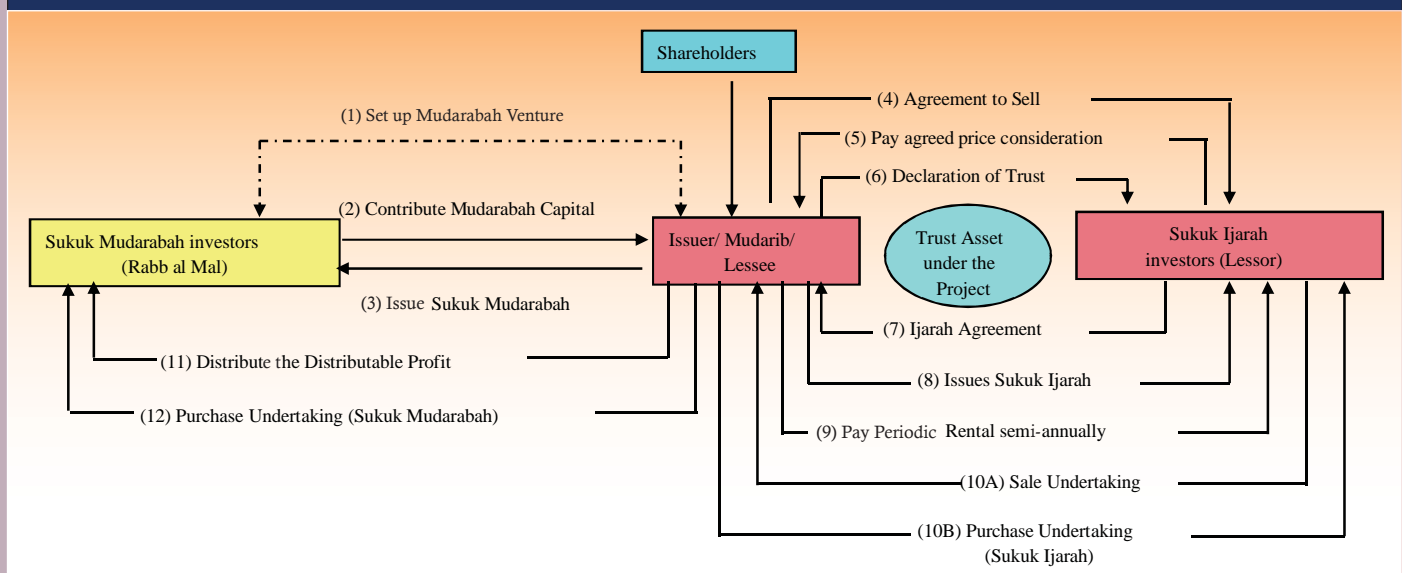


Legal Section

# Structuring Sukuk Ijarah and Mudarabah

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DIAGRAM OF ISSUANCE OF SUKUK IJARAH AND SUKUK MUDARABAH



In this article, we examine the issuance structure of a recent Sukuk issuance based on the Shariah principles of Ijarah (leasing) and Mudarabah (profit sharing).

## SETTING UP A MUDARABAH VENTURE

(a) Pursuant to the concession agreement, the issuer is set up to undertake the assigned business.

### Step 1

(b) For the purpose of undertaking the assigned business, the issuer shall invite the investors to participate in the Mudarabah venture. Under this venture, the issuer shall be the entrepreneur (Mudarib) whereas the investors shall be the capital providers (Rabb al maal).

### Step 2

(c) The Rabb al maal shall contribute financing capital (Mudarabah capital)

to fund the Mudarabah venture.

### Step 3

(d) The Mudarib shall issue the Sukuk Mudarabah to the Rabb al maal (also referred to as the Sukuk Mudarabah holder), evidencing the Rabb al maal's participation in Mudarabah ventures.

(e) The Sukuk Mudarabah shall be represented by Global Sukuk Mudarabah Certificates evidencing the Sukuk Mudarabah holder's participation and beneficial interest in the Mudarabah venture, hence entitling the Sukuk Mudarabah holders to receive the distributable profit i.e. the budgeted profit for the collection period based on the formula of profit equals budgeted revenue minus budgeted expenditure, subject to availability of the same.

(f) The obligations of the Sukuk Mudarabah holders shall be limited up to

the amount invested in the Mudarabah venture. The assigned business under the Mudarabah venture shall be, at all time, developed, operated, managed and represented by the issuer (as the Mudarib).

## LESSOR PARTICIPATION IN THE MUDARABAH VENTURE

(g) In order to carry out the assigned business, the issuer, in the capacity of Mudarib, shall also invite other investors to part finance the project.

