Issuing and Listing Sukuk in France
How to Take Advantage
of the Attractive French Legal and Tax Environment

FRENCH SUKUK GUIDEBOOK
NOVEMBER 2011
Disclaimer

Paris EUROPLACE has developed this Guide to assist those parties interested in learning about the possibility to issue or list sukuk in France whether using International Law or French Law. This Guide provides a summary of the regulatory environment for sukuk in France and the scope for application of such requirements. This Guide is also intended to provide guidance on the Islamic aspects of sukuk under French Law. This document does not constitute Shariah or financial advice, nor does it replace the regulatory requirements of the French Market Authority (AMF). It should be read in conjunction with the detailed requirements of NYSE Euronext Paris to form a definitive view in terms of the application of the relevant operating environment in France to each individual set of circumstances.

This Guide was prepared by the Paris EUROPLACE Islamic Finance Law Committee in November 2011.
**INTRODUCTION**

Islamic finance benefits from strong support in France. In building an appropriate and friendly environment, French authorities have contributed to make France an open country to Islamic finance. France has made a series of legal and tax adjustments into its financial system to integrate transactions and concepts that comply with Islamic ethical principles, ensuring their tax neutrality with respect to conventional finance. The regulatory body (French Financial Market Authority - AMF) has defined a working framework for managing Shariah-compliant funds, some of which are already being distributed in France. Islamic investors can benefit from a leading easy-to-access finance industry through the Paris Stock Exchange.

With a set of 3 documents, the purpose of this Guide is to explain how the French sukuk legal, regulatory and tax framework works. It explains what is required by the French Market Authority (AMF) in terms of documentation, it confirms that the Paris Stock Exchange operated by NYSE Euronext has created a specific segment dedicated to sukuk. It presents the key features of two underlying structures for the issuance of sukuk that comply both with French and Shariah law.

Paris EUROPLACE has been in charge of coordinating the Islamic finance development in France, in application of its mandate given by the Ministry of Economy, Finance and Industry. Paris EUROPLACE, has signed in 2009 an agreement with the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), which enacts legal, financial and accounting standards for Islamic finance in France. In that respect, this new environment promises a successful future for Islamic finance in France and in the Eurozone.

Paris EUROPLACE is the independent body representing the Paris financial Center and serves as a think-tank on international financial matters. Paris EUROPLACE gathers all the key players on the European marketplace: banks, investors, asset managers, the stock exchange, law firms and consultancies and keeps a close and collaborative relationship with the public authorities (regulators, ministries, etc.).
1- French Market Authority Sukuk Position
Admission to listing of Islamic bonds (sukuk) on a French regulated market

Sukuk are Islamic bonds linked to underlying assets by means of a variety of structures, of which the two main categories are currently:

- Sukuk for which the periodic distributions and reimbursement rely primarily on underlying assets and which therefore, by virtue of their construction, are equivalent to securitisation (i.e. an asset backed securities issue);
- Sukuk for which the periodic distributions and reimbursement are based on underlying assets, but for which investors rely primarily on the undertaking of one or more entities for part of or all payments in respect of the sukuk.

Sukuk which are issued in the context of a private and/or international placement will be admitted to the professional segment of the French regulated market, due to the inherent nature of the investors.

The compliance of the issue with Sharia rules does not fall within the remit of the AMF. It is the responsibility of the issuers, with assistance from their advisers, to incorporate into the prospectus the relevant elements, including appropriate details of the Sharia board involved in the transaction, which provide the necessary information to enable investors to make an informed decision.

The AMF's objective is to ensure that the prospectus has been prepared in accordance with European laws and regulations. As the European regulation does not include any specific annexes for Islamic bonds, article 23.2 of this Regulation stipulates that, where a prospectus for a security which is not the same as, but is comparable to, the various types of securities mentioned in the European Regulation, the issuer shall add the relevant information items from another securities note schedule provided for in the annexes of the European Regulation. This addition shall be done in accordance with the main characteristics of the securities being offered to the public or admitted to trading on a regulated market. It is therefore the issuer's responsibility to define the precise contents of the prospectus in accordance with article 23.2 of the European Regulation, taking into consideration the financial characteristics of the sukuk which it plans to list. The issuer will inform the AMF when filing the draft prospectus with the Authority of the type of sukuk being listed and the relevant annexes of the Regulation with which it is complying.

As an example, the AMF will consider that in the first case mentioned above, where the periodic distributions and reimbursement rely primarily on the underlying assets, the prospectus is prepared on the basis of the annex XIII with regards to the terms and conditions of the issue (in so much as the nominal amount of the bond is equal or greater than 50,000 euros), and the annexes related to “Asset Backed Securities”, with regards to the issuer and the assets (annexes VII and VIII of the European Regulation).

In the second case, where investors rely primarily on the undertaking of one or more entities for the payments in respect of the sukuk, the description of the securities follows annex XIII of the Regulation (in so much as the nominal amount of the bond is equal or greater than 50,000 euros). In addition, the principle stated in article 5 of the Prospectus directive, which requires the disclosure of any material information which enables an investor to make an informed decision, can be generally satisfied with the structure being described:

- either on the basis of annexes VI and IX, with the appropriate disclosure of the underlying contracts;
- or on the basis of annexes VII and VIII (considering that the underlying contracts are the relevant assets for this purpose), with the appropriate disclosure of the entities that have given an undertaking for part of or all payments of the sukuk, on the basis of item 2.2.11 of annex VIII.
2- French Market Authority Sukuk Q&A
AMF Q&A on drafting a sukuk prospectus and practical information on obtaining approval for listing on a regulated market
Contents

- What should a sukuk prospectus contain? .......................... p.2
- What information relating to the issue’s compatibility with Islamic law should be included in a sukuk prospectus? .......................... p.2
- Does the AMF impose additional requirements over and above those contained in the Prospectus Directive? .......................... p.2
- Does the sukuk prospectus have to be prepared in French? .......................... p.2
- When is a summary required? .......................... p.3
- What is the regulatory deadline for reviewing and approving a sukuk prospectus? .......................... p.3
- Do listed securities have to be denominated in euros? .......................... p.3
- Once listed on a French regulated market, in which language should periodic and ongoing disclosures on the security be published? .......................... p.3
- Can the issuer choose the listing segment? .......................... p.4
- Are dual listings allowed? .......................... p.4
- Does a sukuk issue have to receive a rating from a rating agency? .......................... p.4
- How do the annexes of the European Regulation affect the content of a sukuk prospectus? .......................... p.5
Issuers wishing to list their sukuk on a French regulated market are required to draft a prospectus for AMF approval. This position is intended to remind issuers of certain administrative procedures (deadlines, language, etc.) that apply, irrespective of the format they choose (a standalone or a base prospectus), and to explain how the European Regulation affects the contents of a sukuk prospectus.
What should a sukuk prospectus contain?

