



HAWASSA UNIVERSITY

SCHOOL OF GRADUATE STUDIES

COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

**REGULATING SUKUK SECURITIES IN ETHIOPIA'S CAPITAL
MARKET: A COMPARATIVE ANALYSIS AND LESSONS OF THE
LEGAL AND INSTITUTIONAL FRAMEWORKS**

LL.M THESIS

ABDULKERIM BEFETA MOHAMMED

HAWASSA UNIVERSITY, HAWASSA, ETHIOPIA

JUNE, 2025

**REGULATING SUKUK SECURITIES IN ETHIOPIA'S CAPITAL
MARKET: A COMPARATIVE ANALYSIS AND LESSONS OF THE
LEGAL AND INSTITUTIONAL FRAMEWORKS**

BY: ABDULKERIM BEFETA MOHAMMED

ADVISOR: YIDNECKACHEW AYELE (PHD)

**LLM THESIS SUBMITTED TO THE SCHOOL OF LAW,
COLLEGE OF LAW AND GOVERNANCE, SCHOOL OF
GRADUATE STUDIES, HAWASSA UNIVERSITY,
HAWASSA, ETHIOPIA**

**IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAW IN
COMMERCIAL LAW**

HAWASSA, ETHIOPIA

JUNE, 2025

ADVISORS' APPROVAL SHEET

SCHOOL OF GRADUATE STUDIES

HAWASSA UNIVERSITY ADVISORS' APPROVAL SHEET

This is to certify that the thesis entitled “**REGULATING SUKUK SECURITIES IN ETHIOPIA’S CAPITAL MARKET: A COMPARATIVE ANALYSIS AND LESSONS OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS**” was submitted in partial fulfillment of the requirements for the degree of LLM with specialization in Commercial Law at the Graduate Program of the School of Law, and was carried out by ABDULKERIM BEFETA ID No: GPCLR/0001/15 under my supervision. Therefore, I recommend that the student fulfil the requirements and, hence, submit the thesis to the School of Law.

Yidneckachew Ayele (PhD)



Name of Advisor

Signature

Date


This LL.M. thesis has been submitted for examination with my approval as thesis
Advisor

EXAMINER’S APPROVAL SHEET

SCHOOL OF GRADUATE STUDIES

HAWASSA UNIVERSITY EXAMINER’S APPROVAL SHEET

We, the undersigned, members of the Board of Examiners of the final open defense by ABDULKERIM BEFETA have read and evaluated her thesis entitled “**REGULATING SUKUK SECURITIES IN ETHIOPIA’S CAPITAL MARKET: A COMPARATIVE ANALYSIS AND LESSONS OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS**” and examined the candidate. This is, therefore, to certify that the thesis has been accepted in partial fulfilment of the requirements for the degree.

_____		_____
Name of Major Advisor	Signature	Date
_____	_____	_____
Name of Internal Examiner-I	Signature	Date
_____	_____	_____
Name of Internal Examiner-II	Signature	Date
_____	_____	_____
Name of External Examiner	Signature	Date
_____	_____	_____
SGS Approval	Signature	Date

DECLARATION

I hereby declare that this LLM thesis on “**REGULATING SUKUK SECURITIES IN ETHIOPIA’S CAPITAL MARKET: A COMPARATIVE ANALYSIS AND LESSONS OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS**” is my original work and has not been presented for a degree in any other university, and all sources of material used for this thesis have been duly acknowledged.

Name: Abdulkerim Befeta

Signature: _____ Date: _____

ACKNOWLEDGMENTS

First and foremost, all praise is due to ALLAH for granting me the strength, endurance, and guidance throughout the journey of this thesis. Without His divine will and blessings, this work would not have been possible.

Secondly, I would like to express my deepest gratitude and sincere appreciation to my advisor, Dr. Yidneckachew Ayele, for his unwavering support, valuable insights, and continuous guidance from the proposal stage to the final submission of this paper. His expertise and encouragement were instrumental in shaping the direction and quality of this research.

In addition, I am profoundly grateful to my beloved parents, Mr. Befeta Mohammed and Mrs. Beyda Kedir, whose endless love, sacrifices, and prayers have been the foundation of all my achievements. Their support and care have always been a source of strength throughout my life and academic journey.

Finally, I want to extend my heartfelt thanks and appreciation to all those who, in one way or another, assisted me during the course of conducting this research. Their assistance and support are deeply acknowledged and genuinely appreciated.

THANK YOU ALL!!!

ACRONYMS AND ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
BNM	Bank Negara Malaysia
CBMA	Central Bank Malaysia Act
CMA	Capital Market Authority
CMSA	Capital Market and Service Act 2007
GCC	Gulf Cooperation Council
ECMA	Ethiopian Capital Market Authority
ESX	Ethiopian Securities Exchange
ICM	Islamic Capital Market
IIFM	International Islamic Financial Market
IFIs	Islamic Financial Institutions
NBE	National Bank of Ethiopia
OSCOLA	Oxford University Standard for Citation of Legal Authorities
PBUH	Peace Be Up on Him
SAC	Sharia Advisory Council
SCM	Security Commission of Malaysia
SPV	Special Purpose Vehicle
SSB	Sharia Supervisory Board
USD	United State Dollar

TABLE OF CONTENTS

DECLARATION	IV
ACKNOWLEDGMENT	V
ACRONYMS AND ABBREVIATIONS	VI
TABLE OF CONTENTS.....	VII
LIST OF TABLES	X
ABSTRACT.....	XI
CHAPTER ONE: INTRODUCTION.....	1
1.1. BACKGROUND OF THE STUDY	1
1.2. STATEMENT OF THE PROBLEM	5
1.3. RESEARCH QUESTIONS.....	8
1.4. OBJECTIVES OF THE RESEARCH	8
1.4.1. General Objective	8
1.4.2. Specific Objectives	8
1.5. RESEARCH METHODOLOGY	9
1.5.1. Research Design and Approach	9
1.5.2. Data Source and Method of Collection.....	10
1.5.3. Data Analysis Method	10
1.6. SCOPE AND LIMITATIONS OF THE STUDY	11
1.7. SIGNIFICANCE OF THE STUDY.....	11
1.8. ETHICAL CONSIDERATIONS	12
1.9. ORGANIZATION OF THE STUDY	12
CHAPTER TWO	13
2. THEORETICAL AND CONCEPTUAL FRAMEWORKS OF ISLAMIC FINANCE AND SUKUK IN GENERAL	13
2.1 INTRODUCTION.....	13
2.2. GENERAL OVERVIEW OF ISLAMIC FINANCE AND ITS DEVELOPMENT	13
2.3. BASIC PRINCIPLES OF ISLAMIC FINANCE.....	17
2.3.1. The Prohibition of Riba in Financial Transactions.....	17
2.3.2. Profit and Risk Sharing Principle	19

2.3.3. Asset Backed Financing	20
2.3.4. Prohibition of Gharar (Excessive Uncertainty) and Maysir (Gambling)	20
2.3.5. Ethical Investment	22
2.4. MAIN COMPONENTS OF ISLAMIC FINANCIAL SYSTEM	23
2.4.1. Islamic Banking	23
2.4.2. Islamic Insurance (Takaful)	24
2.4.3. Islamic Capital Market	25
2.5. SUKUK: CONCEPTUAL FRAMEWORK AND ITS HISTORICAL DEVELOPMENT	26
2.5.1. The Concept of Sukuk	26
2.5.2. Historical Origin of Sukuk	28
2.5.3. Unique Features of Sukuk	30
2.5.4. Comparison between Sukuk, Bond And Shares	32
2.5.5. Basic Structure of Sukuk	34
2.5.6. Types of Sukuk	36
CHAPTER THREE	39
3. KEY INTERNARIONAL STANDARDS AND COUNTRIES' COMPARATIVE REGULATORY EXPERIENCES	39
3.1. INTRODUCTION	39
3.2. INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK FOR SUKUK	39
3.2.1. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)	40
3.2.2. The International Islamic Financial Market (IIFM)	41
3.2.3. The Islamic Financial Services Board (IFSB)	41
3.3. REGULATORY FRAMEWORKS OF SUKUK IN SOME SELECTED NATIONS	42
3.3.1. Malaysian Experience	42
3.3.2. Indonesia Experience	49
3.3.3. Nigeria Experience	54
CHAPTER FOUR	61

4. ACCOMMODATING SUKUK SECURITIES UNDER THE ETHIOPIAN FINANCIAL SYSTEM	61
4.1. INTRODUCTION.....	61
4.2. DEVELOPMENT OF ISLAMIC FINANCE AND SUKUK IN THE ETHIOPIAN LEGAL FRAMEWORK.....	61
4.3. POTENTIAL OPPORTUNITIES AND SOCIOECONOMIC RELEVANCE OF SUKUK FOR ETHIOPIA.....	66
4.4. REGULATORY CHALLENGES OF SUKUK IN ETHIOPIA.....	68
4.4.1. Legal challenges to issue Sukuk.....	68
4.4.2. Sharia Governance Challenge	73
4.4.3. Dispute Settlement Framework	75
4.4.4. Taxation Challenge.....	77
4.5. COMPARATIVE REGULATORY LESSON AND REFORM PROPOSAL FOR ETHIOPIA	79
4.5.1. Regulation of Sukuk	80
4.5.2. Establishing Centralized Sharia Advisory.....	83
4.5.3. Setting up an appropriate forum of adjudication.....	84
4.5.4. Favorable taxation treatment	87
CHAPTER FIVE	88
5. CONCLUSION AND RECOMMENDATIONS	88
5.1. CONCLUSION.....	88
5.2. RECOMMONDATIONS.....	89
BIBLIOGRAPHY	90

LIST OF TABLES

Table 1: The Comparison between Sukuk, Bonds and Shares	34
---	----

ABSTRACT

Sukuk emerged as an alternative sharia-compliant financial instrument to conventional debt-based instruments. Nowadays, Sukuk is one of the flexible and fastest-growing financial products in the global financial market. In Ethiopia, despite high demand for sharia-compliant products, comprehensive regulatory frameworks for Islamic finance have not yet been developed. Besides, Ethiopia has recently introduced a capital market as an investment opportunity to provide diverse and innovative financial products for all. Following this, there is legal recognition of Sukuk. Despite this, there is no specific law that regulates Sukuk products and the current financial laws also not suitable for Sukuk in Ethiopia. This paper aims to assess the need to develop regulatory framework for Sukuk securities in Ethiopia by analyzing the successful experience of other nations. To this end, the research employed doctrinal research methodology and also comparatively analyzed the best experience of selected nations (Malaysia, Indonesia and Nigeria) to draw lessons for the successful regulation of Sukuk in Ethiopia. It has been observed that, in selected jurisdictions supportive legal and regulatory framework significantly supported the development of Sukuk. Based on the analysis, the researcher proposes legal and regulatory institutional issues. Among others, Ethiopia should modify the existing principal legislations to regulate Sukuk as a financial security, prepare detailed regulations or guidelines for Sukuk, establish a centralized Sharia advisory council and establish an appropriate forum of adjudications for the successful regulation and implementation of Sukuk. Regarding operational strategies, Ethiopia should adopt and implement the simplest and common Sukuk structures through a phased-based approach.

Key words: Islamic Finance, Sukuk, Islamic Securities, Sharia-Compliant, Regulatory Frameworks

CHAPTER ONE: INTRODUCTION

1.1. BACKGROUND OF THE STUDY

Islamic finance strictly prohibits the issuance of bonds with interest, as per Sharia law, rendering conventional bonds inappropriate and unattractive for the financial transactions of Muslim investors.¹ Consequently, Sukuk serves as an alternative method for capital acquisition or investment financing under Sharia law.

The word “Sukuk” is the plural of the Arabic word “*sakk*,” which means “certificate, legal instrument, or document representing financial obligation or right.”² The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines Sukuk as “certificates of equal value representing undivided shares in ownership of tangible assets, usufructs, and services, or (in the ownership of) the assets of particular projects or a special investment activity.”³ Accordingly, they are documents or certificates that symbolize ownership in a collective pool of underlying assets or projects, granting the Sukuk holder the right to the returns and share risks associated with the underlying assets or projects, unlike pure debt obligations. However, conceptually, Sukuk is characterized as a combination of being an ownership instrument and a debt instrument at the same time, which usually bears a maturity date like bonds, but contrary to shares.⁴ Unlike conventional bonds that evidence a debt owed by the issuer to the bondholders, Sukuk certificates evidence the investors’ ownership interest in the underlying Sukuk asset, which entitles them to a share of the income generated by that asset.⁵ Islamic securities are priced based on profit-sharing and risk-sharing agreements, in accordance with the ethical

¹ SR Vishwanath and Sabahuddin Azmi, ‘An Overview of Islamic Sukuk Bonds’ (2009) 14 *The Journal of Structured Finance* 58, 58.

² Abu umar Faruq Ahmed, ‘Legal, Regulatory and Other Issues of Sukuk: A Critical Analysis’, *International Congress on Islamic Economics and Finance (ICISEF), 21-23 October 2015, Sakarya, Turkey = Uluslararası İslam Ekonomisi ve Finansı Kongresi: bildiriler kitabı* (Sakarya Üniversitesi 2016). 92

³ ‘Accounting and Auditing Organization for Islamic Financial Institutions’ <<https://aaoifi.com/ss-17-investment-sukuk/?lang=en>> accessed 3 January 2024.

⁴ Zolfaghari Pegah, ‘An Introduction to Islamic Securities (Sukuk)’ (2017) <https://www.jur.uu.se/digitalAssets/563/c_563862-1_3-k_wps2017-2.pdf>.

⁵ Meysam Safari, Mohamed Ariff, and Shamsher Mohamad, *Sukuk Securities: New Ways of Debt Contracting* (Wiley 2014) 649.

principle of distributing rewards only after risks have been shared. In contrast, conventional debt securities are priced through interest-based payments to investors, typically predetermined, without any sharing of risks.⁶ The Profit-and-loss sharing contract aspect of Sukuk is much more beneficial than the interest-based bond, which damp down inequality, suppression, and speculation in the economy.⁷

Currently, Sukuk serves as a feasible alternative form of finance for infrastructure development, project financing, business general purposes, capital adequacy, budgetary demands, and liquidity management.⁸ Thus, the expansion of Sharia-compliant wealth globally positions the Sukuk market as a conduit for fostering sustainable and equitable economic development. Sukuk is regarded as one of the most rapidly expanding financial instruments in the global financial sector and the most successful sharia-compliant product within Islamic financial institutions.⁹

It is designed by using a several sharia-compliant contracts. Generally, the Sukuk arrangement involves an originator and an investor, where the originator could be a government or company that seeks capital for a specific purpose and an investor that invests in this purpose.¹⁰ Thus, the originator establishes a special-purpose vehicle that acquires assets from the originator. Thereafter, the special purpose vehicle transforms the asset's value into Sukuk shares and sells them to investors (Sukuk holders).¹¹ By issuing Sukuk certificates, selling to the investors, and then engages in the operations to utilize these assets.¹² The payments received from these arrangements serve as returns to the

⁶ *ibid* 6.

