

The Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), in view of the increased use of *sukuk* worldwide, the public interest in them, and the observations and questions raised about them, studied the subject of the issuance of *sukuk* in three sessions; first, in al-Madinah al-Munawwarah, on 12 Jumada al-Akhirah 1428 AH (27 June 2007), second, in Makkah al-Mukarramah, on 26 Sh'aban 1428 AH (8 September 2007), and third, in the Kingdom of Bahrain on 7 and 8 Safar 1429AH (13 and 14 February 2008).

Following the meeting of the working group, appointed by the Board, which met in Bahrain, on 6 Muharram 1429AH (15 January 2007), which was also attended by a significant number of representatives from various Islamic banks and financial institutions, the working group presented its report to the Shari'ah Board.

After taking into consideration the deliberations in these meetings and reviewing the papers and studies presented therein, the Shari'ah Board - while re-affirming the rules provided in the AAOIFI Shari'ah Standards concerning Sukuk - advises Islamic financial institutions and Shari'ah Supervisory Boards to adhere to the following matters when issuing *sukuk*:

First

Sukuk, to be tradable, must be owned by the *sukuk* holders, with all the rights and obligations of ownership, in real assets, whether tangible, usufructs or services, capable of being owned and sold legally, as well as in accordance with the rules of the *Shari'ah*, in accordance with Articles (2) and (5/1/2) of the AAOIFI Shari'ah Standard (17) on Investment Sukuk. The Manager issuing the *sukuk* must certify the transfer of ownership of such assets in its (*sukuk*) books, and must not keep them as his own assets.

Second

Sukuk, to be tradable, must not represent receivables or debts, except in the case of a trading or financial entity selling all its assets, or a portfolio with a standing financial obligation, in which some debts, incidental to physical assets or usufruct, were included unintentionally, in accordance with the guidelines mentioned in AAOIFI Shari'ah Standard (21) on Financial Papers.

Third

It is not permissible for the Manager of *sukuk*, whether the manager acts as the *mudharib* (investment manager), or

sharik

(partner), or

wakil

(agent) for investment, to undertake to offer loans to *sukuk* holders, when actual earnings fall short of expected earnings. It is permissible, however, to establish a reserve account for the purpose of covering such shortfalls to the extent possible, provided the same is mentioned in the prospectus. It is not objectionable to distribute expected earnings, on account, in accordance with Article (8/8)3 of the AAOIFI Shari'ah Standard (13) on Mudaraba, or to obtain project financing on account of the *sukuk* holders.

Fourth

It is not permissible for the *mudharib* (investment manager), *sharik* (partner), or *wakil* (agent) to undertake {now} to re-purchase the assets from

sukuk

holders or from one who holds them, for its nominal value, when the

sukuk

are extinguished, at the end of its maturity. It is, however, permissible to undertake the purchase on the basis of the net value of assets, its market value, fair value or a price to be agreed, at the time of their actual purchase, in accordance with Article (3/1/6/2) of AAOIFI Shari'ah Standard (12) on Sharikah (Musharaka) and Modern Corporations, and Articles (2/2/1) and (2/2/2) of the AAOIFI Shari'ah Standard (5) on Guarantees. It is known that a

sukuk

manager is a guarantor of the capital, at its nominal value, in case of his negligent acts or omissions or his non-compliance with the investor's conditions, whether the manager is a *mudharib*

(investment manager),
sharik
(partner) or
wakil
(agent) for investments.

In case the assets of *sukuk* of *al-musharaka*, *mudharabah*, or *wakalah* for investment are of lesser value than the leased assets of 'Lease to Own' contracts (*Ijarah Muntahia Bittamleek*), then it is permissible for the *sukuk* manager to undertake to purchase those assets - at the time the *sukuk* are extinguished - for the remaining rental value of the remaining assets; since it actually represents its net value.

Fifth

It is permissible for a lessee in a *sukuk al-ijarah* to undertake to purchase the leased assets when the *sukuk* are extinguished for its nominal value, provided he {lessee} is not also a partner, *mudharib* or investment agent.

Sixth

Shari'ah Supervisory Boards should not limit their role to the issuance of *fatwa* on the permissibility of the structure of *sukuk*

. All relevant contracts and documents related to the actual transaction must be carefully reviewed {by them}, and then they should oversee the actual means of implementation, and then make sure that the operation complies, at every stage, with

Shari'ah

guidelines and requirements, as specified in the Shari'ah Standards. The investment of *sukuk*

proceeds and the conversion of the proceeds into assets, using one of the

Shari'ah

-compliant methods of investments, must conform to Article (5/1/8/5) of the AAOIFI Shari'ah Standard (17).

Furthermore, the Shari'ah Board advises Islamic financial institutions to decrease their involvements in debt-related operations and to increase true partnerships based on profit and loss sharing, in order to achieve the objectives of the *Shari'ah*.

In the end, all praise is due to Allah, Lord of all the Worlds!

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