

Shabana M. Hasan
Manager of the Advisory
& Research Department of ISRA
Consultancy Sdn. Bhd.

Contemporary Waqf Development through Sukuk

Waqf - An Introduction

Waqf (the plural is awqaf) is an Arabic word derived from the root verb waqafa. It is a form of Islamic endowment or an inalienable trust. According to Lev (2005), waqf is epitomized as the highest form of charity in Islam. Notably, its benefits are not only restricted to the Muslim community, but it goes beyond religious, sectarian, cultural and racial boundaries. There are no direct injunctions on waqf in the Quran, however the detailed concept of waqf can be found in the hadith.

From the birth of Islam in the Arabian Peninsula till the Ottoman caliphate period (15th – 19th century) the glorious waqf administration continued to flourish. During the period of the Ottoman caliphate, it was estimated that three-quarters of all the arable land belonged to waqf (Boudjellal, 2008). Even during the Umayyad, Abbasid and Ottoman caliphate, waqf had a strong presence in other Muslim minority principalities. It was through these waqf lands that one of the major economic problems, i.e. employment, was addressed by creating job opportunities (Cizakca, 1984). Apart from waqf for religious purposes, education was the second largest recipient of waqf proceeds. It is noteworthy that the financing of education through waqf led to several positive outcomes, such as free education.

Unfortunately ever since the colonial occupation of many Muslim countries, the development of waqf properties has become very sluggish. This situation is further worsened by the presence of vast idle and stagnant waqf lands attributed to poor management and administration of institutions handling awqaf. Besides that, the general public believes that waqf is mainly associated with properties that are for religious and educational purposes only, and thus lack the proper understanding of the potential dynamics in the concept of waqf.

Apart from the general discussion on waqf mentioned above, the article will further highlight the various contemporary modes of financing through waqf. However, due to the limitations of the article, it will focus mainly on the development of waqf through sukuk. This discussion will provide a more exciting turn-out of waqf through case-studies underlined. The final part of the article will deal with issues raised during the development of waqf through sukuk, followed by the conclusion and recommendation on the way forward.

Waqf - A Contemporary Mode of Financing

To resolve the problems currently faced in the management and development of waqf, various new measures have been implemented. One of the measures popularly discussed in the development of waqf is the corporate waqf. According to Ibrahim and Ibrahim (2013), corporate waqf is defined as an innovative mechanism in generating income for the benefits of most society in the form of cash waqf, waqf shares, sukuk, ibdal (sale) and istibdal (exchange) of a waqf, etc. However, due to the limitations of this paper, it will only discuss on the innovative development of waqf through sukuk.

Development of Waqf through Sukuk

The tremendous growth of the Islamic financial industry has amounted to various challenges such as liquidity management and raising large amounts of financing to fund both the national and international development projects. However, unlike their conventional counterparts, Islamic financial institutions (IFIs) cannot meet these challenges by issuing interest-based debt instruments. This led both the fiqh councils and the IFIs to assume in-depth efforts to provide a substitute for these riba-based instruments, identified as Islamic bonds or sukuk so as to meet the ever-increasing demand for large-scale Shari'ah-compliant financing. According to Rahail (2008), the first sovereign sukuk was issued in September 2001 for the amount of \$100 million by the Bahrain Monetary Agency.

In the area of waqf, with many of waqf assets being in the form of property, sukuk issuance can therefore be regarded as a popular choice that can be used to finance the development of awqaf properties. While the Islamic traditional modes made use of tools such as hibr and ijaratayn, nonetheless, the introduction of sukuk instruments has helped to further accelerate the progress and development of waqf. Moreover, the combination of sukuk and waqf in a single structure is an interesting development that is worth pursuing. The section below will delve into some of the waqf financing that has used such instrument.