⁷ Abdur Rahman, Asma Hakimah Abdul Halim and Ruzian Markom, 'The Inevitability and Relevancy of Sukuk in Developing Country: A Case of Bangladesh' (2021) 6 Scholars Middle East Publishers, Dubai, United Arab Emirates 468.

⁸ International Islamic Financial Market, 'IIFM Sukuk Report 2024' (International Islamic Financial Market 2024) 24.

⁹ Essia Ries Ahmed, Md. Aminul Islam and Ku Halim Ku Ariffin, 'An Empirical Analysis on Legitimacy of Sukuk: An Insight of Malaysian Sukuk' (2015) 11 Asian Social Science 84, 84.

¹⁰ 'Islamic Capital Market Products: Introduction of Regulations for Sukuk to Sri Lankan Capital Market | Daily FT' <<https://www.ft.lk/financial-services/Islamic-capital-market-products-Introduction-of-regulations-for-Sukuk-to-Sri-Lankan-capital-market/42-752537>> accessed 6 November 2023.

¹¹ Mahamud Asli Osman, 'Sukuk as A Tool towards Development: How Kenya Can Use Sukuk as Alternative Source Of Funding Development Projects' (LLM Thesis, University of Nairobi 2019) 3.

¹² 'Islamic Capital Market Products: Introduction of Regulations for Sukuk to Sri Lankan Capital Market | Daily FT' (n 10).

investors who subscribe for the Sukuk certificates; besides, the originator may repurchase the assets at the end of the agreement period.¹³

The global Sukuk market has grown remarkably over the past decade, and its growth is expected to continue. The issuance of Sukuk began in Malaysia, which issued the world's first corporate Sukuk in 1990 for the value of US\$ 40 million.¹⁴ This event set the stage for global expansion, with other countries and institutions adopting Sukuk. According to the IFSB Islamic Financial Stability Market Report, the global Sukuk market size reached USD 850 billion in 2024.¹⁵ The report indicates that Sukuk is the second largest contributor to the assets of the Islamic financial industry, following Islamic banking. In 2023, global Sukuk issuances increased by 16%, with the total volume of annual issuances reaching USD 212 billion, compared to USD 182.7 billion in 2022.¹⁶ Today, Sukuk has achieved a global reputation beyond Islamic finance, demonstrating their evolution into a broadly accepted financial instrument. These instruments can appeal to both Muslim and non-Muslim investors alike, making them suitable for everyone. By doing so, they not only fulfil the religious requirements of Muslims but also attract conventional investors due to their economic benefits.¹⁷

The widespread issuance of Sukuk by both sovereign and corporate entities has encouraged many Muslim and non-Muslim majority countries to support their legal systems with a structured legal and regulatory framework to implement Sukuk.¹⁸ In many countries, a regulatory framework has been adopted in the existing system to implement and smooth the operation of Sukuk in their financial market.¹⁹ The lack of a structured legal framework for Sukuk security is the primary hindrance to the growth of Sukuk issuance in many

¹³ *ibid.*

¹⁴ Mohamed Ariff, Munawar Iqbal and Shamsheer Mohamad (eds), *The Islamic Debt Market for Sukuk Securities: The Theory and Practice of Profit Sharing Investment* (Edward Elgar 2012) 51.

¹⁵ IFSB, 'Islamic Financial Services Industry Stability Report' (2024) <<https://www.ifsb.org/wp-content/uploads/2024/09/IFSB-Stability-Report-2024-8.pdf>> accessed 24 November 2024.

¹⁶ International Islamic Financial Market (n 8) 25.

¹⁷ Ahcene Lahsasna, M Kabir Hassan and Rubi Ahmad, *Forward Lease Sukuk in Islamic Capital Markets: Structure and Governing Rules* (1st edition 2018, Palgrave Macmillan 2018) 4.

¹⁸ Arabi Bakari, 'Mining and Infrastructure Development in Nigeria: Appraisal of the Legal and Policy Framework for Investment and Sukuk' (PhD Thesis, University of East London 2019) 61–63.

¹⁹ *ibid.*

countries.²⁰ Therefore, the development of the Sukuk market hinges on establishing a robust legal and regulatory framework for the issuance of Sukuk.

Recently, Ethiopia recognized Islamic finance due to high public demand. As a result, different Islamic financial institutions were established, but the existing legal frameworks are not yet conducive to investing in and practicing Islamic financial products.²¹ Besides, Ethiopia recently adopted a capital market proclamation, No. 1248 /2021, with the view to support the development of the national economy through the mobilization of capital, promoting financial innovation, and sharing investment risks.²² The proclamation establishes the Ethiopian Capital Market Authority as an autonomous federal government regulatory authority to regulate the capital market in Ethiopia.²³ Nowadays, the authority develops necessary legal infrastructures for the regulation capital market in the country. It also recognized Sukuk security.²⁴ In January 2025, the Ethiopian Securities Exchange (ESX) launched to provide a platform for listing and trading various debt instruments, including treasury bills, government and corporate bonds, and Sharia-compliant securities such as Sukuk.²⁵ This considers the growing demand for Sharia-based products in Ethiopia.²⁶ However, the knowledge and experiences about Islamic finance are limited in the country.²⁷ Above all, the capital market regulations as well as the current financial laws of Ethiopia didn't cater to the specificity of Sukuk.

At this juncture, this research project aims to examine the Ethiopian laws and regulations

²⁰ Mohamed Ghezal, Rusni Hassan and Ahcene Lahsasna, 'Legal and Regulatory Requirements to Implement Sukuk in Algeria: Learning from Malaysian Experience' (2021) 10 Journal of Islamic finance (E-ISSN 2289-2117) 30.

²¹ Hailu Suadiq And Yattoo Nissar, 'Islamic Finance In Ethiopia: Current Status, Prospects And Challenges' (2021) 6 International Journal Of Islamic Banking And Finance Research 1.

²² Capital Market Proclamation No. 1248 /2021 'Federal Negarit Gazette No. 33, Addis Ababa, 23rd July, 2021' Preamble.

²³ *ibid.*

²⁴ Ethiopian Capital Market Authority's Fee Directive No. 996/2024 art 2(12).

²⁵ ESX: Press Release on ESX Launch 10th Jan 2025' <<https://fsdafrica.org/wp-content/uploads/2025/01/250109-Press-Release-on-ESX-Launch-F.pdf>> accessed 22 April 2025.

²⁶ Samuel Bogale, 'ESX Plans To Develop Shariah-Compliant Capital Market Products | The Reporter | Latest Ethiopian News Today' (26 August 2023) <<https://www.thereporterethiopia.com/36153/>> accessed 2 February 2024.

²⁷ Hailu Suadiq and Yattoo Nissar, 'Islamic Finance in Ethiopia: Current Status, Prospects And Challenges' (2021) 6 International Journal of Islamic Banking and Finance Research 1, 14 <<https://www.Cribfb.Com/Journal/Index.Php/Ijibfr/Article/View/1317>> Accessed 10 October 2023.

concerning the Islamic finance system, mainly Sukuk securities. It intends to examine the suitability of current legal frameworks to accommodate Sukuk arrangements, their limitations and analysis the practices and experiences of selected jurisdictions (Malaysia, Indonesia, and Nigeria) to draw some experiences for the regulation of Sukuk under Ethiopian financial markets. Since Sukuk is new to Ethiopia, it is imperative to examine the experience of well-developed Sukuk market countries to draw lessons for effective integration and regulation.

1.2. STATEMENT OF THE PROBLEM

Over the past years, Ethiopia has been reforming its financial laws to support the economy of the country and ensure a financial inclusion agenda. As a result, Ethiopia has allowed the operation of Islamic banking, insurance (takaful), and microfinance²⁸ as national financial inclusion policies. However, it has been criticized because of the lack of appropriate legal frameworks that accommodate the specificity of Islamic finance and recognize Sharia-compliant products despite high demand for them.²⁹ Among others, Islamic financial institutions in Ethiopia are unable to invest in government bonds and treasury bills³⁰ because these financial instruments issued are exclusively conventional interest-based ones. Interest-based financial transactions are strictly prohibited under sharia law. This situation has practically excluded interest-free financial instruments, which not only results in missed opportunities for the government to raise capital from these institutions but also prevents them from participating in investments in government securities. Hence, regulating Sukuk in the Ethiopian financial market will provide a fantastic alternative opportunity for the government and investors to raise funds from Sharia-compliant institutions.

²⁸ Directive to License and Authorize Interest Free Banking Business No. SBB/72/2019; A Directive to License a Takaful Operator or Authorize a Takaful Window Operator No. SBB/1/2020.; Licensing and Supervision of Interest-free Microfinance Business Directives to Interest-free Microfinance Business Operators and Authorize Directives No. MFI/32/2021.

²⁹ Suadiq and Nissar (n 21) 14.

³⁰ Daniel Nigussie, 'National Bank Explores Treasury Bill Alternatives To Accommodate Islamic Banks | The Reporter | Latest Ethiopian News Today' (16 September 2023) <<https://www.thereporterethiopia.com/36599/>> accessed 2 February 2024.

Despite the recognition, currently, there is no comprehensive law that regulates Sukuk issuance in Ethiopia. Further, the deficiency of knowledge and experience about the legal and regulatory frameworks of Sukuk could challenge its integration into the financial markets of the country. .

Particularly, among others, the existing legal frameworks, the Commercial Code,³¹ Capital Market Proclamation,³² and the directive on the public offering and trading of securities³³ present challenges for Sukuk issuance. These regulations do not specifically address the peculiarities of Sukuk, which will raise concerns regarding investor protection, i.e., it affects investors' informed decision-making in relation to Sharia-compliant securities. However, given the unique nature of Sukuk, a clear and comprehensive definition is crucial to establishing a robust legal foundation. In addition, the absence of a Sharia advisory council in Ethiopia may hinder the standardization and operationalization of Sukuk instruments consistent with Islamic financial principles. Other challenge for the regulation and issuance of Sukuk is taxation laws. Since Sukuk securities are based on underlying asset, when assets are transferred between parties in Sukuk transactions, there's often an added layer of taxation compared to conventional finance methods.³⁴ These assets often incur high taxes when transferred between parties. Such multiple taxations of Sukuk structure will highly affect and diminish the attractiveness of Sukuk compared to bonds.³⁵ To develop Sukuk products, appropriate institutional settings and regulatory frameworks that address the specificities of the products are necessary in addition to the general framework of conventional capital market laws.³⁶

Above all, the sharia-based and asset-backed nature of Sukuk may conflict with existing laws governing conventional finance, posing potential challenges and issues when

³¹ Commercial Code of Ethiopia Proclamation No. 1243/2021" 'Federal Negarit Gazette Extra Ordinary Issue Addis Ababa, 12th Day April, 2021 article-267-295, 407.

³² Capital Market Proclamation No. 1248 /2021 'Federal Negarit Gazette No. 33, Addis Ababa, 23rd July, 2021 article 2(62)'.

³³ Directive to License and Authorize Interest Free Banking Business No. SBB/72/2019 (n 28).

³⁴ Khan, Tariqullah, 'Legal And Regulatory Issues In Issuing Sukuk In South Korea Lessons From Developed Countries' Experience' II International Journal of Economics, Commerce and Management 7.

³⁵ Asli Osman (n 11) 36.

³⁶ Islamic Financial Service Board, 'Guidance Note on Deepening the Islamic Capital Market' 23 <https://www.ifsb.org/wp-content/uploads/2023/10/GN-8_En.pdf> accessed 30 December 2023.

attempting to apply conventional legal frameworks to Sukuk.³⁷ As a result, a comprehensive set of laws that define Sukuk, its structuring, securitization, issuance, disclosure requirements, sharia-compliance requirements, transfer, dispute resolution, accounting principles and taxations, and its maturity will ensure the integrity of the capital market. For that reason, it's better to examine the well-developed regulatory experiences in other selected jurisdictions to take insights and propose recommendations and drawing appropriate lessons for Ethiopia.

Sukuk is a subject of interest in global literature; however, in the Ethiopian setting, it is not well studied and the concept remain novel in the legal, economic and business literature of the country. Nevertheless, there are some works written on the need for Islamic finance in Ethiopia. Some of the works focus on other segments of Islamic finance, like Interest-free banking, insurance (takaful), and interest-free microfinance. To mention some of them; Alyu Abate³⁸ examines the regulatory and supervisory landscape of interest free banking in Ethiopia. He discusses the underlying principles of Islamic finance that apply to institutions providing Islamic financial services. He mainly focus on interest-free banking, he doesn't discuss the concept of Sukuk and its regulatory framework. Abdufetah has written the research on introducing Islamic insurance scheme to Ethiopia as a financial inclusion tool: operational models and regulatory frameworks.³⁹ He discusses the need for introduction and regulation of Islamic insurances in Ethiopia. But he doesn't discuss about the legal and regulatory issues concerning Sukuk. However, there is no comprehensive study in Ethiopia regarding Islamic securities in general and Sukuk in particular, which is one component of Islamic finance. Hence, this research looks for legal and regulatory institutional frameworks for accommodating Sukuk securities in Ethiopia.

³⁷ Asli Osman (n 11).

³⁸ Abate Aliyu, 'The Regulation and Supervision of Interest-Free Banking in Ethiopia' (LLM Thesis, Addis Ababa University 2015).

³⁹ Abdufetah Hussien, 'Introducing Islamic Insurance Scheme to Ethiopia as a Financial Inclusion Tool: Operational Models and Regulatory Frameworks' (LLM Thesis, Haramaya University 2019).