The European Regulation does not include any annexes specific to sukuk. It does say, however, that in the case of a prospectus for a security that is "not the same but comparable to" the various types of securities mentioned in the Regulation, the issuer should add the relevant information from another securities note schedule in the Regulation’s annexes. The issuer should therefore determine the specific contents of the prospectus with reference to the financial characteristics of the sukuk that it plans to list (cf. “How do the annexes of the European Regulation affect the content of a sukuk prospectus?”).

What information relating to the issue’s compatibility with Islamic law should be included in a sukuk prospectus?

Compliance of the issue with Sharia principles does not fall within the jurisdiction of the AMF. It is the responsibility of issuers, with assistance from their advisers, to incorporate into the prospectus the relevant items, including appropriate details of the Sharia board involved in the transaction, that enable investors to make an informed decision about investing in sukuk.

Does the AMF impose additional requirements over and above those contained in the Prospectus Directive?

No it does not. The regulations concerning securities admitted for listing on a regulated market are the same throughout Europe.

Does the sukuk prospectus have to be prepared in French?

There is no obligation to use French in the case of a simple admission of sukuk to listing on a French regulated market. A sukuk prospectus may also be prepared in English(1).

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(1) In this position, “English” means a language that is customary in the sphere of finance.
**When is a summary required?**

A summary is required only if the application concerns the listing on a regulated market of a sukuk with a denomination of less than €50,000. In a brief manner and using non-technical language, the summary should convey the essential characteristics and risks associated with the issuer, any underwriters and the securities.

**What is the regulatory deadline for reviewing and approving a sukuk prospectus?**

The deadline provided for in the Prospectus Directive, which has been transposed into the AMF General Regulation, is ten working days. Whenever a draft standalone or base prospectus is submitted, the AMF sends an acknowledgement of receipt to the issuer if the file is complete. It then issues its decision on prospectus approval within ten days of issuing the acknowledgement of receipt.

**Do listed securities have to be denominated in euros?**

The AMF imposes no restrictions on the currency of issuance.

**Once listed on a French regulated market, in which language should periodic and ongoing disclosures on the security be published?**

Periodic and ongoing disclosures may be published in English when the issuer’s registered office is outside the European Economic Area or when the denomination of the securities admitted to listing is €50,000 or more.

Issuers of sukuk with denominations of €50,000 or more, or the equivalent in another currency, are not required to publish annual financial statements in France.

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1. See footnote 2.
Can the issuer choose the listing segment?

The issuer is free to choose the segment in which the sukuk are to be listed (e.g. the professional segment).

Are dual listings allowed?

Multiple listings do not pose a problem.

A prospectus approved in Paris may receive an approval certificate, or “passport”. This is a straightforward and virtually automatic procedure that allows issuers to list their securities on several exchanges, as they see fit. In practice, the AMF can issue the passport promptly and free of charge if the issuer asks for it when filing the draft prospectus. The AMF forwards the passport to the regulators in the other European Union Member States or states party to the European Economic Area agreement in which the issuer wishes to use its prospectus.

Naturally, the issuer may request a passport at any time. However, issuers are reminded that submitting a request in due time will make it easier for them to arrange translations of the summary for the countries concerned.

Does a sukuk issue have to receive a rating from a rating agency?

The AMF General Regulation does not require ratings for sukuk issues. The prospectus should simply and clearly mention the issue's rating or lack of a rating.
How do the annexes of the European Regulation affect the content of a sukuk prospectus?

Issuers of sukuk in denominations greater than or equal to €50,000 may refer to the following annexes:

1. In the case of a sukuk for which the return and repayment rely primarily on underlying assets, for example, the prospectus should be based on Annex XIII concerning the issue’s characteristics and on the annexes concerning asset backed securities in relation to the issuer and the assets (Annexes VII and VIII of the Regulation).

2. Where investors rely on the commitment of one or more entities for part of or all payments in respect of the sukuk, the description of the sukuk characteristics should be based on Annex XIII of the Regulation. Moreover, the principle laid down in the Prospectus Directive that the prospectus should contain all the material information required for an investor to take an informed decision may generally be satisfied with a description of the security’s structure:

   • either on the basis of Annexes VI and IX, with the appropriate disclosure of the underlying contracts;

   • or on the basis of Annexes VII and VIII (considering that the underlying contracts are the relevant assets for this purpose), with the appropriate disclosure of the entities that have given a commitment for all or part of the payments of the sukuk, on the basis of item 2.2.11 of Annex VIII.
CONTACT

To facilitate the process of reviewing applications, the AMF encourages issuers and their advisors to get into direct contact with the relevant AMF departments as early as possible to talk about the proposed issue and discuss any questions.

You can reach the Banking, Insurance and Debt Securities Unit of the AMF’s Corporate Finance Division on +33(0)1 5345 6251
3- The Euronext Paris Sukuk Listing Segment
Change your point of view

The Euronext Paris segment for Sukuk and equivalent securities

NYSE Euronext provides issuers with the opportunity to have their Sukuk issues* and equivalent securities listed on both, the main market and the professional segment of its regulated market in Paris. The listing process is the same as for traditional bond issues.

As part of the admission process for a Sukuk issue, the AMF (Autorité des Marchés Financiers - French financial markets authority) is responsible for ensuring that the prospectus complies with the EU Prospectus Directive. Compliance of the issue with the principles of Sharia law does not fall within the remit of the AMF, this being the responsibility of the Sharia Board**.

The French tax treatment of Sukuk issues and equivalent securities is neutral:

- For issuers, the compensation paid on the Sukuk is, for tax purposes, treated just like the interest on a traditional bond offering, and is deductible from taxable income;
- For investors, the compensation paid to non-resident Sukuk holders is exempt from withholding tax in France, regardless of whether the offering is governed by French law or the laws of another country.

* Bond-like instruments that comply with Islamic law and its investment principles.

** The AMF’s position of July 2, 2008 can be found at: http://www.amf-france.com/documents/general/8365_1.pdf

Why choose the Paris financial centre?

- Strong political will shared by all players across the French financial community;
- Unparalleled access to a broad European investor base. The quality and liquidity of the French asset management market are key advantages to ensuring the success of issues;
- Presence of professionals in Islamic finance. In this regard, Paris Europlace recently signed a Memorandum of Understanding with AAOIFI (the Bahrain-based Accounting and Auditing Organization for Islamic Financial Institutions), providing it with unparalleled access to Islamic accounting principles and their interpretations;
- Major French banks have expanded their Islamic finance offer in response to growing demand.

Advantages of Sukuk issues on Euronext Paris

- Access to the world’s largest pool of capital;
- Status associated with being listed on NYSE Euronext;
- Experienced listing teams to support issuers throughout the process;
- Reliability and security of NYSE Euronext’s market infrastructure;
- Synergies thanks to the relationship established with the Qatar Exchange as part of a strategic partnership with the State of Qatar since June 2009.