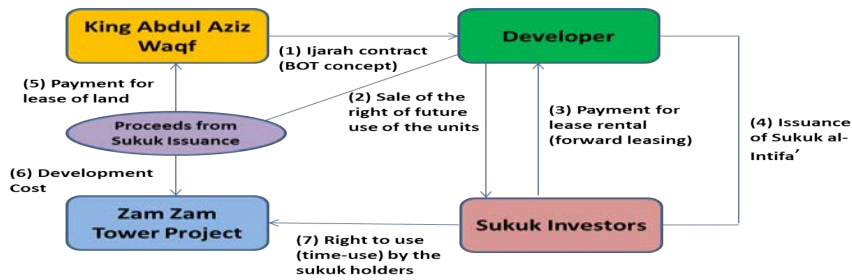
Case Study 1: Issuance of Sukuk al-Intifa'a for Zam Zam Tower

Through sukuk intifa', the King Abdul Aziz Waqf has developed a multiplex of high towers named Zam Zam Tower, located near Masjid Al-Haram in Makkah, Saudi Arabia. Through this sukuk structure, a 24-year reversionary ground lease was awarded to the developer. Therefore, the ground belongs to waqf, the buildings to the developer, and the manfa'ah was sold to the sukuk holders. This structure is somehow similar to a time-share vacation facility with a fraction of ownership in the lease. More importantly, sukuk intifa' was used instead of the normal sukuk ijarah due to the fact that the Saudi laws do not allow foreign ownership of real estate in the holy site, i.e. Makkah and Madinah.

The waqf land, which is adjacent to the Ka'bah, was leased by King Abdulaziz Endowment (Waqf) through a Build-Operate-Transfer (BOT) agreement to a prominent Saudi Arabian builder, which in the agreement will build a shopping complex, four towers and a hotel under the Zam Zam Tower Project. The prominent Saudi Arabian builder then leased the project to Munshaat Real Estate Projects KSC to finance the construction of the project, operate it and then transfer it back to King Abdulaziz Endowment at the end of the 28-year lease tenor. Both the prominent Saudi Arabian builder and Munshaat Real Estate Projects KSC signed a forward ijarah contract.

To finance the development of the project, Munshaat Real Estate Projects KSC issued a US\$390 million sukuk intifa' for a period of 24 years. With the proceeds from the sukuk subscription, Munshaat Real Estate Projects KSC then disbursed the progress payment to the necessary party involved in the development of the project. Once completed, the sukuk holders are provided with four options, namely to show up at the reserved time, exchange the time through a specialized affiliate of Munshaat Real Estate Projects KSC, contract to Munshaat Real Estate Projects KSC to sub-lease the contracted time to a willing tenant who wishes to visit Mecca at that point of time or to sell the sakk to a willing buyer. The transaction structure is as depicted in figure 1 below.

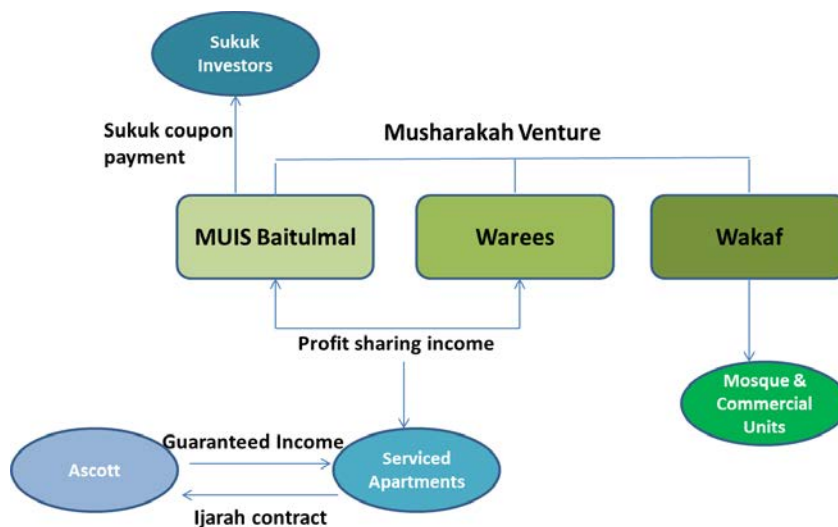
Figure 1: Transaction Structure of Zam-Zam Tower Sukuk Al-Intifa'



Case Study 2: Issuance of Musharakah Sukuk by Majlis Ugama Islam Singapura (MUIS) Due in 2006