1.3. RESEARCH QUESTIONS

Based on the background of the study and research problem stated above, this research project aims to answer the following key research questions:

- What legal and regulatory institutional frameworks challenge the regulation and issuance of Sukuk securities in Ethiopia?
- What regulatory frameworks can be learned or adapted to establish and regulate Sukuk within the Ethiopian financial markets based on the experiences from selected jurisdictions?
- What legal reforms are necessary to effectively regulate Sukuk securities in Ethiopia?

1.4. OBJECTIVES OF THE RESEARCH

1.4.1. General Objective

The general objective of the research is to propose a regulatory framework for Sukuk in Ethiopia by examining comparative legal frameworks and drawing best practices and lessons for the development, regulation, and supervision of Sukuk securities.

1.4.2. Specific Objectives

Specifically, the study addresses the following three objectives:

1. To analyze how the existing legal and regulatory institutional frameworks challenges the regulation of Sukuk securities in Ethiopia.
2. To identify and analyze the regulatory frameworks of Sukuk from selected jurisdictions which are suitable for the establishment and regulation of Sukuk within the Ethiopian financial markets.
3. To propose recommendations for legal reforms to integrate Sukuk in Ethiopia.

1.5. RESEARCH METHODOLOGY

1.5.1. Research Design and Approach

This study employed a qualitative research design by considering the nature of the research questions and objectives. The study involves legal issues that cannot be quantified or explained in statistical analysis; rather, it is an explorative research type that requires qualitative and analytical reasons, justifications, and logical arguments of the underlying legal issue and comparative lessons.

For the legal component, this study employed a doctrinal research approach as well as a comparative legal analysis. The doctrinal approach is suitable for this study because the nature of the research focuses on reviewing and analyzing the relevant available literature and legal provisions to answer the aforementioned research questions. It also applied a comparative approach. The researcher used this approach to analyze the legal, regulatory, and supervisory frameworks of selected jurisdictions to draw lessons for regulating Sukuk securities in Ethiopia. In a sense, the key legal and regulatory structures in successful cases within each country that directly facilitated Sukuk issuance were investigated, described, and analyzed with the aim to draw lessons for Ethiopia.

Accordingly, the researcher purposively selects Malaysia, Indonesia, and Nigeria. Malaysia and Indonesia are selected first, because they have robust and well-developed laws and regulations on the issuance of Sukuk securities, as well as because they follow the dual financial system.⁴⁰ Secondly, both countries have maintained their leadership positions in the global Sukuk market.⁴¹ Therefore, exploring the framework of Sukuk regulations in these jurisdictions could offer valuable insights and best practices for the benefit of other nations that have not yet established their specific Sukuk regulatory systems⁴² like Ethiopia. Therefore, these help to draw up best practices for the regulation

⁴⁰ Salim Al-Ali, *Raising Capital on Şukūk Markets: Structural, Legal and Regulatory Issues* (Springer International Publishing 2019) 174.

⁴¹ International Islamic Financial Market, 'A Comprehensive Study of the Global Sukuk Market' (International Islamic Financial Market 2023) IIFM Sukuk report 2023 10.

⁴² Ghezal Mohamed, Rusni Hassan And Ahcene Lahsasna, 'Legal and Regulatory Approaches In Şukūk Issuance: A Comparative Analysis' (2022) 13 UUM Journal of Legal Studies 249, 251

of Sukuk securities. The selection of Nigeria is based on its leading role in the Sukuk market among African countries⁴³ and its established dual financial system, the same as Ethiopia. As a result, it's imperative to gain insights and draw lessons to Ethiopia.

1.5.2. Data Source and Method of Collection

The researcher used both primary and secondary sources of data. As a primary source of data, the researcher used the core principles that apply to Islamic finance in general and Sukuk in particular, regulatory and supervisory standards for the Sukuk, especially those concerning Sukuk securities set by the IFSB, AAOIFI, and IIFM, as well as the relevant domestic laws of Ethiopia, focusing on the financial laws and legislations of selected countries. The reason is that they are directly relevant to the study.

The secondary sources of data include, but are not limited to, relevant books, articles, journals, internet sources, reports, published or unpublished research papers, and other available and relevant domestic and foreign literature regarding the issue at hand. Besides, it analyzes the regulatory experiences of selected countries with a view to drawing lessons.

1.5.3. Data Analysis Method

The information gathered from both primary and secondary sources undergo analysis using qualitative data analysis methods. It utilized documentary/content analysis, thematic analysis, and explorative analysis techniques to address the research objectives. Content analysis of the existing financial laws of the country, detailed analysis of the legislations of selected countries, relevant literature, and other authoritative sources like scientific papers are utilized in this study. Thematic analysis was also employed to identify legal and institutional challenges for regulation and issuance of Sukuk in Ethiopia. These collected data are legally analyzed and interpreted through qualitative data analysis. Based on their significance and applicability for adaptation to the Ethiopian context, the laws and experiences of selected jurisdictions were analyzed comparatively.

⁴³ International Islamic Financial Market (n 8) 77.

1.6. SCOPE AND LIMITATIONS OF THE STUDY

It is difficult to conduct a study without having a limited scope of the study issues and it is imperative to specify the scope of the study. The Islamic financial system is a vast concept. This research, however, limits itself to Sukuk, which is the most important aspect of the Islamic Finance. This study focuses on the legal and regulatory institutional issues concerning Sukuk by analyzing the existing laws, literature, and experience of selected countries to draw lessons for Ethiopia.

Since doing research is not easy task this research encountered with some limitations. One of the limitations was the diverse views among scholars, researchers, and regulators throughout the world regarding the interpretation of fundamental Islamic finance principles in the context of Sukuk. The accessible data differs among jurisdictions based on social, economic, and market conditions. The lack of standardization of the sharia principles may affect the research. However, the researcher tried to overcome the possible limitations by looking at standards set by such international Islamic standard-setting institutions as the AAIFOI and the IFSB regarding Sukuk.

1.7. SIGNIFICANCE OF THE STUDY

The findings of this research will offer valuable insights for policymakers involved in formulating financial market regulations and for investors contemplating engagement in Islamic financial industry. The experience of selected jurisdictions that accommodate Sukuk in their financial market helps to easily identify the legal gaps or areas for improvement in the Ethiopia financial legal frameworks, which can help lawmakers, to regulate effectively like other nations. Further, the study will contribute to the limited literature on Ethiopia's Islamic finance and capital market, given its novelty and the scarcity of existing literature.

Finally, it will serve as an input for researchers to undertake further investigations and academic studies in this domain.

1.8. ETHICAL CONSIDERATIONS

Adherence to ethical principles and norms is paramount throughout the research process, including the proper citation of relevant, readily accessible sources by following the principles and norms governing research. Notably, the researcher, consistently abided by the principles and norms outlined for researchers. Additionally, proper acknowledgement of the works of others is ensured by employing the latest footnote citation rules of the Oxford University Standard for Citation of Legal Authorities (OSCOLA).

1.9. ORGANIZATION OF THE STUDY

This thesis is organized into five chapters, along with this introductory chapter. The second chapter uncovers the theoretical and conceptual background of Islamic finance and Sukuk. Chapter three analytically introduces the experiences of selected countries, mainly Malaysia, Indonesia, and Nigeria, to highlight their regulatory frameworks and experiences of Sukuk. The fourth chapter analyses the suitability of Ethiopian legal framework to accommodate Sukuk, and thereby outlines a road map for legal and regulatory frameworks for the regulation of Sukuk in Ethiopia financial markets based on the comparative lessons. Finally, in chapter five, the thesis draws concluding remarks and recommendations.

CHAPTER TWO

2. THEORETICAL AND CONCEPTUAL FRAMEWORKS OF ISLAMIC FINANCE AND SUKUK IN GENERAL

2.1 INTRODUCTION

Islamic finance, rooted in the principles and values of Sharia (Islamic law), has gained significant global traction as an alternative financial system. As a cornerstone of this system, Sukuk offers a Sharia-compliant means of raising capital, distinguishing itself from conventional bonds through its adherence to Islamic legal and ethical frameworks. This chapter explores the theoretical and conceptual foundations of Islamic finance and Sukuk by looking at their key aspects. It begins by outlining the principles and core components of Islamic finance, followed by an examination of Sukuk, including its historical evolution, Sharia compliance, features, structure, and types. The chapter highlights similarities and differences between Sukuk, conventional bonds, and shares. This framework offers a solid understanding of Islamic finance and Sukuk's distinctive place in modern financial systems.

2.2 GENERAL OVERVIEW OF ISLAMIC FINANCE AND ITS DEVELOPMENT

The Islamic system of finance provides a potential alternative to the conventional financial system, not only for Muslim countries but also for the rest of the world.⁴⁴ It stands apart from the conventional system by extending beyond purely financial and economic considerations. Its foundation lies in Sharia (Islamic law), which offers not only a religious framework but also social and ethical guidelines for Islamic finance.⁴⁵ It prioritizes the ethical, moral, social, and religious components to promote equality and fairness through the principles of Islamic law (*Sharia*) and its practical application through the development

⁴⁴ Iqbal Zamir, 'Islamic Financial System' (1997) 34 *Finance & Development* 42, 42–45.

⁴⁵ Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance: Theory and Practice* (2nd ed, John Wiley & Sons (Asia) 2011) 7–8.

of Islamic economics.⁴⁶ Islamic finance mandates that all operations comply with Islamic law, both in practice and intent.⁴⁷ As a result, any business activity that contradicts the principles of Sharia is strictly prohibited for Muslims.⁴⁸

Many researchers have defined and described Islamic finance, but they all concur that it is based on Sharia law. It can be broadly defined as a financial system that complies with the principles of Islamic law (sharia) and specifically those delineated in *fiqh al-mu'amalāt* (Islamic financial jurisprudence).⁴⁹ The foundations of Islamic finance are based on Islamic law, referred to as Sharia. Sharia governs all aspects of a Muslim's life, including financial and commercial activities, by providing mandatory guidelines.⁵⁰ Its rules are derived from the Holy Book (*Quran*), the teaching and practice of the Prophet Muhammed (PBUH) *Sunnah*, and other secondary sources from the consensus among Muslim scholars (*Ijma*) and analogy (*Qiyas*).⁵¹ These sources of Islamic law provide the ethical principles, concepts, and regulations that form the foundation of Islamic finance.

The Islamic financial system is essentially differentiated from its conventional equivalent by its stringent ban of interest (*riba*). It eliminates the concept of interest and prohibits the use of debt-based financial instruments.⁵² Because sharia considers interest-based business transactions morally unacceptable, viewing them as a form of exploitation of one party by another.⁵³ It ensures that all financial activities adhere to Sharia law, which promotes wealth generation through ethical and equitable means rather than exploitation. Unlike conventional finance, where interest-based debt financing is common, Islamic finance requires transactions to be backed by tangible assets or real economic activities, avoiding speculative gains or wealth accumulation through interest-bearing loans.⁵⁴ It fosters a model of risk-sharing and mutual benefit, where profits and losses are fairly distributed

⁴⁶ Zamir (n 44) 43.

⁴⁷ Asli Osman (n 11) 7.

⁴⁸ Beng Soon Chong and Ming-Hua Liu, 'Islamic Banking: Interest-Free or Interest-Based?' (2009) 17 *Pacific-Basin Finance Journal* 125, 128.

⁴⁹ Al-Ali (n 40) 9.

⁵⁰ Muhammad Ayub, *Understanding Islamic Finance* (John Wiley & Sons 2007) 19.

⁵¹ *ibid* 41.

⁵² Zamir (n 44) 42.

⁵³ Simon Archer (ed), *Islamic Finance: Innovation and Growth* (Repr, Euromoney Books [u.a] 2004) 3–9.

⁵⁴ Archer (n 53).

among parties. This approach not only discourages risk-shifting but also aligns financial practices with broader social objectives, such as reducing inequality, promoting economic justice, and supporting socially responsible investments.⁵⁵

Furthermore, the ideas of Islamic finance emphasis on ethical and moral standards in all aspects of financial dealings, reflecting its foundation in the teachings of Islam. It prohibits activities associated with tobacco, alcohol, pork products, gambling (*Maysir*), speculative trading, pornography, and the production or sale of armaments and destructive weapons.⁵⁶ The above restrictions are rooted in Sharia law, which aims to promote fairness, social welfare, and harm-free economic practices.

Islamic finance encompasses a range of financial products, services and investment methods that adhere to Sharia principles.⁵⁷ The basic financial instruments include cost-plus financing (*Murabahah*), profit-sharing arrangements (*Mudarabah*), leasing agreements (*ijara*), partnership (*Musharakah*), and forward sale (*bay' salam*).⁵⁸ These instruments function as fundamental components for the creation of a diverse range of more intricate financial instruments, indicating significant potential for financial innovation and growth within the Islamic financial market.⁵⁹ Sukuk is one of the innovative sharia-compliant products.

The origin of Islamic finance traces back to the 7th century during the time of the Prophet Muhammad (PBUH).⁶⁰ From the rise of Islam until the 12th century, there were different Sharia-compliant financial instruments utilized in the Muslim World.⁶¹ During the Islamic Golden Age (8th–13th centuries), Islamic financial practices, including early forms of

⁵⁵ Muhammad Ayub, *Understanding Islamic Finance* (John Wiley & Sons 2007) 74.

⁵⁶ Zamir (N 36) 43; Iqbal And Mirakhor (N 37) 11; Melika Mohammed, 'Introducing Policy And Regulatory Framework For Accomodation Of Islamic Banking In Ethiopia' (LLM Thesis, Addis Ababa University 2020) 12.

⁵⁷ Hans Visser, *Islamic Finance: Principles and Practice, Second Edition* (Edward Elgar Publishing 2013) 1–2 <<https://www.elgaronline.com/view/9781781001738.xml>> accessed 9 December 2024.

⁵⁸ Zamir (n 44) 42.

⁵⁹ *ibid* 43.

⁶⁰ Ahmad Alharbi, 'Development of the Islamic Banking System' (2015) 3 *Journal of Islamic Banking and Finance* 12 <<http://jibfnet.com/vol-3-no-1-june-2015-abstract-2-jibf>> accessed 10 December 2024.

⁶¹ Mohammad Taquiuddin bin Mohamad and others, 'The Historical Development of Modern Islamic Banking: A Study in South-East Asia Countries' [2013] *African Journal of Business and Management* 25.