Sukuk and equivalent securities listing process

NYSE Euronext offers an efficient process to facilitate the listing of your securities on its markets. The table below summarises the key steps to list Sukuk and equivalent securities on Euronext Paris:

<table>
<thead>
<tr>
<th>Operational process for listing Sukuk and equivalent securities on the regulated market and the professional segment</th>
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<tbody>
<tr>
<td>1</td>
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<td>2</td>
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*Bond-like instruments that comply with Islamic law and its investment principles.
**The AMF’s position of July 2, 2008 can be found at: http://www.amf-france.com/documents/general/8365_1.pdf
Below we have illustrated the approximate timeline from the time your prospectus is submitted for approval by the regulator:

<table>
<thead>
<tr>
<th>D-11 (FOR RECURRING ISSUERS)</th>
<th>D-21 (FOR NEW ISSUERS)</th>
<th>D-1 PRIOR TO 10 AM CET</th>
<th>D-1 PRIOR TO 1 PM CET</th>
<th>LISTING DAY (D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Submission of the draft prospectus and required documents to the AMF</td>
<td>- Submission of the file, draft prospectus and required documents to Euronext Paris</td>
<td>- Request for admission to Euronext Paris</td>
<td>- Publication of the Euronext notice which officially announces listing</td>
<td>- Listing finalised</td>
</tr>
</tbody>
</table>

**Key listing conditions for Sukuk and equivalent securities issuance**

<table>
<thead>
<tr>
<th>REGULATED AND PROFESSIONAL MARKETS</th>
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<tbody>
<tr>
<td><strong>Minimum issuance</strong></td>
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<td><strong>Accounting standards</strong></td>
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**Required Documents**

- Regulator-approved prospectus
- Certification issued by the Sharia Board and provided to the arranger and the investors

**General documentation to be provided for the listing application for Sukuk and equivalent securities**

<table>
<thead>
<tr>
<th>GENERAL DOCUMENTATION TO BE PROVIDED FOR A STAND ALONE ISSUE</th>
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<tbody>
<tr>
<td>1 A letter in which the issuer applies for securities listing and specifies:</td>
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<tr>
<td>• the name of the institution(s) that will lead-manage the issue, take responsibility for the listing operation, and act as a transfer agent for the securities in France of which the listing agent is included;</td>
</tr>
<tr>
<td>• if liquidity provision is expected, the issuer may, in accordance with NYSE Euronext, sign a liquidity provision contract with a member of Euronext Paris.</td>
</tr>
<tr>
<td>2 A copy of the Sukuk issuance approval (such as the minutes of general assembly or a statement issued by the Board of Directors);</td>
</tr>
<tr>
<td>3 A copy of the draft prospectus, compliant with the instructions of the AMF;</td>
</tr>
<tr>
<td>4 A copy of the final prospectus;</td>
</tr>
<tr>
<td>5 In the case that an institution is responsible for, all or part of the payments due in respect of the Sukuk, a letter in which said institution undertakes to inform Euronext Paris immediately of:</td>
</tr>
<tr>
<td>• any fact that may materially affect its solvency;</td>
</tr>
<tr>
<td>• any changes to the undertaking covering the securities in question.</td>
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</tbody>
</table>

**General documentation to be provided for an issue under a programme**

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<thead>
<tr>
<th>GENERAL DOCUMENTATION TO BE PROVIDED FOR AN ISSUE UNDER A PROGRAMME</th>
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<tbody>
<tr>
<td>1 A letter in which the issuer applies for securities listing and specifies:</td>
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<tr>
<td>• the reference of the issuance programme or the information document applicable to the forthcoming issue,</td>
</tr>
<tr>
<td>• the maximum number of securities or amount that may be issued,</td>
</tr>
<tr>
<td>2 A copy of the Sukuk issuance approval (such as the minutes of general assembly or a statement issued by the Board of Directors);</td>
</tr>
<tr>
<td>3 A copy of the issuance programme bearing the visa of the AMF. Any updates or additions to the programme, also bearing the visa of the AMF, must be sent immediately.</td>
</tr>
<tr>
<td>4 In the case that an institution is responsible for, all or part of the payments due in respect of the Sukuk, a letter in which said institution undertakes to inform Euronext Paris immediately of:</td>
</tr>
<tr>
<td>• any fact that may materially affect its solvency;</td>
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<td>• any changes to the undertaking covering the securities in question.</td>
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4- French Tax Administration - Sukuk Tax Ruling (French Version)
BULLETIN OFFICIEL DES IMPÔTS

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IMPOT SUR LE REVENU (IR). IMPOT SUR LES SOCIÉTÉS (IS). TAXE SUR LA VALEUR AJOUTEE (TVA). DROITS D'ENREGISTREMENT. CONTRIBUTION ÉCONOMIQUE TERRITORIALE (CET). REGIME APPLICABLE AUX SUKUK D'INVESTISSEMENT

NOR : ECE L 10 00002 J

Bureaux A, B1, C2, D1 et D2

PRESENTATION

La présente instruction a pour objet de préciser le régime fiscal applicable à l’un des principaux outils de la finance islamique : les sukuk d’investissement et autres instruments financiers assimilés.

Les sukuk d’investissement sont ici des titres financiers hybrides négociables dont, comme pour les produits financiers assimilés, la rémunération et, le cas échéant, le capital, sont indexés sur la performance d’un ou plusieurs actifs sous-jacents détenus directement ou indirectement par l’émetteur.
SOMMAIRE

INTRODUCTION

Section 1 : Caractéristiques des sukuk d'investissement et autres instruments financiers assimilés

I. Sukuk d’investissement
II. Titres de créance et prêts indexés sur la performance d’un ou plusieurs actifs
III. Caractéristiques communes aux sukuk d’investissement et aux autres instruments financiers assimilés

A. Droits et obligations des titulaires de sukuk d’investissement ou de titres de créance ou prêts indexés
B. Conditions de rémunération et de remboursement

Section 2 : Modalités d’imposition applicables

Section 3 : Entrée en vigueur
INTRODUCTION

1. Les développements qui suivent traitent des questions fiscales relatives à l’un des principaux outils de la finance islamique : les sukuk d’investissement et autres instruments financiers assimilés.

2. Il s’agit de déterminer les conditions dans lesquelles, compte tenu de leurs caractéristiques propres, ces instruments émis sur le fondement du droit français ou d’un droit étranger peuvent être assimilés sur le plan fiscal à des prêts, des titres de créance le cas échéant négociables ou des obligations, ainsi que de préciser le régime fiscal qui leur est applicable.

