

## **Resolution of OIC Fiqh Academy (related to Islamic Economic and Finance)**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

### **Resolution 188 (3/20)**

#### **Completion of the Issue of Islamic Bonds (*Şukūk*)**

The Council of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation meeting in its 20<sup>th</sup> Session in Oran (People's Democratic Republic of Algeria) from 26 Shawwal to 2 Dhul-Qaedah, 1433H (13-18 September, 2012)

Having considered the researches received from the Academy on the completion of the issue: “Islamic *Şukūk* (Bonds)”, and having listened to the discussions on the matter; and

Having also considered the recommendations of the Symposium on Islamic *Şukūk* held in Jeddah under the auspices of the Islamic Economic Research Center (King Abdel Aziz University) from 10 to 11 Jumada II 1431 H (24-25 May, 2010) with the participation of the International Islamic Fiqh Academy, the Islamic Research and Training Institute (member of the Islamic Development Bank Group) and having listened to the deliberations on the issue,

**DECIDES as follows:**

#### **First: General Regulations**

- (1) Islamic *Şukūk* should achieve the objectives of the Sharī‘ah in terms of developing and supporting real activities and the administration of justice among people.
- (2) *Şukūk* contracts should fulfill all the requirements whereby ownership is legitimately and legally proven, resulting in the ability to act and afford insurance. Contracts should be free from fraud and sham and

insuring that they will ultimately guarantee safety from the Sharī'ah point of view.

- (3) *Ṣukūk* documents should contain the necessary mechanisms to regulate the application and ensure that they are free from fraud and sham, as well as to correct any potential flaws.

Periodic reviews should be conducted in order to insure the sound use of the proceeds of *Ṣukūk* for the specific purpose of issuance and the application of all the requirements of the contracts in the manner consistent with the intentions of Sharī'ah.

- (4) Islamic bonds “*Ṣukūk*” must to demonstrate the fundamental differences between them and usury bonds in terms of structure, design, construction, and the need to reflect them on the marketing mechanisms and pricing.

## **Second: Obligations**

- (1) No *mudārib*, partner, or agent shall commit to carrying out any of the following:
  - (a) Buying *Ṣukūk* or *Ṣukūk* assets at their nominal value or with a predetermined value leading to capital guarantee or to current cash for deferred cash, save in cases pertaining to abuse and negligence, which require the guarantee of the rights of *Ṣukūk* holders.
  - (b) Lending to *Ṣukūk* holders when the real return on *Ṣukūk* falls below the projected return thus leading to borrowing and selling or obtaining loans with interest. A reserve may be created from profits to cover potential shortfalls.
- (2) Hedging measures may be taken against *Ṣukūk* capital and other risks through cooperative insurance and *takāful* insurance which are governed by the rules of the Sharī'ah.

## **Third: Leasing an Asset to the Seller**

An asset may not be sold at a cash price with the condition that the seller leases this asset as a lease coupled with a promise of ownership at a total of lease and price exceeding the cash price whether this condition is explicit or implicit as this type of sale is prohibited by Sharia. It is therefore not permissible to issue *Ṣukūk* on the basis of such a mode.

#### **Fourth: Lease Based on Description**

- (1) Properties based on description may be leased in a manner that does not contradict the rules of transactions according to the Sharī'ah, and *Şukūk* may be issued accordingly.
- (2) The problem with this mode may stem from two sources:
  - a) Rule on postponement of lease till the meeting of the parties.
  - b) Rule on dealing in *Şukūk* of lease properties based on description before determining the place of leasing.

The Academy recommends that the Secretariat of the Academy constitute a team of scholars and experts to examine this mode in the light of what was presented earlier and submit a detailed study prior to the convening of the next session of the Academy.