Sukuk thrived and supported vast trade networks.⁶² However, the rise of Western colonial powers in the 19th and 20th centuries led to the decline of Islamic finance as conventional banking systems were introduced.⁶³ The modern revival began in the 1960s with the establishment of *Mit Ghamr* Savings Bank in Egypt and gained momentum in the 1970s with institutions like the Islamic Development Bank.⁶⁴ The reason for the emergence of modern Islamic finance is to provide alternative Sharia-compliant financial services and products for those who are not able to access conventional financial services due to religious reasons.⁶⁵ By the 1980s and 1990s, Islamic finance expanded globally, supported by the growing Sukuk market and the rise of Islamic banks in regions like the Middle East and Southeast Asia.⁶⁶

The growth and success of the Islamic banking industry in the Muslim world have sparked interest in Islamic finance as an alternative to conventional banking in Europe and America, particularly for Muslim minorities.⁶⁷ It gained global recognition due to its remarkable resilience during the 2007–2009 financial crises, leading to increased demand even from non-Muslim countries.⁶⁸ In response, many nations have worked to create Sharia-compliant financial environments, both to attract investment from Gulf Cooperation Council (GCC) countries and to accommodate the financial needs of their Muslim populations.⁶⁹ This approach also enhances financial inclusion by addressing religious exclusions in financial systems.

Nowadays Islamic finance has gained global recognition and credibility with support from international organizations such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the Islamic Financial Services Board (IFSB), the

⁶² Latham & Watkins, *The Sukuk Handbook: A Guide To Structuring Sukuk*, p 1.

⁶³ Iqbal and Mirakhor (n 45) 13–14.

⁶⁴ *ibid* 15.

⁶⁵ Gait A. H and Worthington A. C, ‘A Primer on Islamic Finance: Definitions, Sources, Principles and Methods’ 31.

⁶⁶ Tamim Abdullah Bin Suliman, ‘Shari’ah and Legal Risk Issues in Sukuk Structures: An Analytical Case Study on SABIC Sukuk in Saudi Arabia’ (PhD Thesis, Durham University 2016) 21.

⁶⁷ *ibid*.

⁶⁸ *ibid*.

⁶⁹ Iqbal and Mirakhor (n 45) 18.

International Islamic Financial Market (IIFM), and the Liquidity Management Centre (LMC).

According to the IFSB report of 2024⁷⁰, the Islamic financial industry asset value reached a \$3.38 trillion encompassing banking, takaful (Islamic insurance), and Islamic capital markets including Sukuk.

2.3. BASIC PRINCIPLES OF ISLAMIC FINANCE

It is well-founded that Sharia serves as the foundation of Islamic finance. The rules and practices of Islamic financial transactions are derived from the Holy Quran and the practices of the prophet (*Sunnah*) and other secondary sources of Islamic jurisprudence, such as opinions commonly agreed upon among Sharia scholars, analogy, and personal reasoning.⁷¹ From these sources, Islamic finance rests on major principles, which form its foundation. Understanding the fundamental principles that differentiate Islamic finance from other financial systems is vital. The need of discussing on the principle of Islamic finance is emanating from the seeking of having a sharia-compliant Sukuk instrument in Ethiopia. Therefore, this section aims to delve into the fundamental principles of Islamic finance.

2.3.1. The Prohibition of *Riba* in Financial Transactions

The primary principle of Islamic finance is the strict prohibition of *riba*, or interest. It is unanimously agreed among Muslims that *riba* is a grave sin in Islam, and any financial transaction involving interest or usury is considered unlawful under Sharia law.⁷² According to the Sharia, *riba* technically refers to the premium that a borrower is required to pay the lender in addition to the principal amount as a condition for the loan or for extending its duration.⁷³ This interest payment is guaranteed regardless of the purpose of the loan or its outcome, making it strictly prohibited in Islamic finance.⁷⁴ In Islamic

⁷⁰ IFSB (n 15).

⁷¹ Alamgir, M, Hossain, M.M. and Faisal, N.A., 'Issues and Challenges for Islamic Finance and Banking in Bangladesh in the Perspective of Global Development' (2017) 24 Research Monograph 18–19.

⁷² Ayub (n 50) 44.

⁷³ Iqbal and Mirakhor (n 45) 59.

⁷⁴ *ibid.*

finance, excess increase in capital through giving loans to others or any other interest-based deal and transactions are prohibited.

Sharia law prohibits interest (*riba*) because it is considered a form of economic and social exploitation that violates the Islamic principle of social justice.⁷⁵ The prohibition aims to promote fairness and ethical behavior in financial transactions by ensuring that both borrowers and lenders share risks and rewards equitably. Islam condemns unjust practices where lenders guarantee themselves a profit without bearing any risk, leaving borrowers to shoulder the entire burden.⁷⁶ Hence, Muslims are prohibited from earning income through charging interest but are allowed to generate income by sharing risks and rewards between the parties through asset-backed financing.⁷⁷ This aligns with the broader Islamic goal of ensuring wealth distribution is fair and reflects true productivity, fostering a more just and socially responsible economic system.⁷⁸

The Quran and numerous sayings of the Prophet Muhammad (PBUH) explicitly prohibit *riba*. Quranic verse including: “O believers, take not doubled and redoubled interest, and fear God so that you may prosper. Fear the fire which has been prepared for those who reject faith, and obey God and the prophet so that you may receive mercy.”⁷⁹ The teaching of Prophet Muhammad (PBUH) also strictly prohibited all forms of *riba*, whether it involves paying, receiving, charging, or even witnessing it, and instructed Muslims to avoid any transactions or gains derived from usury entirely.⁸⁰

Sukuk securities developed as an alternative product to conventional bond (interest-based instrument)

⁷⁵ Ali Saeed Al-Shamrani, ‘Islamic Financial Contracting Forms In Saudi Arabia: Law And Practice’ (PhD Thesis, Brunel University 2014) 41.

⁷⁶ Iqbal and Mirakhor (n 45) 10.

⁷⁷ Ayub (n 50) 76.

⁷⁸ Iqbal and Mirakhor (n 45) 10.

⁷⁹ *The Holy Qur’ān Surah*, p Surah Al-Imran veres 3:130.

⁸⁰ Yahyá ‘Abd al-Rahmān, *The Art of Islamic Banking and Finance: Tools and Techniques for Community-Based Banking* (J Wiley & sons 2010) 41.

2.3.2. Profit and Risk Sharing Principle

Profit and risk sharing is a key principle in Islamic finance, emphasizing the equitable distribution of both profits and losses among all parties participating in a financial transaction.⁸¹ Islamic financial instruments replaces interest with Profit and Loss sharing as the return on capital, transforming fund providers into investors rather than creditors, as is common in interest-based financial systems.⁸² In Islamic finance, a lender providing funds for trade or production shares in both the profits and risks as a partial owner of the enterprise, earning returns only when profits are made.⁸³ In contrast, a creditor in a conventional system earns interest regardless of the enterprise's success or failure, bearing only the risk of the borrower's solvency rather than the business's outcomes.⁸⁴ In other words, shifting the entire risk of principal repayment and interest payments solely to the borrower, while the lender retains ownership claims over these amounts, is considered unlawful. Therefore, the risk-sharing framework aims to achieve distributive justice of Islamic economic theory by eliminating the interest-based scheme of financing.⁸⁵

Islamic finance applies risk-sharing in practice through various methods of arrangement, such as *Mudarabah* and *Musharakah* contracts,⁸⁶ where the investor collaborates with the entrepreneur by sharing both profits and losses, or engages in equity-based financing, where the financier invests directly in the business and participates in its financial outcomes, including gains and losses.

There is a substantial difference between profits derived from entrepreneurial ventures and profits generated through loan-based activities.⁸⁷ Profits from loans (interest) are viewed as an unethical monetary advantage gained without providing equivalent value, making them

⁸¹ Muhamed Zulkhibri, *Islamic Finance, Risk-Sharing and Macroeconomic Stability* (Palgrave Macmillan US 2019) 238–354.

⁸² Aliyu (n 38) 12.

⁸³ Iqbal and Mirakhor (n 45) 65.

⁸⁴ Fatmah A. Al Maddah, 'Islamic Finance and the Concept of Profit and Risk Sharing' (2017) 1, *Middle East Journal of Entrepreneurship, Leadership and Sustainable Development* 89, 91.

⁸⁵ Aliyu (n 38) 12.

⁸⁶ Fatmah A. Al Maddah (n 84) 89–95.

⁸⁷ Ahmad M. Abu-Alkheil, 'Ethical Banking and Finance: A Theoretical and Empirical Framework for the Cross Country and Interbank Analysis of Efficiency, Productivity and Performance' (PhD Thesis, University of Hohenheim 2012) 2–3.

forbidden under Sharia.⁸⁸ However, Islam supports profit and financial gain when they result from genuine efforts, acceptance of liability for the venture's outcomes, productive activities, and compliance with Sharia Law.⁸⁹

2.3.3. Asset Backed Financing

In Islamic finance, money is viewed solely as a medium of exchange with no intrinsic value or utility and is not treated as a commodity or asset class.⁹⁰ Consequently, it cannot be used to generate income independently, such as through interest-bearing deposits or loans.⁹¹ Instead, money should be invested through the purchase and sale of tangible assets, and income streams should be derived from the economic use of those assets.⁹² Asset-Backed finance principle requires all financial transactions to be supported by real, identifiable, and tangible assets. In other words, it implies that all financial transactions should be secured by a reference portfolio of on-balance-sheet assets belonging to the originator.⁹³ In Islam money can only grow and generate a return if deployed into real economic activities such as trading, leasing, investing and other Sharia compliant transactions that are backed, based, or linked to real assets, goods, and services. Therefore, Islamic finance is widely regarded as asset-backed financial systems that effectively connect the financial sector with the real economy.

The very notion of Sukuk instrument structured based on underlying asset (will be discussed under Sukuk section).

2.3.4. Prohibition of *Gharar* (Excessive Uncertainty) and *Maysir* (Gambling)

The other foundational principle of Islamic financial system is prohibition of *Gharar*. The term *Gharar* in Arabic encompasses a wide range of meanings, including fraud, uncertainty, deceit, or excessive peril that could result in loss or harm. It refers to

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Muḥammad Taqī ‘Uṣmānī, *An Introduction to Islamic Finance* (Kluwer Law International 2002) 12.

⁹¹ Junaid Haider and Muhammad Azha, ‘Islamic Capital Market Sukuk and Its Risk Management in the Current Scenario’ (MA Thesis, Umea University 2010) 18.

⁹² ‘Uṣmānī (n 90).

⁹³ Ahcene Lahsasna, *Forward Lease Sukuk in Islamic Capital Markets: Structure and Governing Rules* (Palgrave Macmillan US 2018) 19–20.

transactions involving ambiguous or uncertain elements, such as a lack of clarity regarding the existence, characteristics, or outcome of the subject matter.⁹⁴ This ambiguity arises due to insufficient information or an unclear understanding of the contract's terms, the quality of the goods, or the ultimate result of the agreement.⁹⁵ Hence, In Islamic financial contracts and transaction Gharar is strictly prohibited.

Although the Quran does not explicitly mention the prohibition of *gharar* (excessive uncertainty), Allah mention “Eat not your property among yourselves unjustly by falsehood and deception, except it be a trade amongst you by mutual consent.”⁹⁶ The Quran explicitly prohibits gambling,⁹⁷ which many scholars argue is closely related to speculative activities.⁹⁸ Additionally, several sayings of the Prophet Muhammad (PBUH) prohibit transactions involving uncertainty. For example, He prohibited the sale of unborn animals still in their mother's womb, the trade of milk without measuring it, the purchase of war spoils before their distribution, the sale of charities before reception, and the trade of a diver's catch before retrieval.⁹⁹ These examples highlight the overarching principle of avoiding ambiguity and unfair practices in financial dealings. The rationale behind the prohibition of *Gharar* seeks to prevent transactions that could create disagreements between the parties involved, as such uncertainties have the potential to disturb trust and disrupt social harmony.¹⁰⁰

Islamic finance also strictly prohibits generating profit through speculative or gambling activities (*Maysir*). *Maysir* refers to gambling or games of chance where wealth is acquired by luck or speculation, without any legitimate effort, consideration, or compensation.¹⁰¹ These transactions are sometimes described as zero-sum, where one party's gain inevitably results in the other's loss, rather than fostering a mutually beneficial outcome. The Quran

⁹⁴ Md Akther Uddin, ‘Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir’ 3–5 <<http://rgdoi.net/10.13140/RG.2.2.36029.20969>> accessed 13 December 2024.

⁹⁵ *ibid* 3.

⁹⁶ *The Holy Qur`ān Surah* (n 79) Al-Bakarah, 2:188; Al Nisa, 4:29.

⁹⁷ *ibid* Al-Bakarah, 2:219 and Al Maidah, 5:93.

⁹⁸ H Nurul Husna and R Abdul Rahman, ‘Financial Distress–Detection Model for Islamic Banks’ [2012] *International Journal of Trade, Economics and Finance* 158, 158–59.

⁹⁹ Md Akther Uddin (n 94).

¹⁰⁰ Ayub (n 50) 61.

¹⁰¹ *ibid* 61–63.

explicitly condemns *Maysir*: In *Surah Al-Baqarah verse 2:219*, Allah prohibits gambling alongside the consumption of wine (*khamr*), emphasizing their harmful nature. Similarly, in *Surah Al-Maidah verse 5:90-91*, the prohibition is reiterated, grouping gambling with wine consumption, idol worship, and divining arrows, all of which are described as evil acts inspired by Satan.¹⁰² These verses collectively highlight the destructive consequences of such activities and urge believers to avoid them for their own success and well-being.

Sharia does not forbid the typical commercial speculation inherent in business ventures, as risk-taking is a core component of Islamic finance transactions.¹⁰³ However, due to the prohibition of *gharar* and *maysir* (gambling), certain financial instruments like options, futures, and derivatives are generally excluded from use in Islamic finance.¹⁰⁴ Because it involve non-asset-backed transactions, dealing in debt, excessive uncertainty (*gharar*), gambling, non-existent assets, and short sales (selling goods not owned).¹⁰⁵ These products are considered non-compliant because they involve excessive uncertainty and speculative practices that conflict with Sharia principles.

2.3.5. Ethical Investment

Alongside the major prohibitions, Sharia outlines a set of guiding principles that establish the foundational framework for conducting financial and commercial activities. Islamic investments must adhere to social responsibility, avoiding any actions or activities deemed sinful or unethical under Sharia because they are considered impure and harmful to society.¹⁰⁶ Hence, Islamic financial instruments including Sukuk are prohibited from supporting activities that Sharia law considers unlawful. Consequently, investing in or financing any business activity that involves alcohol, tobacco, narcotics, pork related products, gambling, companies involved in oppressive regimes (i.e. abusing human rights)

¹⁰² Md Akther Uddin (n 94).