3. A défaut de précision contraire, les articles mentionnés dans cette instruction sont ceux du code général des impôts.

Section 1 : Caractéristiques des sukuk d’investissement et autres instruments financiers assimilés

I. Sukuk d’investissement

4. Les sukuk d’investissement sont ici des titres financiers hybrides négociables dont la rémunération et, le cas échéant, le principal sont indexés sur la performance d’un ou plusieurs actifs sous-jacents détenus directement ou indirectement par l’émetteur. Leur porteur bénéficie d’un droit assimilé à un droit de copropriété direct ou indirect sur ce ou ces actifs. Le ou les actifs concernés sont des services, biens ou droits ou l’usufruit de ces biens ou droits.

II. Titres de créance et prêts indexés sur la performance d’un ou plusieurs actifs


III. Caractéristiques communes aux sukuk d’investissement et aux autres instruments financiers assimilés

6. Sont exposées ci-après les caractéristiques que doivent présenter les sukuk d’investissement, titres de créance et prêts indexés pour bénéficier du régime fiscal décrit en section 2.

A. Droits et obligations des titulaires de sukuk d’investissement ou de titres de créance ou prêts indexés

7. Ils sont désintéressés avant les associés de l’émetteur ou de l’emprunteur, quelle que soit la nature des titres de capital émis par ce dernier (comme par exemple, s’agissant des titres émis sur le fondement du droit français, des actions définies aux articles L. 228-7 à L. 228-29-7 du code de commerce ou des parts sociales).

8. Ils ne bénéficient pas des droits reconnus aux associés, notamment ni du droit de vote dans la structure émettrice ou emprunteuse ni du droit au boni de liquidation lors de la liquidation de celle-ci, sauf le cas échéant après conversion de leurs titres ou de leurs prêts en titres de capital.

9. Les conditions posées aux paragraphes 7 et 8 sont réputées remplies dans le cas de titres de créance émis par un organisme de titrisation ou de parts de fonds commun de titrisation bénéficiant du régime fiscal antérieurement applicable aux parts de fonds communs de créances dans le cadre défini par l’instruction administrative du 25 juillet 2008 publiée au bulletin officiel des impôts (BOI) sous la référence 5 I-4-08.

1 Sont par suite exclus les fonds supportant des risques d’assurance mentionnés aux articles L. 214-49-11 à L. 214-49-13 du code monétaire et financier.
B. Conditions de rémunération et de remboursement

10. La rémunération est fonction de la performance des actifs (indexation). La rémunération des sukuk d'investissement, des titres de créance et des prêts indexés est variable et fonction des bénéfices dégagés sur ces actifs ou sur les résultats de l'émetteur ou de l'emprunteur. A cet égard, elle peut être nulle en cas de perte.

11. Toutefois, une cible de rémunération (« taux de profit espéré ») est indiquée aux porteurs de sukuk d'investissement, de titres de créance et de prêts indexés ; celle-ci est plafonnée à un taux de marché reconnu (par exemple : Euribor, Libor), augmenté d'une marge conforme aux pratiques observées sur le marché des titres de créance.

Pour parvenir à servir le « taux de profit espéré », le contrat peut prévoir un lissage dans le temps de la rémunération des porteurs au travers de l'activation d'un « compte de réserve » mis en place par l'émetteur. Ce compte est abondé lorsque la performance du ou des actifs est supérieure au « taux de profit espéré », et utilisé lorsqu'elle est inférieure à ce taux. Ainsi, seule la rémunération correspondant au « taux de profit espéré » est exigible aux échéances de paiement prévues par le contrat (mensuelles, trimestrielles…).

Le détenteur de titre, personne physique dans le cadre de son activité professionnelle commerciale ou personne morale, est en mesure d'enregistrer à chaque échéance de paiement prévue par le contrat (mensuelles, trimestrielles, …), la rémunération correspondant au « taux de profit espéré », diminuée le cas échéant, d'une provision déductible sur le plan fiscal dans les conditions de droit commun, notamment si le porteur démontre la probable incapacité de l'émetteur à verser le montant exigible d'ici à l'échéance du titre.

Le compte de réserve est clôturé à l'échéance du titre. L'éventuel excédent est alloué selon les modalités propres au contrat, incluant les porteurs de titres au titre de l'indexation retenue dans le contrat, voire un tiers. Il peut également être utilisé pour compenser pour les porteurs de titres tant ou partie d'une éventuelle perte en capital lors de la revente des actifs (cf. n° 13).

Le remboursement du principal peut être partiel du fait de l'indexation retenue dans le contrat. Le remboursement des sukuk d'investissement, titres de créance et prêts indexés est soit progressif, soit réalisé au terme prédéfini dans le contrat.

12. Pour les sukuk, les titres et prêts ayant financé un ou plusieurs actifs, le remboursement est fonction de la valeur de cession des actifs à la date d'échéance des titres ou du prêt, ainsi que des remboursements du principal inclus dans les loyers, notamment dans l'hypothèse où l'actif financé est donné en crédit-bail par l'émetteur ou emprunteur.

13. Lorsque la valeur du ou des actifs financés ne permet pas de rembourser la valeur nominale des titres ou le montant du prêt, le droit à remboursement du principal, du fait de l'indexation retenue dans le contrat, est réduit à due concurrence de l'insuffisance constatée. Lorsque la valeur du ou des actifs financés excède la valeur nominale des titres ou le montant du prêt, le remboursement peut excéder le montant du principal conformément à la règle d'indexation retenue dans le contrat.

Pour limiter le risque de perte en capital à l'échéance du titre, le contrat peut également prévoir la constitution d'un second compte de réserve, ci-après dénommé « compte de réserve sur risque d'investissement », abondé en cours de vie du produit par prélèvement sur les bénéfices dégagés par les actifs ou les résultats de l'émetteur ou de l'emprunteur. Ce compte est clôturé à l'échéance du titre. Son solde lors de la clôture, éventuellement ajouté à celui du compte de réserve visé au n° 11, est alloué selon les modalités du contrat et peut à ce titre revenir notamment aux porteurs de titres au titre de l’indexation retenue dans le contrat, voire à un tiers.

Section 2 : Modalités d'imposition applicables

14. Au regard de leurs caractéristiques (cf. III de la section 1) et jusqu'à leur éventuelle conversion en titres de capital, les sukuk d'investissement ou les titres de créance et prêts indexés peuvent être considérés fiscalement, pour l'application des dispositions du code général des impôts (CGI), comme des titres de créance, le cas échéant négociables, ou des prêts et s'agissant des sukuk, comme des obligations ou des titres de créance négociables selon leur forme juridique et leur maturité. Dès lors également, les rémunérations servies aux porteurs des sukuk d'investissement ou des titres de créance et prêts indexés sont traitées sur le plan fiscal comme des intérêts dans les conditions de droit commun, avec notamment application de la règle du couru (article 38-2 bis) au titre du "taux de profit espéré" en matière d'imposition des bénéfices industriels et commerciaux.
15. Ces dispositions sont applicables aux émetteurs comme aux porteurs de titres résidents ou non résidents, et visent notamment les impôts et taxes suivants : impôt sur les sociétés, impôt sur le revenu (notamment régime du prélèvement forfaitaire obligatoire sur les produits financiers à revenu fixe de source française), contribution économique territoriale, taxe sur la valeur ajoutée, droits d’enregistrement.