The musharakah sukuk issued by MUIS is done based on 2 tranches whereby the first tranche was a \$25 million musharakah sukuk for the purchase of a building located at 11 Beach Road, whilst the second tranche was the raising of \$35 million for the mixed development project at Bencoleen Street. The paper will discuss in detail on the second tranche of the musharakah sukuk issued. The waqf property for the second tranche belongs to an Arab merchant named Shaikh Ali B Omar Aljunied. Due to the huge commercial potential of the land at Bencoolen Street, MUIS decided to develop the area. The suggested development is 104 serviced-apartments, a mosque and a 6-storey commercial complex. The cost is approximated to be \$35 million. A musharakah sukuk was issued to raise the capital. The initial stage was a musharakah venture between 3 parties, i.e., waqf, baitulmal and Warees (wholly-owned subsidiary of MUIS). The waqf contributed the land and capital, the baitulmal provided \$35 million from investors and Warees provided a nominal amount along with their expertise. The second stage involves a leasing contract agreement that was entered between the Special Purpose Vehicle (SPV) and Ascott International Pte. Ltd. The latter agrees to lease the property for a period of 10 years thus a steady flow of income was secured and this can be complemented with returns to the investors. Since it is a musharakah venture, the profit shall be apportioned accordingly within the proportion of the capital invested by the 3 parties. It is noteworthy that due to the success of this sukuk structure issuance, MUIS was awarded Mohammad Bin Rashid Al Makhtoum Islamic Finance Awards in the category of Regional Continuing Contribution to Islamic Finance in that particular year. Importantly, this successful innovation has increased the revenue of the properties from an annual rental of \$19,000 per annum to an escalated gross income of \$5.3 million in 2006. The distribution of returns to the 3 parties is further illustrated in figure 2 below.

Figure 2: Distribution of Returns to the 3 Parties



Issues Raised During the Development of Waqf through Sukuk

An important matter to consider is that during the development process of the waqf property through sukuk, the income, which is due to the beneficiaries, will be put on hold till the completion of the construction and there is rental income flows. During this period of time, the beneficiaries are cut off from receiving any share of the waqf proceeds. Hence, it is very important to ensure that during the development process of the waqf property, the beneficiaries should still be provided with proceeds and not to terminate their proceeds altogether. Besides that, another important issue to ponder is that the sukuk investors will be given the usufruct resulting in a total standstill of the beneficiaries' income. The question raised is whether this is permissible under the will. Another major problem highlighted is when a development is undertaken, the repayment period of the capital is usually extended. Repayment can take a substantial period to complete, and as a result the waqf will be indebted for a considerable period of time.

Way Forward

Conclusively, it is notable to point out that the framework in developing waqf has evolved. This evolvement is heightened with the renewed interest of the Muslim communities towards waqf, especially after realizing the various potentials that waqf creates; one such evolvement is the development of waqf through sukuk. Issues in the development of waqf through sukuk, as highlighted above, are acknowledged, however, instead of putting the evolvement of waqf on hold, the above-mentioned issues should be properly addressed and adhered to. Henceforth, it is hoped that religious scholars, awqaf authorities, academicians, practitioners, developers, financial institutions, etc. would collaboratively work together to synergies proper efforts and to bring forward creative and Shari'ah compliant ideas, methods and initiatives for successful development of waqf locally and globally.

“You will never attain virtue until you spend something you are fond of; while God is Aware of anything you may spend“ Qur'an: Al-Nahl, 16:92

References.

1. Author can be contacted at: shabana@isra.my
2. Extracted from Dr. Aznan Hasan Presentation Slides on Sukuk: Concepts, Issues and Trends
3. Abdul-Karim, Shamsiah (2010). Contemporary Shari'ah Structuring for the Development and Management of Waqf Assets in Singapore. Durham theses. Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/778/>
4. Contemporary Waqf Administration and Development in Singapore: Challenges and Prospects by Shamsiah Abdul Karim from Islamic Religious Council of Singapore
5. Extracted from Abdul-Karim, Shamsiah (2010). Contemporary Shari'ah Structuring for the Development and Management of Waqf Assets in Singapore. Durham theses. Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/778/>