¹⁰³ Ayub (n 50) 58.

¹⁰⁴ Juan Sole and others, 'Operative Principles of Islamic Derivatives: Towards a Coherent Theory' (2012) 12 IMF Working Papers 1, 4.

¹⁰⁵ Sole and others (n 104).

¹⁰⁶ Essia Ries Ahmed and others, 'Operational Definition for Doubtful Activities (Shubuhah) Based on Islamic Finance Perspective' (2021) 12 Journal of Islamic Marketing 1025.

and/or environmental degradation as well as industries failing to meet the *riba* (interest) and *gharar* (excessive uncertainty) prohibitions such as conventional finance.¹⁰⁷

All these foundational principles are deeply embedded in the various branches of Islamic finance and serve as the basis for the products developed within this system including Sukuk.

2.4. MAIN COMPONENTS OF ISLAMIC FINANCIAL SYSTEM

Islamic finance is broadly categorized into key sectors based on the nature and application of its products, including Islamic banking, Islamic capital markets, and Islamic insurance (*Takaful*).

2.4.1. Islamic Banking

Islamic banking is the well-known component of Islamic finance, functioning similarly to conventional banking but offering financial products and services that comply with Sharia principles.¹⁰⁸ This includes the ban on offering services considered illegal, such as those related to alcohol or gambling, and the prohibition on charging or receiving interest.

Islamic banks operate on profit-and-loss-sharing models rather than charging interest.¹⁰⁹ This means that instead of paying or charging interest on loans, the bank shares the risk and rewards of an investment with its clients. They offer products such as *mudarabah* (profit-sharing) and *musharakah* (joint venture partnerships) to facilitate business transactions while adhering to Islamic principles of equity and justice.¹¹⁰ It engages in asset-backed financing and focus on ensuring that financial activities are grounded in real economic activities.¹¹¹

¹⁰⁷ Melika Mohammed, 'Introducing Policy And Regulatory Framework For Accomodation Of Islamic Banking In Ethiopia' (LLM Thesis, Addis Ababa University 2020) 12.

¹⁰⁸ 'Islamic Banking - Institute of Islamic Banking and Insurance' (19 September 2023) <<https://islamic-banking.com/islamic-banking/>> accessed 18 December 2023.

¹⁰⁹ Muhammad Hanif, 'Profit & Loss Sharing in Islamic Banking and Finance' (Social Science Research Network, 27 April 2014) <<https://papers.ssrn.com/abstract=2430013>> accessed 18 December 2024.

¹¹⁰ Iqbal and Mirakhor (n 45) 116–118.

¹¹¹ Ayub (n 50) 116–117.

A 2024 report by the Islamic Financial Services Board highlighted that the banking sector continued to dominate the Islamic financial services industry, accounting for around 70.21 percent of the total global Islamic financial assets in 2023.¹¹² The report estimated the sector's value at approximately \$2.37 trillion, reaffirming its leading role within the industry.¹¹³

2.4.2. Islamic Insurance (*Takaful*)

Islamic insurance, commonly referred to as "*Takaful*," originates from the Arab world and translates to mutual guarantee or guaranteeing one another.¹¹⁴ It is a Sharia-compliant alternative to conventional insurance that operates on principles of mutual assistance and cooperation, emphasizing shared responsibility, joint indemnity, collective interest, and solidarity among participants.¹¹⁵ Unlike conventional insurance, *takaful* avoids the elements of interest (*riba*), excessive uncertainty (*gharar*), and gambling (*maysir*), ensuring compliance with Sharia principles.¹¹⁶

Takaful companies utilize a risk-sharing approach to deliver insurance services to their participants.¹¹⁷ They establish a shared fund by collecting contributions from members, which is then used to compensate for losses or damages incurred by any member. Individuals who purchase a *takaful* policy become members of the *takaful* fund and contribute regularly through premiums.¹¹⁸ These contributions are invested in Sharia-compliant assets such as equities, real estate, and Sukuk to generate returns for the fund and its members. In the event of a covered loss or damage, claims are paid to the affected member or beneficiary from this shared fund.

¹¹² IFSB (n 15) 8.

¹¹³ *ibid* 9.

¹¹⁴ Nico P. Swartz and Pieter Coetzer, 'Takaful: An Islamic Insurance Instrument' (2010) 02 Journal of Development and Agricultural Economics 333, 333–339.

¹¹⁵ AbdufetaH Hussien (n 39) 16.

¹¹⁶ International Organization of Securities Commissions, 'Islamic Capital Market Fact Finding Report : Report of the Islamic Capital Market Task Force of the International Organization of Securities Commissions.' (2004) 22.

¹¹⁷ Nico P. Swartz and Pieter Coetzer (n 114) 336.

¹¹⁸ AbdufetaH Hussien (n 39) 25.

2.4.3. Islamic Capital Market

The Islamic capital market covers all the transactions, operations and activities are carried out in the capital market as per Sharia principles.¹¹⁹ It is part of the Islamic finance system, including Sukuk and Sharia-compliant equity investments. Sukuk are Islamic financial instruments that serve as alternatives to conventional bonds, gaining popularity as a means of project financing. It contributes approximately 90 percent to the Islamic capital markets.¹²⁰ They can be structured as asset-based or asset-backed instruments and are tradable on secondary markets, offering greater liquidity compared to traditional Islamic finance instruments. This is the very tenet on which this research lies.

Sharia-compliant equity investments involve purchasing shares in companies that align with Islamic principles.¹²¹ These companies operate in permissible sectors, such as healthcare, education, or technology, while avoiding industries considered *haram* (unlawful) under sharia. They also follow Islamic principles like profit-and-loss sharing and risk-sharing. Sharia-compliant equity investments provide a viable alternative to conventional equities and have gained significant popularity in recent years.

The Islamic Financial Services Board's report 2024¹²² underscored the vital role of the Islamic capital markets sector in the global Islamic finance industry. The sector accounted for 29.08% of the industry's total, with an estimated value of \$1032.24 billion dollar.¹²³ Sukuk, in particular, stood out as the second leading product with estimated value \$850 billion dollar.¹²⁴ This highlights the growing appeal of Sukuk as an innovative tool for financing projects, enabling trade, and offering investment opportunities. The rising demand for Sukuk is significantly shaping the Islamic capital markets sector and influencing the broader global financial landscape.

¹¹⁹ Junaid Haider and Muhammad Azha (n 91) 19.

¹²⁰ *ibid* 20.

¹²¹ Nafis Alam, Lokesh Gupta and Bala Shanmugam, *Islamic Finance: A Practical Perspective* (1st ed. 2017, Springer International Publishing : Imprint: Palgrave Macmillan 2017) 45.

¹²² IFSB (n 15).

¹²³ *ibid*.

¹²⁴ *ibid*.

2.5. SUKUK: CONCEPTUAL FRAMEWORK AND ITS HISTORICAL DEVELOPMENT

2.5.1. The Concept of Sukuk

Sukuk are among the most distinguished and generally acknowledged instruments in Islamic finance. Sukuk is the plural form of the Arabic term "*Sakk*," which refer to a financial instrument, or a legal document.¹²⁵ The term Sukuk, used in Muslim societies during the middle Ages, refers to papers representing financial obligations arising from trade and other commercial activities.¹²⁶ In modern financial terms, Sukuk is considered an Islamic alternative to conventional bonds or a Sharia-compliant financial instrument that signifies proportional ownership in specific tangible underlying assets of a particular project, business venture or transactions.¹²⁷ These instruments also grant a pro rata share of the profits or losses stemming from the property, business ventures, or investment activities.¹²⁸

In various academic literatures the term Sukuk is often translated as 'Islamic bond,' but this is a misleading translation. Sukuk and bonds are distinct financial instruments. Conventional Bond does not accurately capture the unique nature of Sukuk. A more accurate translation of Sukuk would be Islamic investment certificate.¹²⁹

Some Islamic financial bodies have issued different formal definitions, but they are similar in terms of their main meaning. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), a key standard-setting body in the Islamic banking and finance sector, defines Sukuk as an investment-grade product to distinguish them from shares and bonds.¹³⁰ It define Sukuk as “certificates of equal value representing undivided

¹²⁵ Obiyathulla Ismath Bacha and Abbas Mirakhor, *Islamic Capital Markets: A Comparative Approach* (Wiley 2013) 172.

¹²⁶ Ali Saeed Al-Shamrani (n 75) 89.

¹²⁷ Yusuf Sani Abubakar and others, 'The Concept of Sukuk and Its Applications in Contemporary Islamic Financial System' (2023) 2 *Law and Humanities Quarterly Reviews* 40 <<https://www.asianinstituteofresearch.org/lhqrarchives/the-concept-of-sukuk-and-its-applications-in-contemporary-islamic-financial-system>> accessed 28 December 2024.

¹²⁸ *ibid.*

¹²⁹ Muhammad al-Bashir Muhammad Al-Amine, *Global Sukuk and Islamic Securitization Market: Financial Engineering and Product Innovation* (Brill 2012) 57.

¹³⁰ Al-Ali (n 40) 30.

shares in ownership of tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or special investment activity.”¹³¹

Further, the Islamic Financial Service Board (IFSB) in its Capital Adequacy Standard defined Sukuk¹³² as “certificate that a proportional undivided ownership right in tangible assets, or a pool of predominantly tangible assets, or a business venture (such as a *muḍarabah*). These assets may be in a specific project or investment activity in accordance with sharia rules and principles.

The International Islamic Financial Market (IIFM) offers another institutional definition of Sukuk, describing it as "commercial paper that provides an investor with ownership in an underlying asset. It is asset backed trust certificates evidencing ownership of an asset or its usufruct (earnings or fruits)."¹³³

In Ethiopian context, there is no a comprehensive definition of Sukuk provided from regulatory perspective. However, the Ethiopian Securities Exchange under its rule book defined Sukuk¹³⁴ as: “investment certificates or notes of equal value that represent an undivided ownership interest in tangible assets, usufructs, services, or investments in the assets of specific projects or specialized investment activities, in accordance with Sharia principles and concepts approved by the Ethiopian capital market authority.”

According to the aforementioned definitions, Sukuk are Sharia-compliant investment certificates that signify undivided ownership interests in tangible assets or designated projects. This certificate allows the holder to receive income from the utilization of the assets.¹³⁵ They are best characterized as asset-based investments, where the investors

¹³¹ ‘Accounting and Auditing Organization for Islamic Financial Institutions’ <<https://aoifi.com/ss-17-investment-sukuk/?lang=en>> accessed 31 January 2024.

¹³² ‘IFSB, “Capital Adequacy Requirements for Şukūk, Securitisations and Real Estate Investment” (IFSB, January 2009) 3’.

¹³³ IIFM, ‘International Islamic Financial Market Şukūk Report 1st Edition’ (IIFM, 2010) 3’

¹³⁴ Ethiopian Securities Exchange, ‘Rulebook of the Ethiopian Securities Exchange (Equities and Fixed Income Markets, 2024)’.

¹³⁵ Balibek, Emre, ‘Establishing a Legal Framework for Sovereign Sukuk Issuance: A Public Debt Management Perspective’ (*World Bank*) 4 <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/907001497472893193/Establishing-a-legal-framework-for-sovereign-sukuk-issuance-a-public-debt-management-perspective>> accessed 5 February 2024.

assume both the risks, and rewards associated with the asset in proportion to their investment.

Unlike conventional bonds, Sukuk do not represent a debt obligation owed by the issuer.¹³⁶ Instead, investors own a portion of the underlying asset and receive a share of the earnings it generates. It can be issued by both sovereign and corporate entities to finance their activities. Similar to bonds, Sukuk have a maturity date and often provide a regular stream of income throughout their term, along with a final payment upon maturity.¹³⁷ Its primary goal of Sukuk is to offer a Sharia-compliant alternative to conventional bonds.

Sukuk has become a key instrument in Islamic finance and capital markets, providing Sharia-compliant investment opportunities for investors and a funding mechanism for issuers. It has been widely used to finance diverse projects, including infrastructure, real estate, energy and environmental project like green Sukuk.¹³⁸

2.5.2. Historical Origin of Sukuk

Sukuk historical origins traced back to the early Islamic Caliphates, during which Sukuk served as instruments symbolizing financial obligations arising from trade and various commercial activities.¹³⁹ The first recorded use of Sukuk dates back to the 7th century AD in Damascus, Syria.¹⁴⁰ During this period, the Umayyad Dynasty under the rule of Khalifah al-Marwan ibn al-Hakam issued Sukuk as a form of payment to soldiers and civil servants.¹⁴¹ These Sukuk granted holders the right to redeem them at the treasury on the

¹³⁶ Umar A Oseni and M Kabir Hassan, 'The Regulation and Supervision of Sukuk in Global Capital Markets' in M Kabir Hassan and Mervyn K Lewis (eds), *Handbook on Islam and Economic Life* (Edward Elgar Publishing 2014) 398–399 <<https://china.elgaronline.com/view/edcoll/9781783479818/9781783479818.00029.xml>> accessed 4 January 2024.

¹³⁷ Pegah (n 4) 1.

¹³⁸ Lahsasna (n 93) 71–72.

¹³⁹ Mahamud Asli Osman, 'Sukuk as A Tool towards Development: How Kenya Can Use Sukuk as Alternative Source Of Funding Development Projects' (LLM Thesis, University of Nairobi 2019) 23.

¹⁴⁰ *ibid.*

¹⁴¹ Adam Abu Bakar and Ibrahim Muhammad, 'Sukuk and Nation Building: An Overview of the Development and Impact of Sukuk Financing in Nigeria' (2020) 5 IKONOMIKA 71, 75.

maturity date for a predetermined amount of commodities, typically grains.¹⁴² Sukuk were also referred to as money orders, resembling modern-day cheques.¹⁴³

However, the revival of Sukuk in modern Islamic finance began in the 20th century, as Muslim-majority nations sought financial instruments compliant with Sharia law. In 1988 the modern concept of Sukuk was formally developed by International Council of Islamic Fiqh Academy.¹⁴⁴ During its Fourth Session held in Jeddah, the Council of the Islamic Fiqh Academy of the Organization of Islamic Conference (OIC) laid the groundwork for what would become contemporary Sukuk.¹⁴⁵ This conference appears to have initiated the widespread issuance of Sukuk, particularly in the Middle East and Southeast Asia, paving the way for its adoption as a key financial instrument in these regions.