16. Dans ce cadre, la charge déductible pour l’émetteur de sukuk d’investissement ou de titres de créance indexés, ou pour l’emprunteur recourant à un prêt indexé, correspond à la rémunération exigible en vertu du contrat d’émission, soit le « taux de profit espéré ». En d’autres termes, l’abondement de la réserve visée au B du paragraphe III de la section 1, pendant les périodes de paiement de la rémunération, pourra faire l’objet d’une provision non déductible sur le plan fiscal. Symétriquement, le prélèvement sur la réserve générera une reprise de provision non imposable.

La charge déductible correspondra à la rémunération calculée sur la base du « taux de profit espéré ». Si celui-ci n’est pas servi intégralement après utilisation de la réserve, à l’échéance du titre ou du prêt, l’émetteur, dans la mesure où il sera alors délié de toute obligation de servir la rémunération correspondant au « taux de profit espéré », devra constater un produit imposable dans les conditions de droit commun (abandon de créance) égal à la différence entre le « taux de profit espéré » et la rémunération effectivement servie.

17. Lorsqu’un « compte de réserve sur risque d’investissement » est prévu au contrat, les montants affectés à cette réserve sont sans incidence sur le résultat imposable de l’émetteur. L’abondement de ce compte de réserve ne remet pas en cause la constitution et la déductibilité dans les conditions de droit commun des provisions enregistrées pour prendre en compte la dépréciation éventuelle de l’actif.

Section 3 : Entrée en vigueur

18. La présente instruction annule et remplace le titre II de l’instruction administrative du 25 février 2009 publiée au BOI sous la référence 4 FE/09. Elle s’applique aux titres émis ou aux prêts conclus à compter de la date de sa parution.

La Directrice de la législation fiscale

Marie-Christine LEPETIT
5- Paris EUROPLACE Presentation – “French Sukuk: The Legal and Tax Framework”
French Sukuk: The legal and tax framework

Gilles Saint Marc

Partner, Gide Loyrette Nouel

Member of the Steering Committee, Paris EUROPLACE

The current situation of development of Islamic Finance and its potential for future

Introduction

- Reasons for France’s interest in Islamic Finance
  - Immediate short-term reasons: need for liquidity
  - Long-term reasons: interest for an alternative participating finance

- France, a Sharia-friendly legal and tax environment
  - Common principles
  - Adequate general legal structures
  - Dedicated law ans regulations:
    - Mutual funds
    - Sukuk
    - Mursabahatransactions
    - Ijaratransactions
    - Istisnaa/transactions

- Practical implementations
  - Real estate financings
  - Mutual funds
  - Retail banking
Reasons for France’s interest in Islamic Finance

- Integrating factor of a modern and moderated Islam: France concentrates the largest Muslim population in Europe (6 million)
  - 3 times bigger than Muslim population in the UK
  - French secularism: neutrality of the State as regard to religions, without being atheistic

- Islamic Finance: an alternative ethical source of financing
  - Simplicity and practicality vs. unnecessary complexity
  - Long-term financing: matching maturity of long-term investment
  - Participative financing in the performance of the underlying assets: the financier acts as a partner of the company (higher remuneration) and the remuneration due by the company is only based on the cash-flows generated by the financed assets (lower risk)
  - Asset-based financing: financing based on tangible assets (project finance, shipping, car fleet, aircraft, goods, machinery) vs. financial assets (derivatives, CDO etc.), which limits the risk of bubbles and of excessive leverage
  - Transparency: Sharia-compliance of the financing provided that the use of funds be Sharia-compliant itself

France: A Sharia-friendly legal and tax environment
*Dedicated law and regulations - Sukuk*

- 2 legal structures under French law have been validated by the AAOIFI in November 2010
France: A Sharia-friendly legal and tax environment

Legal framework

Structure 1: Participatory Certificates (all kind of assets financing)

Investors

Participatory Certificates

Investment

SPV Issuer

Management Company

Corporate

Lease + undertaking to purchase

Rent + repurchase price

100% held subsidiary

Remuneration depending on the corporate issuer’s performance (income or profit)

- Repayment of the certificate: market value of the certificates. In case the SPV issuer shall sell the assets on the market, the repayment will be equal to the sale price of the asset less the payment due to the Management Company.

Legal framework: Existing common legal rules

- Sukuk
- Implementation of an equivalent to Anglo-saxon trust: Fiducie

Comments on SPV Issuer Structure

- The investors invest in specific assets held by a specific SPV which will be set up for the purpose of the investment. The SPV Issuer is a 100% held subsidiary of the Corporate.
- A Management Company will be responsible for the management of the financed assets. It will receive a small annual management fee.
- The SPV Issuer will lease the financed assets to the Corporate against payment of rents. At the maturity of the participatory certificates, the Corporate will undertake to purchase the leased assets from the SPV Issuer against payment to the SPV Issuer of a purchase price equal to the market value of the leased assets. The legal form of the participatory certificates will be bonds (obligations). Their economic characteristics would be similar to preferred shares.
- In case the Corporate fails to perform its purchase undertaking, the Management Company will take care, on behalf of the SPV Issuer, of disposing of the financed assets on the market and allocate the proceeds to the repayment of the investors, potentially with a loss or a gain if the market value of the financed assets is, respectively, less or higher than the amount initial subscribed by the investors.
- In the event a capital gain is realized upon the sale of the assets, the Management Company will receive an exceptional fee corresponding to most of the capital gain.
France: A Sharia-friendly legal and tax environment

**Legal framework**

- **Structure 2: Combination of ABS and Fiducie**
  (refinancing of real estate assets)

- Sukukholders are co-owners of:
  - the right to receive the Rents
  - the benefit of the legal ownership of the Underlying Assets held by the Fiduciary

- At maturity: if the Original Owner fails to perform its Undertaking to repurchase, the Fiduciary will dispose of the Underlying Assets on the market.

- Sukukholders are co-owners of:
  - the right to receive the Rents
  - the benefit of the legal ownership of the Underlying Assets held by the Fiduciary

- A French regulated securitization vehicle (fondscommun de titrisation) will issue units representing the co-ownership rights of the investors in the assets owned by the vehicle (the Issuer).