#### **Fifth: Dealing in *Şukūk*, Shares or Units**

- (1) If the securities assets are turned into cash money and debts, dealing in them is subject to the provisions governing exchange and debt selling.
- (2) If the securities assets are turned into property, benefits and rights, dealing in them may be at the rate agreed upon.
- (3) If the stock exchange assets are a mixture of cash money, debts, property, benefits and rights, there are two situations:
  - (a) Cash money and debts should belong to the real principal and the stock exchange be included in the ownership of the principal. In such a case, dealing may take place without taking into account the percentage of cash and debt to the assets.
  - (b) Separation of the ownership of the cash money, debts or failure to add stock exchange to the ownership of the principal. In this case dealing is subject to majority provisions.
- (4) If the company or project which the securities represents has not actually commenced work or is under liquidation, dealing is subject to majority provisions.
- (5) It has emerged from the researches presented so far that dependency may be established through the ownership of the operator, operation or activity. The scope of the criterion of majority has also widened. Given the need for identifying the criteria for dependency and establishing its types, as well as identifying the criteria for the majority and establishing its types, the

Academy recommends that its secretariat constitute a team of scholars and experts to examine these criteria in the light of the above and submit a detailed study before the convening of the next session of the Academy.

### **Sixth: The Impact of the Resolutions on the Previous Contracts**

- (1) Resolutions passed by the Academy enter into force from the date they are issued and do not affect any contracts entered into earlier such as the *Ṣukūk* which are based on considered religious rulings.
- (2) Muslims should follow the rulings of the pure Sharia in all their affairs and deeds to the best of their ability and strength as Allah says” Be mindful of Allah as much as you can.” Surat al-Tagabun, Verse 16. And the Saying of Allah, “Allah does not charge a soul than what it can bear”. Surat al-Baqara, Verse 286. Muslims are therefore called upon to work assiduously to alleviate disabilities and refrain from circumstantial provisions to supplement the wisdom of Sharī‘ah. They should work towards setting the Muslim community on the path of the Sharī‘ah.

**Allah Knows Best**

### **Resolution 190 (20/5)**

#### **The Role of the Fiqh (jurisprudence) Academies in Rationalizing the Progress of Islamic Financial institutions: Mechanisms and Formulas**

The Council of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation meeting in its 20<sup>th</sup> Session in Oran (People's Democratic Republic of Algeria) from 26 Shawwal to 2 Dhul-Qaedah, 1433H ( 13-18 September, 2012 )

Having considered the researches received from the Academy on the Role of Fiqh (jurisprudence) Academies in Rationalizing the Progress of Islamic Financial Institutions: Mechanism and Formulas; and Having listened to the deliberations on the subject,

It is of the opinion that the Fiqh academies and Islamic financial institutions and banks constitute one of the great achievements in the modern era. The Academy expresses its appreciation for the prominent role being played by the Islamic Sharī'ah supervisory bodies and financial institutions in our times in reviving the contemporary Islamic finance and consolidating trust and confidence in them.

It is also of the opinion that:

- (1) There is a need for forging cooperation between Islamic Sharī'ah supervisory bodies, the Fiqh and International Academies for the purpose of coordination, cooperation and exchange of opinions.
- (2) There is a need for coordination between the Islamic Sharī'ah supervisory bodies within the Islamic financial institutions.
- (3) The need for the Academy to facilitate the conduct of useful studies in order to assist Islamic financial institutions in the implementation of Sharī'ah and finding appropriate solutions to their problems and crises.
- (4) There is a need for the Academy to prepare a comprehensive law on Islamic financial transactions to provide guidance in such transactions.

#### **The Academy Council recommends the following:**

- (1) **CALLS UPON** Islamic financial institutions to adopt the resolutions of the Fiqh Academies.

- (2) **CALLS FOR** continued dialogue with central banks and supervisory authorities in Islamic countries to enable Islamic financial institutions to play their role in the national economic and developmental life under the rules of control in a manner compatible with the characteristics of Islamic financial functions.
- (3) **CALLS UPON** the Academy to communicate all its resolutions to all Islamic financial institutions and banks, scientific and educational institutions and local and international research centers, and to make them accessible through media outlets and social communication networks.

**Allah Knows Best**

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