This development eventually led to the first Sukuk issuance in 1990 by Malaysian private firm, Shell MDS, for the value of US\$ 40 million.¹⁴⁶ The second Sukuk, issued in 2001 by Kumpulan Guthrie Berhad, a Malaysian public company, marked a significant milestone as the first-ever global corporate Sukuk.¹⁴⁷ The first international sovereign Sukuk of a US\$ 100 million were issued by the Government of Bahrain in September 2001 with a 5 year maturity period.¹⁴⁸ These events set the stage for global expansion. Nowadays, the total issuance of Sukuk both in Muslim and non-Muslim majority countries in global Sukuk market reached \$850 billion dollars.¹⁴⁹

¹⁴² Mohamed Rafe Md. Haneef, 'Recent Trends and Innovations in Islamic Debt Securities: Prospects for Islamic Profit and Loss Sharing Securities' in Syed Nazim Ali (ed) (ed), *Islamic Finance: Current Legal and Regulatory Issues* (Cambridge, Mass: ILSP Harvard 2005) 30.

¹⁴³ M. Sherif and C. T. Erkol, 'Sukuk and Conventional Bonds: Shareholder Wealth Perspective' (2017) 8 *Journal of Islamic Accounting and Business Research* 347.

¹⁴⁴ Abul Hassan, Aktham Issa Almaghaireh and Muhammad Shahidul Islam, *Islamic Financial Markets and Institutions* (Routledge, Taylor & Francis Group 2023) 186.

¹⁴⁵ Essia Ries Ahmed and others, *The Challenges and Prospects of Sukuk: A Content Analysis-Based Study* (Cambridge Scholars Publisher 2022) 19.

¹⁴⁶ Mohamed Ariff, Iqbal and Shamsheer Mohamad (n 14) 51.

¹⁴⁷ Essia Ries Ahmed and others, *The Challenges and Prospects of Sukuk: A Content Analysis-Based Study* (Cambridge Scholars Publisher 2022) 20–21.

¹⁴⁸ Abu Bakar and Muhammad (n 141) 76.

¹⁴⁹ IFSB (n 15).

In 2004, Germany became the first non-Muslim country to issue Sukuk when the state of Saxony-Anhalt launched a €100 million Sukuk.¹⁵⁰ A decade later, in 2014, the United Kingdom government became the first non-Muslim country to issue sovereign Sukuk. Today, countries such as Saudi Arabia, Malaysia, the United Arab Emirates, Indonesia, Turkey, Bahrain, and Pakistan are leaders in Sukuk issuance with most of these Sukuk are sovereign.¹⁵¹ However, this is emerging jurisdictions like Pakistan, Bangladesh, Egypt, Nigeria, and other African countries get more involved in the Sukuk market.¹⁵²

The rapid growth of the Sukuk market underscored the need for regulation, standardization, and oversight to ensure adherence to Islamic Sharia principles.¹⁵³ In response, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) issued Sharia Standard No. 17 on investment Sukuk.¹⁵⁴ These guidelines were designed to facilitate Sukuk trading and establish rules to ensure that each Sukuk structure complies with Sharia principles.¹⁵⁵

2.5.3. Unique Features of Sukuk

The essential features of Sukuk play a vital role in understanding their conceptual foundation in financial innovation and investment.¹⁵⁶ These features also serve as key criteria for evaluating whether a Sukuk structure aligns with Sharia principles. Sukuk shares general characteristics with other Islamic financial instruments, as well as unique features that are inherent to its issuance.

Generally like all Islamic finance instruments, Sukuk issuance must adhere to key principles, including the prohibition of *Riba* (interest), *Gharar* (excessive uncertainty), gambling, and investments in prohibited assets or activities¹⁵⁷ as discussed in the previous sections. This means Sukuk holders cannot earn interest but are rewarded with profits

¹⁵⁰ Shafiu Ibrahim Abdullahi, 'Sukuk as an Alternative Source of Funds for Nigerian Government .' in Kabir I. Dandago, Aliyu Dahiru Mohammed and Umar A. Oseni (eds), *Essentials Of Islamic Banking And Finance In Nigeria* (Benchmark Publishers Limited Kano 2013) 214–224.

¹⁵¹ IFSB (n 15) 29.

¹⁵² International Islamic Financial Market (n 8) 10.

¹⁵³ Asli Osman (n 11) 24.

¹⁵⁴ 'Accounting and Auditing Organization for Islamic Financial Institutions' (n 3).

¹⁵⁵ Asli Osman (n 11) 24.

¹⁵⁶ Al-Ali (n 40) 34.

¹⁵⁷ *ibid* 33.

generated by the underlying assets. The Quran prohibits charging interest on money lending. Instead, Sharia requires that any return earned by the financier must come from profits generated through a commercial risk undertaken by the financier.¹⁵⁸ Additionally, Sukuk structures must avoid excessive or disproportionate risks and speculative transactions. The underlying assets must not be involved in gambling or speculative activities (*maysir*), nor can they be associated with items or industries deemed impermissible (*haram*) under Sharia law.

In addition, some of the characteristics of Sukuk can be established from its definition and sharia-compliant nature. Firstly, the funds raised through Sukuk issuance must be utilized to finance tangible assets, investments, or specific projects. The identification of specific assets is crucial because, unlike conventional bonds, Sukuk cannot be used to meet the general financial needs of the issuer.¹⁵⁹ This distinction makes Sukuk an asset-backed financing instrument unlike to interest-bearing one. Generating income from real economic transactions is a fundamental requirement of Sharia. Trading in debt is prohibited under Sharia because money is not regarded as a commodity.¹⁶⁰ Therefore, Sukuk must always be backed by tangible underlying assets.

Secondly, a Sukuk security represents common or undivided ownership interest over the underlying asset, investment activity or specific project and not a debt owed by the issuer; this makes the Sukuk holder an owner, and not a lender.¹⁶¹ Because of the prohibition of interest in Islam, the income received by Sukuk holders must be derived from the cash flows generated by the underlying project or asset.¹⁶²

Thirdly, Sukuk are structured based on various Sharia-compliant contracts (Islamic commercial contracts), each offering distinct Sukuk structures.¹⁶³ These contracts govern the issuance, trading, and profit-and-loss arrangements of the specific Sukuk structure. The type of Sukuk issued corresponds to the particular Islamic financing formula used, and

¹⁵⁸ Latham & Watkins, (n 62) 1.

¹⁵⁹ Asli Osman (n 11) 26.

¹⁶⁰ Abul Hassan, *Islamic Finance: Ethical Underpinnings, Products, and Institutions* (Palgrave Macmillan US 2018) 20–21.

¹⁶¹ Lahsasna, Hassan and Rubi Ahmad (n 17) 5.

¹⁶² Al-Ali (n 40) 34.

¹⁶³ *ibid.*

each formula is subject to specific rules and guidelines dictated by that contract. We will discuss this under Sukuk types section

Fourthly, Sukuk are tradable Sharia-compliant financial instruments, meaning that holders can sell certain types of Sukuk in the secondary market.¹⁶⁴ Fifthly, Sukuk are issued through a subscription process, providing investors with comprehensive information, including the issuance price, maturity date, credit rating, periodic payment details, and applicable governing law.¹⁶⁵

Last but not least, Sukuk are structured as profit-and-risk-sharing instruments.¹⁶⁶ In Islam, profit-and-risk-sharing is a fundamental principle that promotes economic fairness and justice, making it a requirement for earning legitimate profits. Gains are justified only when accompanied by risk. Consequently, Sukuk holders share both the profits and risks associated with the underlying assets. Payments to Sukuk holders are not guaranteed and are only made if the underlying assets generate profits. Additionally, the repayment amount at maturity should reflect the current market value of the underlying assets, rather than the initial investment amount.¹⁶⁷

2.5.4. Comparison between Sukuk, Bond and Shares

Sukuk, conventional bonds and shares are popular investment instruments in the global financial market, commonly issued by governments, corporations, and financial institutions to raise capital. While they provide investors with the opportunity to earn returns, they differ fundamentally in their structure and principles.

One key difference between Sukuk and conventional bonds lies in how returns on investment are generated. Sukuk returns are tied to the revenue derived from the performance of an underlying real asset and whereas conventional bond returns are fixed

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

¹⁶⁶ Mohamed Ariff, Meysam Safari and Shamsheer Mohamad, 'Sukuk Securities, Their Definitions, Classification and Pricing Issues' in Mohamed Ariff, Munawar Iqbal and Shamsheer Mohamad (eds), *The Islamic Debt Market for Sukuk Securities; The Theory and Practice of Profit Sharing Investment* (Edward Elgar 2012) 18.

¹⁶⁷ Vishwanath and Azmi (n 1) 59.

as interest payments, regardless of any underlying asset.¹⁶⁸ Consequently, Sukuk investors earn returns based on ownership rather than interest.¹⁶⁹ As a result, the value of Sukuk can increase when the value of the underlying assets rises.¹⁷⁰ Bonds lack this feature, revenue from a bond stems from its periodic fixed interest payments and repayment of principal at the maturity date.¹⁷¹

Furthermore, Sukuk pricing is directly linked to the value of the assets backing them, whereas bond pricing is based on credit ratings (issuer's creditworthiness).¹⁷²

Both Sukuk and debt securities have a maturity date, whereas share securities do not offer repayment on a fixed date.¹⁷³ In contrast to shareholders, Sukuk holders do not have voting rights or control over the underlying assets.¹⁷⁴ Additionally, Sukuk is issued exclusively for Sharia-compliant purposes, unlike bond and equity securities, which are not restricted in this manner. Both Sukuk certificates and share certificates are financial instruments in which the return is not guaranteed by the issuer. In the case of Sukuk, returns are based on the performance of the underlying asset, such as a project, while for shares; returns depend on the performance of the company.¹⁷⁵

Sukuk, as highlighted, are a distinctive form of hybrid security that blends characteristics of both bonds and shares.

¹⁶⁸ Lahsasna (n 93) 5.

¹⁶⁹ Ayub (n 50) 193.

¹⁷⁰ Wahida Ahmad and Rafisah Mat Radzi, 'Sustainability of Sukuk and Conventional Bond during Financial Crisis: Malaysia's Capital Market' (2011) 4 *Global Economy and Finance Journal* 33, 4.

¹⁷¹ Al-Ali (n 40) 34.

¹⁷² Ali Alshamrani, 'Sukuk Issuance and Its Regulatory Framework in Saudi Arabia' (2014) 2 *Journal of Islamic Banking and Finance* 310.

¹⁷³ Al-Ali (n 40) 35.

¹⁷⁴ Safari, Ariff, and Shamsheer Mohamad (n 5) 58.

¹⁷⁵ Lahsasna, Hassan and Rubi Ahmad (n 17) 7.

Table 1: The Comparison between Sukuk, Bonds and Shares¹⁷⁶

Points	Sukuk	Bonds	Shares
Definition	An investment certificate signifies ownership shares in particular assets or projects.	A debt instrument that includes a commitment to repay the principal amount along with interest.	An equity instrument representing an ownership interest in companies
Nature	Undivided ownership stakes in the underlying assets or projects.	Debt of issuer	Proprietary interest in the company
Issuer	Special purpose vehicle (SPV)	Government and companies	Companies
Purpose	issued only for the sharia-compliant investment purposes	Not required.	Not required
Return guarantee	Not guaranteed by the issuer	Guaranteed by the issuer	Not guaranteed by the company
Profit/return	Profits from the underlying project or asset	Interest	Dividend

2.5.5. Basic Structure of Sukuk

The typical structure of Sukuk consists of several steps aimed at ensuring the Islamic financial instrument adheres to Sharia-compliant principles.¹⁷⁷ It involves three key

¹⁷⁶ ‘Abdul Karim Abdullah, “Sukuk and Bonds: A Comparison”, in Mohammad Hashim Kamali and A. K. Abdullah (Eds), *Islamic Finance Issues in Sukuk and Proposals for Reform*. (Markfield: The Islamic Foundation, 2014)’ 75–80.

¹⁷⁷ Tamim Abdullah Bin Suliman (n 66) 52.

participants: the originator, the Special Purpose Vehicle (SPV), and the investors, also known as Sukuk holders.¹⁷⁸ The originator, typically a company or government, seeks to raise funds through Sukuk issuance for a specific project.¹⁷⁹ The issuer, usually an SPV, serves as an independent bankruptcy-remote and tax-efficient entity managing the Sukuk-related assets and acting as an intermediary between the originator and investors.¹⁸⁰ Investors, or Sukuk holders, purchase the Sukuk as a means of investing their funds.

In the first step the originator identify a specific project or asset that needs financing and create SPV to manage the asset. The SPV issues Sukuk certificates to investors, specifying the volume, value, rates, and maturity dates. These certificates represent the Sukuk holder ownership in the underlying asset or project.¹⁸¹ Investors purchase the Sukuk certificates, providing the funds needed for the project or asset. The Sukuk certificate outlines the rights and obligations of both the issuer and the investors, as well as the terms of the Sukuk investment. The SPV uses the subscriptions or funds raised from the Sukuk issuance to acquire the asset or invest in the project.¹⁸² It manages the asset or project, generating income or profits, which are then distributed to the investors (Sukuk holder) based on the terms of the Sukuk contract.¹⁸³ The distribution may follow a predetermined profit-sharing ratio or a fixed return.

At the Sukuk maturity date, the originator repurchases the asset from the SPV at an agreed-upon price, typically equal to the outstanding face value of the Sukuk. The SPV then pays the sale proceeds and any accumulated profits or rents to the Sukuk holders against the redemption of Sukuk certificates.¹⁸⁴ In case of originator defaults, Sukuk holders can exercise their ownership right over the underlying asset or project and recover their investment.¹⁸⁵ For this to happen the underlying assets must be isolated from the

¹⁷⁸ Lahsasna (n 93) 134–135.

¹⁷⁹ *ibid* 134.

¹⁸⁰ *ibid* 134–135.

¹⁸¹ Tamim Abdullah Bin Suliman (n 66) 52.

¹⁸² Tamim Abdullah Bin Suliman (n 66).

¹⁸³ *ibid*.

¹⁸⁴ Junaid Haider and Muhammad Azha (n 91) 23–24.