- The assets owned by the Issuer (the Sukuk Assets) are:
  - the rights to receive the rental payments under the lease agreements related to the Underlying Assets, which will be sold by the Original Owner to the Issuer (the Rents), and
  - the benefit of the legal ownership of the Underlying Assets (including the related lease agreements) held by the Fiduciary.
France: A Sharia-friendly legal and tax environment

Legal framework

- Transfer of the Sukuk Assets by the Original Owner
  - On the same day and at the same time:
    - The Original Owner will sell directly to the Issuer its right to receive the Rents against payment of purchase price by the Issuer to the Original Owner, out of the proceeds raised by the Sukuk issuance, pursuant to the terms of the Transfer Agreement (see below);
    - The Original Owner will transfer the legal ownership of the Underlying Assets (including the related lease agreements) to the Fiduciary pursuant to the terms of the Fiduciary Agreement (see below), which will hold the Underlying Assets for the benefit of the Issuer, and therefore for the benefit of the Sukukholders [given that the Issuer is a fund and as such has no legal personality].
  - The legal ownership right of the Fiduciary on the Underlying Assets will be registered (if the Underlying Assets are real estate assets or rights) at the land registry.
  - The Fiduciary will either manage the Underlying Assets itself during the term of the issuance or will sub-delegate its duties to a third party (provided that such third party is not the Original Owner or one of its affiliates).

- As a result thereof, the Original Owner will no longer be the legal owner of the Rents and of the Underlying Assets, and the risks associated to these Sukuk Assets will be passed onto the Sukukholders.
- In particular, in the event of a total destruction of, or an expropriation related to, the Underlying Assets and in the event that the amount of the indemnity received from the insurance company or the State (as the case may be) is lower than the nominal amount of the Sukuk, the Sukukholders will bear the loss of the shortfall. Moreover, in the event of the bankruptcy of the Original Owner, the Sukukholders will not be creditors of the Original Owner and will be entitled to request the Issuer to dispose of the Sukuk Assets for their benefit.
- It will be highlighted in the Transaction Documents (see below) that the Sukukholders will subscribe to the Sukuk in consideration of them becoming the legal owner of the Sukuk Assets, i.e. directly of the Rents and indirectly (through the Fiduciary) of the Underlying Assets.
France: A Sharia-friendly legal and tax environment

Legal framework

- During the term of the issuance of the Sukuk: Payment of the remuneration by the Issuer to the Sukukholders
  - Sukukholders will receive, as remuneration on the Sukuk, the Rents actually received by the Issuer from the assigned lessees.
- At maturity of the Sukuk: Repayment of the Sukuk by the Issuer
  - Normal scenario
    - At maturity, the Original Owner shall repurchase the Sukuk Assets for a purchase price equal to the then outstanding principal amount of the Sukuk pursuant to the Undertaking to Repurchase (see below).
    - Such purchase price will be used by the Issuer in order to repay the Sukuk at maturity.
    - If the Original Owner performs its obligations vis-à-vis the Issuer under the Undertaking to Repurchase, the Fiduciary will transfer the Underlying Assets back to the Original Owner.

- Original Owner event of default scenario
  - In the event that the Original Owner fails to perform its obligations vis-à-vis the Issuer under the Undertaking to Repurchase, the Fiduciary will dispose of the Underlying Assets on the market for their then available market value and the proceeds of such disposal will be allocated to the Issuer in order to repay the Sukukholders.
  - All, but only, the proceeds resulting from the disposal of the Underlying Assets (whether it is a loss or a gain given the nominal value of the Sukuk at issuance) will be allocated to the Sukukholders as repayment of the Sukuk and full discharge of the Issuer.
France: A Sharia-friendly legal and tax environment

Tax framework

- Tax treatment of Sukuk transactions and assimilated debt instruments such as indexed loans or bonds (Tax Instruction of 24 August 2010):
  - Sukuk are assimilated to debt instruments for tax purposes provided that they comply in particular with the four following requirements
    - Sukuk must rank senior to any shareholders of the SPV
    - Sukuk must not entitle the holders to any shareholders rights like voting rights in the SPV, right to liquidation surplus etc
    - Remuneration under Sukuk must be based on the assets’ performance or on the results of the SPV and must be subject to a predetermined cap (Euribor, Libor), plus margin
    - When the value of the financed assets exceeds the par value of the Sukuk or the amount of the loan, the repayment may exceed the amount of the principal pursuant to the indexation rule provided for in the contract
  - As a result thereof, the remuneration under Sukuk:
    - is deductible from the taxable result of the SPV under similar conditions than interests (at expected profit rate)
    - is exempted from withholding tax when paid to non French tax residents (except in case of payment to non cooperative territories)

Other regulations

- Sukuk:
  - Recommendation of the AMF on 2 July 2008 for listing of the Sukuk on Euronext Paris:
    - Sukuk are assimilated to debt instruments and not equity
    - Acknowledges that Sukuk issues may be structured either
      - as asset-backed or
      - as asset-based
    - Provides information on level of disclosure to be set out in offering circulars:
    - A target remuneration ("expected profit rate") is indicated to the Sukuk holders
  - Practical guide issued by NYSE-Euronext (2 July 2009) regarding the listing of Sukuk on Euronext
  - Practical guide issued by AMF (October 2010) regarding the format of a Sukuk prospectus
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6- Paris EUROPLACE French Law Sukuk Al Ijara Structure
Paris EUROPLACE has gathered finance professionals, expert lawyers, including tax specialists, and Shariah Scholars, from both French and International backgrounds, to design sukuk structures that would be altogether Shariah compliant, enforceable under French law, and efficient on a tax perspective.

The following memorandum provides a structure that Paris EUROPLACE believes will satisfy all of the above conditions. It summarizes our common understanding of the structure and displays the terms and conditions of the contemplated key transaction documents.

The purpose of this memorandum is to provide the market participants with general guidelines for the structuring of a French sukuk in a way that has been collectively accepted by relevant experts.

It must be highlighted that the structure described below is not a readily usable structure applicable in all cases. Shariah scholars and professional lawyers should be appointed to review any actual sukuk structure together with all its supporting documentation.

The Shariah compliance confirmation of actual issuances based on this structure will remain subject to the assessment, on a case by case basis, by the relevant Shariah board of each transaction and the issuance of a specific fatwa.

The following structure is one of the two structures that Paris EUROPLACE has engineered.

Paris EUROPLACE
DESCRIPTION OF THE STRUCTURE

A. Issue of Sukuk

A French regulated securitization vehicle (fonds commun de titrisation) will issue units representing the co-ownership rights of the investors in the assets owned by the vehicle (the Issuer).

The assets owned by the Issuer (the Sukuk Assets) are:
- the rights to receive the rental payments under the lease agreements related to the Underlying Assets, which will be sold by the Original Owner to the Issuer (the Rents), and
- the benefit of the legal ownership of the Underlying Assets (including the related lease agreements) held by the Fiduciary.