### Step 4

(h) In relation to the invitation, the issuer and the investors shall enter into an **agreement to sell**, whereby the issuer shall sell to the investors (represented by the Trustee) the trust asset to be developed for an agreed price consideration and to be paid on staggered basis. Pursuant thereto, the investors shall acquire the beneficial



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ownership of the trust asset. For the purpose of the agreement to sell, the issuer shall represent the Mudarabah venture.

### Step 5

(i) Arising from the **agreement to sell**, whereby the issuer shall sell to the investors, the investors shall pay the first agreed price consideration.

### Step 6

(j) The issuer shall subsequently make a **declaration of trust** on the trust asset in favour of the investors. The issuer shall declare that it shall only hold the trust asset in trust for the investors and does not have any interest (beneficial or otherwise) other than merely reflected as the holder of the concession under the concession agreement. For the purpose of the declaration of trust, the issuer shall represent the Mudarabah venture.

### Step 7

(k) The issuer shall then enter into an **Ijarah agreement** with the investors (also referred to as the "lessor" and represented by the trustee), based on the principle of Ijarah Mawsufah Fi Zimmah (forward lease), whereby the lessor shall lease the trust asset to the issuer within the Ijarah period. For the purpose of the Ijarah agreement, the issuer shall represent the Mudarabah venture.

### Step 8

(l) The issuer (in its capacity as the lessee) shall issue Sukuk Ijarah to the lessor (also referred to as the Sukuk Ijarah holders). The Sukuk Ijarah shall be represented by Global Sukuk Ijarah certificates evidencing the lessor's undivided proportionate beneficial interest in the trust asset and its right to receive the periodic rental from the issuer as the lessee.

(m) As the beneficial owner of the trust asset, the lessor shall bear all cost(s) of major maintenance including takaful/insurance. In this regard, the issuer has agreed to pay all the said cost(s) on behalf of lessor. The lessor shall take into consideration the future cost(s)

and expenses to be incurred before determining the exact periodic rental under the Ijarah agreement.

(n) In relation to the Ijarah transaction, the lessor shall, at all times, be represented by the trustee for the purpose of including, but not limited to, the execution of the Ijarah agreement, payment of periodic rental and the exercise of the sale undertaking and purchase undertaking (Sukuk Ijarah) and the Mudarabah venture shall, at all times, be represented by the Mudarib.

## PERIODIC RENTAL

### Step 9

(o) Throughout the Ijarah period, the issuer shall pay the periodic rental to the lessor according to an agreed fixed schedule.

(p) Notwithstanding the stage of construction, during the construction period, the Issuer shall pay the periodic rental to the lessor under the principle of Ijarah Mawsufah Fi Zimmah. The periodic rentals (payable during the construction period) are deemed as partial payment/advance rental over the aggregate periodic rental under the Ijarah agreement. Consequentially, the future periodic rental to be paid under the Ijarah agreement shall be reduced, accordingly.

## TERMINATION OF LEASE

### Step 10(A)

(q) Upon expiry of the Ijarah agreement, the beneficial interest of the trust asset shall be transferred back to the Mudarib/lessee at a nominal value of RM1 at the end of the Ijarah period (i.e. upon redemption of the final Sukuk Ijarah) via an undertaking by the trustee in the **sale undertaking**.

### Step 10(B)

(r) Upon declaration of an event of default (Sukuk Ijarah):

(i) during the construction period, the lessee shall acquire the beneficial interest of the trust asset from the lessor at the exercise price i.e. the amount of the nominal value of

the Sukuk Ijarah plus the amount equivalent to the Periodic rental compensation on late payment (where applicable) and expenses incurred due and payable on such date, whereby in this case, such exercise price payable by the lessee shall be set-off with the refundable advanced periodic rental, if any, by the lessor to the lessee; and

(ii) during commercial operation of the trust asset, the lessee shall acquire the beneficial interest of the trust asset from the lessor at the exercise price, whereby in this case, such exercise price payable by the lessee shall be set-off with the refundable advanced periodic rental, if any, by the lessor to the lessee.

## PROFIT DISTRIBUTION TO SUKUK MUDARABAH HOLDERS

### Step 11

(s) Under the Mudarabah venture, the Mudarib shall distribute the distributable profit to the Sukuk Mudarabah holders based on an agreed profit sharing ratio.

## DISSOLUTION OF THE MUDARABAH VENTURE

### Step 12

(t) Either upon each maturity of the serial Sukuk Mudarabah or upon declaration of any event of default, the issuer shall acquire the interest in the Mudarabah venture.

Upon completion of the purchase, the Mudarabah venture shall then be dissolved. ☺



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