¹⁸⁵ Tamim Abdullah Bin Suliman (n 66).

originator's balance sheet to ensure they are excluded from the originator's bankruptcy estate.¹⁸⁶

Let exemplify the above steps of Sukuk structure. If the Ethiopian government aims to build a certain project let say airport terminal development. For this purpose the government establishes SPV to raise fund from investors against the issuance of Sukuk certificate. This raised fund by SPV will be utilized for the construction of airport terminal. SPV manage the airport and collect profits generated from its performance during contract period. Then it distributes the profit to Sukuk certificate holder according to the terms and conditions of Sukuk contract or prospectus. Up on the maturity date, SPV sells the airport terminal to the government. The sell proceeds will be distributed to Sukuk holders.

However, the structure of Sukuk can differ based on the type of contract employed, the underlying asset or project, and the specific requirements of the issuer and investors. Nevertheless, the fundamental principles of Sukuk remain rooted in avoiding interest and ensuring the sharing of risks and profits among all parties involved.

2.5.6. Types of Sukuk

Sukuk are structured according to the intended use of funds and the financing method in compliance with Islamic law. They are developed based on fundamental Islamic financing principles. In 2015 the AAOIFI revised sharia standards to regulate various types of Sukuk structures.¹⁸⁷ These standards form the foundation for fourteen distinct Sukuk structures that compliance with Islamic principles. There structure applied for both corporate and sovereign issuers.

The common types of Sukuk structures include *Sukuk al-wakala* (structured on an agency basis), *Sukuk al-ijara* (structured as lease agreements), *Sukuk al-mudaraba* (based on equity partnerships), *Sukuk al-murabaha* (structured as cost-plus or deferred payment agreements), *Sukuk al-musharaka* (joint venture arrangements), Sukuk al-salam (deferred

¹⁸⁶ Al-Ali (n 40) 74.

¹⁸⁷ 'The Accounting and Auditing Organization for Islamic Financial Institutions, Shari'ah Standards. (Manama: The Accounting and Auditing Organization for Islamic Financial Institutions, 2015)' 468.

delivery purchase agreements), and *Sukuk al-istisna* (Islamic project financing bonds).¹⁸⁸ While *Sukuk al-wakala* and *Sukuk al-ijara* dominate in the international Sukuk markets, *Sukuk al-murabaha* is the most prevalent structure in domestic Sukuk markets.¹⁸⁹

Al-Ijara Sukuk is structured on a lease (*Ijara*) contract, where Sukuk holders own specific tangible assets leased under a Sharia-compliant agreement.¹⁹⁰ The rental income, predefined in terms and payment dates, serves as the return to investors. It typically follows a sale-and-leaseback arrangement, ensuring the assets comply with Islamic principles.¹⁹¹ In *ijara Sukuk*, the originator transfers ownership of the tangible assets to an SPV created for this purpose. The SPV then issues Sukuk certificate to investors to raise fund and uses the Sukuk proceeds to pay the purchase price of the tangible assets.¹⁹² The SPV subsequently leases the tangible assets back to the originator for a predetermined period.¹⁹³ The SPV collects regular rental payments from the originator and distributes them to Sukuk holders on bases of pro rata ownership interest in the underlying asset. At maturity, the SPV sells the asset back to the originator on pre-determined price and pay the proceeds to the Sukuk holders.¹⁹⁴

In a *Sukuk al-wakala* structure, the originator enters into a *wakala* (agency) agreement with a SPV created by the originator.¹⁹⁵ The SPV then issues Sukuk to investors. Under the agency agreement, the originator, acting as the SPV's agent, invests the Sukuk proceeds in a portfolio of Sharia-compliant assets and manages them to generate a profit within a specific period.¹⁹⁶ The SPV uses the profits received from the originator to make periodic distribution payments to the Sukuk holders.¹⁹⁷

¹⁸⁸ International Islamic Financial Market (n 8).

¹⁸⁹ *ibid* 61–70.

¹⁹⁰ Junaid Haider and Muhammad Azha (n 91) 27.

¹⁹¹ *ibid*.

¹⁹² Omar Salah, *Sukuk Structures: Legal Engineering under Dutch Law* (Eleven International Publishing 2014) 69.

¹⁹³ Salah (n 192).

¹⁹⁴ Kalid Alsaeed, 'Sukuk Issuance in Saudi Arabia: Recent Trends and Positive Expectations' (Phd thesis, Durham University 2012) 49–50.

¹⁹⁵ Siti Sarah Razak, Buerhan Saiti and Yusuf Dinç, 'The Contracts, Structures and Pricing Mechanisms of Sukuk: A Critical Assessment' (2019) 19 *Borsa Istanbul Review* S21, 30.

¹⁹⁶ *ibid*.

¹⁹⁷ *ibid*.

In a *Sukuk al-murabaha* structure, the originator sets up a SPV to issue Sukuk to investors.¹⁹⁸ The SPV uses the proceeds from the Sukuk to buy specific tangible assets from a third-party seller, which it then sells to the originator.¹⁹⁹ The originator repays the SPV in installments, covering both the cost and an agreed profit margin, and the SPV distributes these payments to the Sukuk holders.²⁰⁰

Sukuk Al-Musharaka is a partnership-based financing arrangement where parties contribute capital to a Sharia-compliant project, sharing profits based on a pre-agreed ratio and losses in proportion to their capital contributions.²⁰¹ Sukuk holders own an undivided share in the *Musharaka* venture. Terms, duration and profit-sharing ratio arrangement fixed under the *musharaka* contract.²⁰² In *musharaka* Sukuk, the originator and SPV enter into *musharaka* agreement for specific period. The originator contributes assets to the partnership. Next, investors (Sukuk holders) subscribe to the Sukuk and provide funds to SPV. The SPV then contributes these funds to the partnership as its capital. Any profit out this *musharaka* venture will be distributed to both originator and the SPV. The SPV in turn make payments to the Sukuk holders. Finally, the SPV commits to repurchasing the partnership shares from the investors at a pre-determined price, allowing Sukuk holders to sell their Sukuk back to the SPV at face value upon maturity. *Musharakah* Sukuk is tradable and negotiable instruments in secondary markets.

¹⁹⁸ Salah (n 192) 65.

¹⁹⁹ *ibid.*

²⁰⁰ *ibid.*

²⁰¹ Lahsasna (n 93) 71–73.

²⁰² Ismath Bacha and Mirakhor (n 125) 93.

CHAPTER THREE

3. KEY INTERNATIONAL STANDARDS AND COUNTRIES' COMPARATIVE REGULATORY EXPERIENCES

3.1. INTRODUCTION

This chapter explores the key legal and regulatory standards as provided by international Islamic financial standard-setting organizations and the relevant regulatory practice of selected nations, namely Indonesia, Malaysia and Nigeria. Finally, based on this countries' experiences, it generalizes key valuable comparative lessons for the potential adoption and regulation of Sukuk within Ethiopia's financial market system.

3.2. INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK FOR SUKUK

Sukuk regulation is not only essential to ensure compliance with Sharia principles but also to mitigate financial risk. Its regulatory framework involves a lot of financial market laws that laid down rules for issuance, trading, and redemption, investors' protection, dispute resolution and Sharia guidelines.²⁰³ Because of its unique structure, countries often establish either dedicated Islamic finance regulations or modify their existing financial frameworks to accommodate Sukuk.²⁰⁴ An important element in the regulation includes asset ownership rules, taxation, disclosure requirements, and the role of Sharia boards. Investor trust and market stability depends much on it. These guarantee that Sukuk are free from forbidden activities including speculation, gambling, or participation in industries opposed to Islamic principles. This guaranteed by having sharia supervisory board that assess whether a particular Sukuk structure compliance with sharia principles or not.

²⁰³ Umar A Oseni and M Kabir Hassan, 'The Regulation and Supervision of Sukuk in Global Capital Markets' in M Kabir Hassan and Mervyn K Lewis (eds), *Handbook on Islam and Economic Life* (Edward Elgar Publishing 2014) 400<<https://china.elgaronline.com/view/edcoll/9781783479818/9781783479818.00029.xml>> accessed 4 January 2024.

²⁰⁴ *ibid.*

Different international conventional standard-setting institutions including the Economic Co-operation and Development (OECD), the International Organization of Securities Commissions (IOSCO), and the Basel Committee on Banking Supervision (BCBS) have published guidelines on areas such as governance, securities regulation, and risk management. However, they fail to accommodate the distinctive features of the Islamic financial services sector.²⁰⁵ As a result, specialized international standard-setting organizations were established to fill this gap to foster the development of the Islamic financial industry.²⁰⁶ In particular, the organizations support the growth of Islamic finance and the development of the Sukuk market by issuing different standards and guidelines. It's crucial to align the regulatory framework with standards to mitigate the Sukuk risk. Regulators need to ensure the governing framework for Sukuk places them on equal footing with conventional debt-based instruments. Many countries modify the existing conventional framework to accommodate Sukuk in light of the IFSB and AAOIF standards. However, the standards are not mandatory.

The following sections discuss international Islamic finance standard-setting institutions and their role concerning Sukuk.

3.2.1. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)

AAOIFI is an international non-profit organization founded in 1991 and based in Bahrain. It is tasked with formulating and disseminating standards for the international Islamic finance sector. AAOIFI has issued around 100 standards covering Sharia principles, accounting, auditing, ethics, and governance.²⁰⁷ AAOIFI's standards are extensively embraced by numerous institutional members from more than 45 countries, encompassing central banks, regulatory bodies, financial institutions, accounting and auditing firms, and law firms. AAOIFI's guidelines are extensively embraced by prominent Islamic financial

²⁰⁵ Organization of Islamic Cooperation (ed), *The Role of Sukuk in Islamic Capital Markets* (COMCEC Coordination Office 2018) 21.

²⁰⁶ *ibid.*

²⁰⁷ 'Accounting and Auditing Organization for Islamic Financial Institutions' <<https://aaoifi.com/about-aaoifi/?lang=en>> accessed 15 January 2025.

institutions globally. They have played a major role in standardizing international Islamic finance practice.²⁰⁸

Concerning Sukuk, AAOIFI played a foundational role through the issuance of Sharia Standard No. 17 on Investment Sukuk in 2003.²⁰⁹ However, it has been revised. This standard sets out the key Sharia rules governing the issuance, trading, types, and characteristics of Sukuk. It classifies Sukuk into 14 categories based on underlying sharia contracts and has significantly influenced product development in the Sukuk market. Prior to the introduction of this standard, Sukuk instruments often lacked liquidity and closely resembled conventional financial products, raising concerns among sharia scholars.²¹⁰ Its standardization efforts enhanced the authenticity and acceptance of Sukuk as compliant Islamic capital market instruments.

3.2.2. The International Islamic Financial Market (IIFM)

The IIFM, established in 2001, is an international standard-setting organization for the Islamic Financial Services Industry, concentrating on the standardization of sharia-compliant financial contracts and product templates.²¹¹ It publishes guidelines for Islamic financial instruments, such as Sukuk and Islamic derivatives, across Islamic capital markets. Additionally, IIFM published a reference paper on repo alternatives and collateralization to enhance liquidity management in both the primary and secondary markets for Sukuk.²¹²

3.2.3. The Islamic Financial Services Board (IFSB)

The IFSB, an international standard-setting body, headquartered in Kuala Lumpur, was officially established on November 3, 2002. Its objective is to enhance the robustness and resilience of the Islamic financial services sector by issuing comprehensive global

²⁰⁸ *ibid.*

²⁰⁹ ‘Accounting and Auditing Organization for Islamic Financial Institutions’ (n 3).

²¹⁰ Organization of the Islamic Conference (ed), *The Role of Sukuk in Islamic Capital Markets* (COMCEC Coordination Office 2018) 22.

²¹¹ ‘International Islamic Financial Market-Corporate Profile’ <<https://www.iifm.net/about-iifm/corporate-profile>> accessed 15 December 2024.

²¹² Organisation of Islamic Cooperation (n 205) 22.

standards and principles across the banking, capital markets, and insurance industries.²¹³ The primary goal of the IFSB is to create a robust and transparent Islamic financial services sector by introducing new standards aligned with Sharia principles or adopting existing international standards by Sharia principles, and recommends their acceptance. To this end, the work IFSB complements global regulatory bodies such as the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS). It also collaborates actively with international, regional, and national bodies, as well as with academic and research institutions and various market participants. As of December 2024, the IFSB comprises 185 members, including 84 regulatory and supervisory authorities, 10 international intergovernmental organizations, and 91 market participants (financial institutions, professional firms, industry associations, and stock exchanges) across 60 jurisdictions.²¹⁴

IFSB issued standards on risk management, corporate governance, capital adequacy and market discipline. regarding to Sukuk, IFSB has issued the following major regulatory standards; IFSB-7, concerns on capital adequacy standards for Sukuk, securitizations, and real estate investments; IFSB-15, a revised capital standard applicable to Islamic financial institutions (excluding takaful and Islamic collective investment schemes); and IFSB-19, it provides guiding principles on disclosure requirements for Islamic capital market products, including Sukuk.²¹⁵ These standards ensure that Sukuk structures align with risk management, transparency, and investor protection principles in Islamic finance.

3.3. REGULATORY FRAMEWORKS OF SUKUK IN SOME SELECTED NATIONS

3.3.1. Malaysian Experience

For the past 30 years, Malaysia has become a global Islamic finance hub, surpassing others in Sharia-compliant investments and establishing a strong legal framework. Its unique

²¹³ 'Islamic Financial Services Board' (*Islamic Financial Services Board*) <<https://www.ifsb.org/>> accessed 15 April 2024.

²¹⁴ *ibid.*

²¹⁵ Organization of the Islamic Conference (n 210) 22–25.

approach spans Islamic banking, the capital market, and Sukuk, solidifying its position as an international hub.²¹⁶ According to the IIFM report, Malaysia play a leading role in both domestic and international Sukuk issuance.²¹⁷ As of 2023, it maintains a dominant position in global Sukuk issuance, holding a market share of 36.21%.²¹⁸ The success of Malaysia's Sukuk market is due to the robust legal and regulatory support.²¹⁹To facilitate the rapid growth of Sukuk, the Malaysian government revised its regulatory system and established a framework specifically designed for Sukuk.