B. Transfer of the Sukuk Assets by the Original Owner

On the same day and at the same time:

1. The Original Owner will sell directly to the Issuer its right to receive the Rents against payment of purchase price by the Issuer to the Original Owner, out of the proceeds raised by the Sukuk issuance, pursuant to the terms of the Transfer Agreement (see below);

2. The Original Owner will transfer the legal ownership of the Underlying Assets (including the related lease agreements) to the Fiduciary pursuant to the terms of the Fiduciary Agreement (see below), which will hold the Underlying Assets for the benefit of the Issuer, and therefore for the benefit of the Sukukholders given that the Issuer is a fund and as such has no legal personality.

The legal ownership right of the Fiduciary on the Underlying Assets will be registered (if the Underlying Assets are real estate assets or rights) at the land registry.

The Fiduciary will either manage the Underlying Assets itself during the term of the issuance or will sub-delegate its duties to a third party (provided that such third party is not the Original Owner or one of its affiliates).

As a result thereof, the Original Owner will no longer be the legal owner of the Rents and of the Underlying Assets, and the risks associated to these Sukuk Assets will be passed onto the Sukukholders.

In particular, in the event of a total destruction of, or an expropriation related to, the Underlying Assets and in the event that the amount of the indemnity received from the insurance company or the State (as the case may be) is lower than the nominal amount of the Sukuk, the Sukukholders will bear the loss of the shortfall. Moreover, in the event of the bankruptcy of the Original Owner, the Sukukholders will not be creditors of the Original Owner and will be entitled to request the Issuer to dispose of the Sukuk Assets for their benefit.

It will be highlighted in the Transaction Documents (see below) that the Sukukholders will subscribe to the Sukuk in consideration of them becoming the legal owner of the Sukuk Assets, i.e. directly of the Rents and indirectly (through the Fiduciary) of the Underlying Assets.
C. During the term of the issuance of the Sukuk: Payment of the remuneration by the Issuer to the Sukukholders

Sukukholders will receive, as remuneration on the Sukuk, the Rents actually received by the Issuer from the assigned lessees up to a certain target amount. Any additional performance perceived in excess to this amount will be granted to the Issuer as a performance fee.

D. At maturity of the Sukuk: Repayment of the Sukuk by the Issuer

1. Normal scenario

At maturity, the Original Owner shall repurchase the Sukuk Assets for a purchase price equal to the then outstanding principal amount of the Sukuk pursuant to the Undertaking to Repurchase (see below).

Such purchase price will be used by the Issuer in order to repay the Sukuk at maturity.

If the Original Owner performs its obligations vis-à-vis the Issuer under the Undertaking to Repurchase, the Fiduciary will transfer the Underlying Assets back to the Original Owner.

2. Original Owner event of default scenario

In the event that the Original Owner fails to perform its obligations vis-à-vis the Issuer under the Undertaking to Repurchase, the Fiduciary will dispose of the Underlying Assets on the market for their then available market value and the proceeds of such disposal will be allocated to the Issuer in order to repay the Sukukholders.

All, but only, the proceeds resulting from the disposal of the Underlying Assets (whether it is a loss or a gain given the nominal value of the Sukuk at issuance) will be allocated to the Sukukholders as repayment of the Sukuk and full discharge of the Issuer.
At maturity: if the Original Owner fails to perform its Undertaking to Repurchase, the Fiduciary will dispose of the Underlying Assets on the market.

Sukukholders are co-owners of:
- the right to receive the Rents
- the benefit of the legal ownership of the Underlying Assets held by the Fiduciary

“Sukuk”: Co-ownership securities

At maturity: Undertaking from the Original Owner to repurchase the Rents

Transfer to the Fiduciary of the legal ownership of the Underlying Assets

Sale to the Issuer of the right to receive the Rents

Beneficiary of the legal ownership of the Underlying Assets held by the Fiduciary

Remuneration derived from the Rents

Issuer

Fiduciary

Lessees
TERMS AND CONDITIONS OF THE KEY TRANSACTION DOCUMENTS

Transfer Agreement

- It will be entered into among the Issuer, the Original Owner and the Fiduciary.

- It will set forth:

  • The assets which are the subject of the sale to the Issuer (the Rents) and the purchase price due by the Issuer to the Original Owner in respect thereof,

  • The fact that such sale of the Rents is part of a more global transaction which includes the transfer of the Underlying Assets by the Original Owner to the Fiduciary, and that the Transfer Agreement and the Fiduciary Agreement constitute two indivisible agreements (the purchase of the Rents being made in consideration of the simultaneous transfer of the Underlying Assets to the Fiduciary), one not being entered into without the other,

  • The representations and warranties made by the Original Owner to the Issuer regarding the Rents and the Underlying Assets.

- It will also indicate that, at maturity of the Sukuk, the Sukuk Assets shall be transferred back by the Fiduciary to the Original Owner pursuant to the terms of the Undertaking to Repurchase and the Fiduciary Agreement (see below).

Fiduciary Agreement

- It will be entered into among the Issuer, the Original Owner and the Fiduciary and will be registered at the Land registry (Conservation des hypothèques) [if the Underlying Assets are real estate assets or rights],

- The Fiduciary shall be licensed as a EU credit institution or an investment firm,

- It will set forth:

  • The Underlying Assets which are legally transferred to the Fiduciary (including the related lease agreements),

  • The fact that such transfer is part of a more global transaction which includes the sale of the Rents by the Original Owner to the Issuer, and that the Transfer Agreement and the Fiduciary Agreement constitute two indivisible agreements (the purchase of the Rents being made in consideration of the simultaneous transfer of the Underlying Assets to the Fiduciary), one not being entered into without the other,

  • The purpose of the fiduciary transfer which will be the holding and management of the Underlying Assets (including the related lease agreements) during the term of the issuance of the Sukuk; however, the Fiduciary will be entitled to sub-delegate its duties to a third party (provided that such third party is not the Original Owner or one of its affiliates),
• the transfer back of the Underlying Assets (including the related lease agreements) at maturity of the Sukuk, by the Fiduciary to the Original Owner, provided that the Original Owner performs its obligations vis-à-vis the Issuer under the Undertaking to Repurchase,

• the disposal of the Underlying Assets (including the related lease agreements) at maturity of the Sukuk and the allocation of the disposal proceeds to the Issuer, in the event that the Original Owner fails to perform its obligations vis-à-vis the Issuer under the Undertaking to Repurchase,

• The obligations of the Fiduciary vis-à-vis the Original Owner (as settlor of the fiducie) and the Issuer (as beneficiary of the fiducie).

Issuer Regulations

- The Issuer Regulations constitute the legal binding document (equivalent to the by-laws of a company) of the fund (which has no separate legal personality) and will be drawn up by the management company and the custodian of the Issuer,

- Their content will be the same as that of the prospectus, except that it will be drafted in legal terms.

