

## Recommendations from the 2<sup>nd</sup> Roundtable on Challenges in *Sukūk* Issuance 2014

In the name of Allah, most gracious, most merciful

Praise be to Allah, the Lord of the universe. Peace and blessings be upon our Prophet, his family and companions.

After an extensive discussion on the papers presented at the second Roundtable, the participants concluded the following results:

1. Sovereign *Sukūk* are those which are issued or financed by the state or whose purpose is to support the public budget or state public projects, or in which state owned assets are used or which are issued by an entity founded by sovereign entities for public interest.
2. There are specific rules governing the difference between sovereign and private *Sukūk* as it is known that sovereign entities may issue *Sukūk* based on *Iqta* (land grant) or preferential right. Sovereign entities may also enjoy other privileges such as non-registering ownership and tax exemptions.
3. The participants recommended the issuance of *Sukūk* which are beneficial and can be based on various forms such as preferential, long-term lease, *musatahah*, usufructuary right, or build-operate-transfer (BOT).
4. The state, having general jurisdiction, has the right to issue *Sukūk* on some of its public utilities, which are considered usufructuary rights that the state may transfer to a private ownership due to public interest.
5. A legal owner is he who gains and bears the risks regardless of whether or not he has registered the asset in his name.

6. The participants discussed the issue of dividing ownership to equitable ownership (it can also be called beneficial ownership) and legal ownership which was derived from the Anglo-Saxon common law. It has transpired that equitable ownership is actual ownership even though it is concealed, and that apparent ownership is that in which the assets are registered in the owner's name. This arrangement is followed in issuing *Sukūk* for procedural purposes or for tax reduction purposes. The discussion concluded that such an arrangement does not pose any *Shari'ah* problems since the property is certainly owned by its lawful owner and that registration is not considered one of the tenets (*Rukun*) of a contract nor one of its validity conditions (*Shart Sihhah*).
  
7. In principle, ownership and the authority to dispose coexist together. Nevertheless, they may also fall apart such as in the case of the *Al-Mahjur 'Alaih* (the person prohibited from free disposition in his property) who owns but does not have the authority to dispose of, and the agent and trustee who have the authority to dispose of but do not own. Therefore, dividing ownership into equitable ownership (beneficial) and legal ownership does not contradict *Shari'ah* law provided that the beneficial owner is the owner according to Islamic law although the asset is registered in the name of another party.
  
8. The sovereign entity issuing the *Sukūk* may obtain from *Sukūk*-holders an undertaking to sell at any price. This is not considered a guarantee which is prohibited by *Shari'ah* since the sovereign entity has the option of executing or not executing it. As for the undertaking to purchase other than leasing *Sukūk*, such an undertaking is not permissible unless it is done at the fair value or the net asset value or the rental balance of the leased asset or based on what is agreed upon at the time of purchase.

Walhamdulillahilahi rabbil 'alamin.

Wassalamualaikum warahmatullahi wabarakatuh.