 제3집

Etsyaki,Yosida (2008), *Introduction to Islamic Finance*, Wisdom Publishing

요시다 에츠아키 (2008), *이슬람 금융이 뜬다*, 예지Wisdom Publishing

Han, Jang-Suk& Kim, Young-Kwan (2010), *Value Added Tax*, Kwang- Kyo

한장석, 김용관 (2010), *부가가치세*, ㈜ 광교 이택스

Kang, Dae-Chang (2012), *the Structure and Policy Implications of Islamic Finance: focused on Sukuk*, Korea Institute for International Economic Policy

강대창(2012), *이슬람 금융의 구조와 정책점 시사점* : 수쿡을 중심으로, 대외 경제 정책 연구원

Kim, Bo-Young (2011), *Japan's Full-scale Adoption for Islamic Finance*, Capital Market Weekly, No.11, Korea Capital Market Institute

김보영(2011), *일본의 이슬람금융 도입 본격화*, 자본시장 Weekly, 2011-11호, 자본시장연구원

Kim, Bo-Young (2009), *the Emergence of Islamic Finance Post Global Crisis,* Capital Market Weekly 2009-24, Korea Capital Market Institute

김보영 (2009), *금융위기 후 새롭게 주목받는 이슬람금융*, 자본시장 weekly, 2009-24호, 자본시장연구원

Kim, Bo-Young (2010), *Korea 's yet Another Delay in Introduction of Islamic Finance*, Capital Market Weekly 2010-49, Korea Capital Market Institute.

김보영 (2010), *또다시 지연된 한국의 이슬람금융 도입*, 자본시장 Weekly, 2010-49호, 자본시장연구원

Kim, Han-Soo& Kim, Bo-Young(2012), *Current Status and Implications of Islamic finance*, Korea Capital Market Institute

김한수, 김보영 (2012), *이슬람 금융의 현황과 시사점*, 자본시장 연구원

Kim, Young –Seo (2012), A *Legal Study on the Islamic Finance Introduction*, a Master Thesis in Sung-Sin University.

김영서 (2012), *이슬람 금융 제도의 도입에 관한 법적 연구*, 성신여자대학교 대학원 석사논문

Korea Ministry of Government Legislation website, viewed January 23, 2013, <http://www.law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=enforcement%20decree#liBgcolor0>

Korean Muslim Federation website, viewed December 24, 2013, <http://www.koreaislam.org/intro/intro01.jsp>

Lee, Choong-Lyol& Lee, Young-Soo&Jei, Sang-Young (2011), *Islamic finance: theory and practice*, Korea Institute for International Economic Policy

이충열, 이영수, 제상영(2011), *이슬람금융: 이론과 현실 및 활용방안*, 경제/인문 사회 연구회 세계지역 종합연구 , 대외경제 경제정책연구원

Lee, Jae-Sung (2012), *a Study on Islamic Finance; in focus of Sukuk,* International Finance Research

이재승(2012), *이슬람 금융에 관한 연구; 수쿠크를 중심으로*, 국제금융연구 제2권 제1호

Lee, Sang-Tak (2012), *Legal Problems on the Introduction of Islamic Finance into Korea*, a Master Thesis in Graduate School of Law, Sung-Kyun-Kwan University.

이상탁(2012), *이슬람 금융의 도입에 관한 법적 연구*, 성균관대학교 석사 학위논문

Money Today news, *Good Morning Shin-Han Securities Co.,Ltd enters into Islamic financial market*, September 11, 2007, viewed January2014,http://www.mt.co.kr/view/mtview.php?type=1&no=2007091111282703649&outlink=1

Money Today news, *Woo-Ri investment securities Co., Ltd signs MOU with Qatar Islamic Bank*, March 10, 2010, viewed October 13, 2013 http://www.mt.co.kr/view/mtview.php?type=1&no=2010031009230777782&outlink=1

Naver Encyclopedia, *Seoul Central Masjid*, viewed January 1, 2014. http://terms.naver.com/entry.nhn?docId=1218858&cid=40942&categoryId=34482

Naver Encyclopedia, *Seoul Central Masjid*, viewed January 1, 2014. <http://terms.naver.com/entry.nhn?docId=814303&cid=1018&categoryId=1018>

Park, Sung-Jin (2011), *A Study on the Tax Reduction of Islamic Bonds (Sukuk)*, Korean Academic Society of Accounting, Accounting Research Study, Vol. 16 , No.3

박성진 (2011), *이슬람 채권(Sukuk)에 대한 조세감면의 타당성에 관한 연구*, 대한회계학회, 회계연구, 제16권 제3호.

Seo, Yoon-Suk (2011), *Expanded Islamic Finance in Japan*, the Banker of Monthly Finance, the Korea Federation of Banks.

서윤석(2011), *확대되는 일본 내 이슬람 금융*, 해외 금융정보, 월간금융 The Banker, 전국은행연합회

Sohn, Tae-woo (2012), *Study on Legal Problems related to issuing a Sukuk by Domestic Corporations*, National Research Foundation of Korea

손태우 (2012), 국내 기업의 수쿠크 발행과 관련된 법적 문제에 관한 연구, 한국연구재단

Suh, Gang-Suk(2011), *Possibility of Instruction of Islamic Finance in Korea; case study of Dubai financial law and Sukuk system*, a Master Thesis in Department of Arabic area study, Graduate School, Myong-Ji University

서강석(2011), *이슬람 금융의 국내 도입 가능성에 관한 연구 ; UAE 의 제도와 수쿠크 운용 사례를 중심으로*, 명지대 석사학위 논문

The National Assembly of the Republic of Korea website, viewed October 24, 2013; http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=ARC_U0H9T0D9N2I8B1J6F4D6M5D4L1P0Y3 p.4

Yang, Seung-Jin (2012), *Legal Study on Introduction of the Islamic Finance into Korea*, Graduate School of Law, Sung-Kyun-Kwan University.

양승진(2012), *이슬람 금융의 국내 도입을 위한 법적 연구*, 성균관대 일반 대학원 학위 논문

Yool Chon Law firm, *Tax support system created to vitalize Islamic Bond,* September 18, 2009, viewed August 18, 2013. <http：//www.lawnb.com/lawinfo/contents_view.asp?cid=120CDEDD5007492B8925B7D998445332>