Servicing Agreement

- It will be entered into among the Issuer, the Original Owner and the Fiduciary,

- It will appoint the Fiduciary as servicer of the Rents sold to the Issuer or any duly authorised third party (not being the Original Owner or one of its affiliates),

- It will set forth the obligations of the Fiduciary as servicer of the Rents assigned (collection procedure, reporting, etc.).

Undertaking to Repurchase

- It will be entered into among the Issuer, the Original Owner and the Fiduciary,

- It will set forth:

  • The obligations of the Original Owner to repurchase the Rents assigned to the Issuer at maturity against the payment of a purchase price by the Original Owner to the Issuer equal to the then outstanding principal amount of the Sukuk,

  • The fact that in the event that the Original Owner fails to perform its obligations vis-à-vis the Issuer, the Underlying Assets (including the related lease agreements) will be disposed of by the Fiduciary on the market for their then available market value and the proceeds of such disposal be allocated to the Issuer in order for it to repay the Sukukholders.
Prospectus

- A prospectus is not a legal document, but only a marketing document,
- It shall only be drawn up in the event of a public offering (not in the event of private placement),
- It shall be drawn up by the management company and the custodian of the Issuer, as the legal founders of the Issuer,
- It will describe:
  - the Sukuk Assets of the Issuer (the Rents and the Underlying Assets),
  - the purpose of the issuance of the Sukuk and of the related transaction and will provide a summary of the main characteristics of the Transaction Documents (e.g. the Transfer Agreement, the Fiduciary Agreement and the Undertaking to Repurchase as described below); in particular, it will highlight the fact that the subscription of the Sukuk by the Sukukholders is made in consideration of the Issuer becoming the owner of the Rents and the Underlying Assets, either directly or indirectly through the Fiduciary, and that this indirect ownership of the Underlying Assets by the Fiduciary is due to French mandatory legal (the French securitization vehicle not being capable of purchasing tangible assets) and tax constraints (avoiding the payment of 5.09% registration duties, unless the Original Owner does not perform its obligations at maturity under the Undertaking to Repurchase),
  - the legal and financial characteristics of the Sukuk as well as the respective rights and obligations of the Sukukholders (including, without limitation, the terms and conditions of the Sukuk),
  - the different risk factors and the way in which the risks are addressed (liquidity mechanism, security),
  - the role of the different parties, with a particular focus on the legal regime applicable to the Issuer and the respective role of the management company (which shall be an entity duly licensed by the Autorité des marchés financiers [French equivalent of the SEC], whose duty is to legally represent the fund vis-à-vis third parties given its absence of legal personality) and of the custodian (which shall be a EU credit institution, whose duty is to ensure the custody of the assets of the Issuer),
  - the Shariah characteristics of the transaction, the composition of the Shariah board and of the fatwa.
7- Paris EUROPLACE French Law Participatory Certificates
Paris EUROPLACE has gathered finance professionals, expert lawyers, including tax specialists, and Shariah Scholars, from both French and International backgrounds, to design sukuk structures that would be altogether Shariah compliant, enforceable under French law, and efficient on a tax perspective.

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The following structure is one of the two structures that Paris EUROPLACE has engineered.

Paris EUROPLACE
**Remuneration** depending on the corporate issuer’s performance (income or profit) +

**Repayment of the certificate:**
market value of the certificates. In case the SPV Issuer shall sell the assets on the market: the repayment will be equal to the sale price of the asset less the payment due to the management company.

**Comments on SPV Issuer Structure:**

1. The investors invest in specific assets held by a specific SPV which will be set up for the purpose of the investment. The SPV Issuer is a 100% held subsidiary of the Corporate.

2. A Management Company will be responsible for the management of the financed assets. It will receive a small annual management fee.

3. The SPV Issuer will lease the financed assets to the Corporate against payment of rents. At the maturity of the participatory certificates, the Corporate will undertake to purchase the leased assets from the SPV Issuer against payment to the SPV Issuer of a purchase price equal to the market value of the leased assets. The legal form of the participatory certificates will be bonds (*obligations*). Their economic characteristics would be similar to preferred shares.

4. In case the Corporate fails to perform its purchase undertaking, the Management Company will take care, on behalf of the SPV Issuer, of disposing of the financed assets on the market and allocate the proceeds to the repayment of the investors, potentially with a loss or a gain if the market value of the financed assets is, respectively, less or higher than the amount initial subscribed by the investors.

5. In the event a capital gain is realized upon the sale of the assets, the Management Company will receive an exceptional fee corresponding to most of the capital gain.
Alternatively, participatory certificates could be structured as equity-linked bonds (obligations donnant accès au capital) under French law, allowing the investors to require the conversion of their bonds into shares and then become the shareholders of the SPV Issuer.

The effective return paid by the SPV Issuer to the investors on the participatory certificates, after the payment by the SPV Issuer of the management fee to the Management Company, will be economically similar to the return received by regular bondholders.

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**TERMS AND CONDITIONS OF THE KEY TRANSACTION DOCUMENTS**

Terms and conditions of the participatory certificates
- It will describe:
  - the financed assets,
  - the contemplated return on the assets,
  - the purpose of the issuance of the participatory certificates and of the related transaction and will provide a summary of the main characteristics of the Transaction Documents; in particular, it will highlight the fact that the subscription of the participatory certificates by the investors is made in consideration of the SPV Issuer becoming the legal owner of the financed assets,
  - the option for the Corporate to repurchase the participatory certificates at their fair market value before the maturity of the certificates,
  - the legal and financial characteristics of the participatory certificates as well as the respective rights and obligations of the investors,
- It will carry as an appendix the Shariah characteristics of the transaction, the composition of the Shariah board and the fatwa,
- It will specify that for French legal and tax purposes, the participatory certificates will be subject to the French provisions applicable to bonds.

Lease Agreement
- It will be entered into among the SPV Issuer and the Corporate,
- It will set forth the rents to be paid by the Corporate in consideration for the rental of the financed assets.

Undertaking to Repurchase
- It will be entered into among the SPV Issuer and the Corporate,
- It will set forth:
The obligations of the Corporate to repurchase the financed assets at maturity against the payment of a purchase price by the Corporate to the SPV Issuer equal to the fair market value of the financed assets,

The fact that in the event that the Corporate fails to perform its obligations vis-à-vis the SPV Issuer, the financed assets will be disposed of by the SPV Issuer on the market for their then available market value and the proceeds of such disposal less most of the capital gain will be allocated to the SPV Issuer in order for it to repay the investors.

Management Agreement

- It will be entered into among the SPV Issuer and the Management Company.

- It will set forth:
  
  - The obligations of the Management Company in relation with the financed assets.
  
  - The annual management fee to be received by the Management Company in consideration for the management of the financed assets. If the profits or income generated by the financed assets exceed a predefined amount, the Management Company will be entitled to most of the excess return.

  - The fact that the Management Company will be entitled to most of the capital gain realised upon the sale or transfer of the financed assets.
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