A. Enabling legal and regulatory Frameworks for Sukuk

The Sukuk regulatory system in Malaysia is primarily being governed by the Capital Market Services Act 2007 (CMSA), Securities Commission Act 1993 (SCA), Companies Act 2016, and the Securities Industry (Central Depository) Act 1991.²²⁰ The government funding act 1983 authorizes Malaysian government to issue government investment certificates, which are sharia compliant. These laws are complemented by specific guidelines addressing Sukuk issuance.

Since the first issuance of Sukuk in 1991, the government of Malaysia has been using Sukuk to finance infrastructure development and fund the budget deficit.²²¹ The increasing use of Sukuk in Malaysia is due to several reasons, such as providing a way for Muslim investors to engage in Sharia-compliant options, offering an alternative for those looking to invest and manage cash flow, and having strong demand from investors wanting to raise money through Sukuk issuance.²²²

Regarding regulatory frameworks of Sukuk, Malaysian integrated Islamic securities within the CMSA 2007 (amended in 2011) which regulates both conventional and Islamic capital

²¹⁶ Ascarya and Diana, Y., 'Comparing The Development of Islamic Financial/Bond Markets in Malaysia and Indonesia' in S. S. Ali (ed), *ISLAMIC CAPITAL MARKETS* (Islamic Research and Training Institute 2008) 366.

²¹⁷ International Islamic Financial Market (n 8).

²¹⁸ *ibid* 77.

²¹⁹ Gerard D'Cruz Rodney and Murni Zuyati Zulkifli Aziz, 'Malaysia' in John Dewar and Munib Hussain (eds), *The Islamic Finance and Markets Review* (4th edn, Law Business Research Ltd 2019) 43.

²²⁰ Al-Ali (n 40) 180–181.

²²¹ Organization of the Islamic Conference (n 210) 75–78.

²²² BIX Malaysia, 'Beginner's Guide To Bond+Sukuk Malaysia' 15.

market under a unified regulatory system.²²³ The 2011 amendment of CMSA specifically addressed the ICM. At the regulatory level, the Security Commission of Malaysia (SCM), established on 1 March 1993 under the Securities Commission Act 1993, provides a harmonized regulatory framework for the whole capital market.²²⁴ The regulatory function of the SCM includes overseeing exchanges, clearinghouses, registering authorities, and approving as well as regulating issued bonds and Sukuk.²²⁵ Additionally, the SCM has the authority to investigate and enforce regulations within its jurisdiction and reports directly to the Minister of Finance.²²⁶

Within unified regulatory framework, Malaysian laws, firstly provide general requirements for both conventional bonds and Sukuk like licensing, governance and disclosure. Secondly, focuses on ICM products, emphasizing Sharia compliance, document disclosure, and the role of Sharia advisors. Additionally, it mandates pre-approval for Sukuk issuance from the Securities Commission Malaysia (SCM) under the CMSA.²²⁷

Furthermore, the SCM develop specific Sukuk Guideline that addresses different aspects of Sukuk issuance. It covers four major parts, such as Sukuk issuance and trading requirements, Issuance and trading approval procedures, retail issuance requirements, and Sharia-compliant provisions, concepts and principles.²²⁸ The CMSA further outlines the key components of these guidelines, including the required underlying contracts, such as sale and lease arrangements, which must get SCM approval.²²⁹ Further, the SCM issued Guidelines for Offering Asset-Backed Securities, Private Debt Securities, Sukuk, and Private Debt Securities to Retail Investors, as well as the Guidelines for Trust Deeds, Prospectuses, and Sharia Adviser Registration.²³⁰

²²³ Gerard D’Cruz Rodney and Murni Zuyati Zulkifli Aziz (n 219) 46.

²²⁴ Saheed Abdullahi Busari, Luqman Zakariyah and Akhtarzaite Abdul Aziz, ‘Sukuk Default Regulation in Malaysia and United Arab Emirates: Comparative Analysis’ (2019) 3 International Journal of Fiqh and Usul al-Fiqh Studies 90, 93.

²²⁵ *ibid* 93–94.

²²⁶ *ibid* 93.

²²⁷ Capital markets and services act 2007.

²²⁸ Malaysia, Guidline on Sukuk 2012.

²²⁹ Capital markets and services act s 36.

²³⁰ Ghezal, Hassan and Lahsasna (n 20) 33.

In addition to the domestic regulatory framework, Malaysia incorporated international standards issued IIFM and IFSB in to Sukuk guidelines for effective operation Islamic financial market. Notably, Malaysia has aligned its Sukuk guidelines with the Sharia standards issued by AAOIFI to ensure compliance and consistency in Sukuk practices.²³¹

The examination of Malaysia's regulatory framework for issuing Sukuk shows the presence of a well-defined legislative structure specifically designed for Sukuk. This framework includes detailed guidelines that cover various aspects, such as the issuance prospectus, requirements for market listing and offering, and clarification of provisions that align with Islamic law. In addition, it aligned the Sukuk guidelines with IFSB and AAOFI standards for effective regulation of the market.

B. Robust Sharia Governance Framework

In Malaysia, regulators develop a comprehensive sharia governance framework for Islamic financial services sector.²³² This framework has been instrumental in the development of Islamic finance, particularly Sukuk, by establishing a well-defined regulatory structure that boosted the confidence of investors in Malaysia's Islamic finance industry. Malaysia has a centralized Sharia Advisory Council (SAC) within both the Central Bank (Bank Negara Malaysia) and the Securities Commission. The former supervises Islamic financial institutions and service providers, while the latter oversees Sharia-related matters in the Islamic capital market (ICM).

Bank Negara Malaysia's (BNM) Sharia Advisory Council (SAC) was established in 1997 to oversee Sharia compliance in Islamic banking and takaful.²³³ As per the Central Bank Act 2009, the SAC has the authority to interpret Islamic law on referred matters, review sovereign Sukuk issuances, and provide expert opinions in commercial disputes, which courts must consider. Additionally, BNM requires financial institutions to establish Sharia

²³¹ Bakari (n 18) 143.

²³² Zulkifli bin Hasan, *Shari'ah Governance in Islamic Banks* (Edinburgh University Press 2012) 106.

²³³ *ibid* 108.

Committees (SCs), which operate under the SAC's jurisdiction and report Sharia-related matters for approval, as outlined in the 2010 Sharia governance framework.²³⁴

The Securities Commission's Sharia Advisory Council (SC SAC) was also established as the highest authority to monitor, regulate, and make decisions on sharia-based transactions in relation to Islamic capital market products, including Sukuk.²³⁵ Members are experts in both Sharia and finance.²³⁶ The CSMA also sets out not only detailed criteria for SAC membership, including academic qualifications, but also their roles and responsibilities in regulating the Islamic capital market. Among others, ensuring the Sharia compliance of Islamic stock market transactions, issuing rulings on their permissibility, advising the Securities Commission, and offering guidance to any party involved in Islamic capital market activities.²³⁷ The SAC may also perform additional tasks as assigned by the minister. Importantly, the SAC's rulings are legally binding on all relevant market participants, licensed persons, stock exchanges, clearing houses, and depositories, as well as on courts and arbitrators.²³⁸ In cases where a registered Sharia adviser's opinion conflicts with the SAC's decision, the SAC's ruling takes precedence. Sharia Boards or advisers registered by the CMA must follow the guidelines of the Securities Commission, and all Sukuk must ultimately be approved by the SAC.

Furthermore, to ensure sharia-compliance and promote transparency, SCM publishes SAC resolutions and guidelines. This is to strengthen the integrity, consistency, and credibility of Sharia rulings, mitigating Sharia-related risks, particularly in Sukuk issuance, while fostering confidence in Malaysia's Islamic capital market.²³⁹

²³⁴ Bank Negara Malaysia. Guidelines on Shariah Governance Framework for Islamic Financial Institutions. 2010.

²³⁵ Ghezal, Hassan and Lahsasna (n 20) 33.

²³⁶ A Usama DeLorenzo, 'Building up an Islamic Capital Market: The Malaysian Example' in M Kabir Hassan and Michael Mahlkecht (eds), *Islamic Capital Markets* (1st edn, Wiley 2012) 223 .

²³⁷ Capital markets and services act 316.

²³⁸ *ibid* 316.

²³⁹ DeLorenzo (n 236).

C. Dispute Settlements mechanisms

In Malaysia, the civil courts decided both conventional and Islamic financial disputes. However, this system have created challenges and led to different judicial pronouncements because judges are not oriented in Islamic commercial law. To tackle this problem, the government has proposed the establishment of a specialized Sharia court.²⁴⁰ In 2003, the Malaysian judiciary set up the *Muamalat* bench within the Commercial Division of the High Court in Kuala Lumpur, specifically dedicated to handling Islamic banking and finance cases.²⁴¹ Judges appointed to the *Muamalat* bench have expertise in both Islamic and conventional finance.²⁴² Additionally, to assist the presiding judge on the specialized bench, the Central Bank of Malaysia Act 2009 requires courts to consult the Sharia Advisory Council regarding any inquiries that emerge in litigation cases involving intricate Islamic legal issues necessitating consideration by distinguished jurists with appropriate qualifications in Islamic jurisprudence.²⁴³

In addition to civil courts, Malaysia established several alternative dispute resolution institutions to adjudicate Islamic finance disputes via mediation, arbitration, or alternative methods. The institutions include the Kuala Lumpur Regional Centre for Arbitration, the Financial Mediation Bureau, and the Malaysian Mediation Centre.²⁴⁴ The availability of a diverse range of dispute resolution options has significantly contributed to the growth and stability of Malaysia's Sukuk market.

²⁴⁰ Atikullah Abdullah, 'A Comparison between Malaysia and Indonesia in Islamic Banking Industry' (2017) 4 *Pressacademia* 276, 278.

²⁴¹ *ibid.*

²⁴² Umar A Oseni and M Kabir Hassan, 'The Dispute Resolution Framework for the Islamic Capital Market in Malaysia: Legal Obstacles and Options' in M Kabir Hassan and Michael Mahlkecht (eds), *Islamic Capital Markets* (1st edn, Wiley 2012) 97 <<https://onlinelibrary.wiley.com/doi/10.1002/9781119206040.ch4>> accessed 5 April 2024.

²⁴³ Aishat Abdul-Qadir Zubair, 'An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia' (2020) 11 *Jurnal Hukum Novelty* 164, 171.

²⁴⁴ Umar A. Oseni and Abu Umar Faruq Ahmad, 'Dispute Resolution in Islamic Finance: A Case Analysis of Malaysia' in Hatem A. El-Karanshaw et al. (eds) (ed), *Ethics, Governance and Regulation in Islamic Finance* (Bloomsbury Qatar Foundation 2015) 125.

D. Tax Treatment

In practice, Sukuk transactions structuring involve multiple transfers of underlying assets between the SPV and the originator or obligor. Each of these transfers can trigger tax liabilities such as stamp duty or capital gains tax potentially placing Sukuk at a financial disadvantage when compared to conventional bonds. To solve these tax problems of Sukuk, Malaysia has taken proactive tax measures to facilitate the issuance.²⁴⁵ The government introduced tax neutrality on Sukuk transactions, which removes additional tax burdens related to the transfer of underlying assets.²⁴⁶ This makes Sukuk compete fairly with conventional bonds. The principle of tax neutrality is primarily enshrined in the Income Tax Act 1967, which disregards the disposal of underlying assets of Islamic financial transactions for income tax or capital gain tax purpose.²⁴⁷ This implies that there is no additional tax impact on sale and leaseback arrangements in Sukuk transactions. The act also treats profit earned from Islamic financial transactions similar to interest for tax purpose.²⁴⁸ In this regard, payments made to Sukuk-holders are tax deductible for issuers like interest payments in conventional bonds.

Additionally, Malaysia introduced several tax incentives to support the development of the Islamic securities including Sukuk. These include exemptions from stamp duty on Islamic securities issued under the Malaysia International Islamic Financial Centre (MIFC) initiative (effective until 2020), and exemptions from administrative tax procedures for Special Purpose Vehicles (SPVs) involved in Sukuk transactions.²⁴⁹ Additionally, the cost of issuance incurred by SPV is deemed tax-deductible. The Malaysian government has liberalized withholding tax policies to attract greater foreign participation in Sukuk issuance and investment.

²⁴⁵ Organization of the Islamic Conference (n 210) 40.

²⁴⁶ Malaysian Institute of Accountants, *Tax Treatment on Islamic Finance in Malaysia* (Malaysian Institute of Accountants (MIA) 2012) 14.

²⁴⁷ Malaysia, Income Tax Act 1967(Act 53) Section 2(8).

²⁴⁸ Malaysian Institute of Accountants (n 246) 14.

²⁴⁹ Organization of the Islamic Conference (n 210) 40,.

3.3.2. Indonesia Experience

Indonesia, home to approximately 220 million Muslims nearly 90% of its population stands as the world's most populous Muslim-majority country.²⁵⁰ Over the years, the country has made significant strides in developing and enacting Islamic financial laws. Notable progress was developing its Sukuk market and issuing the first corporate Sukuk (*ijahra*-based Sukuk) by Indosat, a telecommunications company, in 2002. However, the foundation of Islamic finance in the country was laid earlier, in 1991, with the establishment of Bank *Muamalat* Indonesia, the country's first fully Sharia-compliant bank.²⁵¹

The first important step toward the formalization of Sukuk issuance was the enactment of Law No. 19/2008 on *Surat Berharga Syariah Negara* (SBSN Law) or Sovereign Sukuk law, which allow the government to issue Sukuk. Since then, Sukuk have been used to finance budget deficits and infrastructure projects, especially through project-based Sukuk linked to specific development initiatives.²⁵² As of 2023, the government of Indonesia has issued a total of Indonesian Rupiah 2.223,01 trillion in Sukuk, since the enactment of SBSN Law. And maintain a leading position in global Sukuk issuance next to Malaysia.²⁵³ The Indonesian government has introduced a range of tax and legislative reforms to support the issuance of Sukuk.

A. Enabling Legal and Regulatory Framework for Sukuk

Indonesia initially regulated Sukuk under conventional finance laws, with capital market laws applying to Islamic capital market instruments.²⁵⁴ Early regulations governing sovereign debt instruments, including Sukuk, were issued by Bank Indonesia, such as Regulation No. 5/4/PBI/2003. A major shift occurred with the enactment of Law No. 19/2008 on State Sharia Securities (SBSN Law), which granted the government authority

²⁵⁰ Angelo M Venardos, *Current Issues in Islamic Banking and Finance: Resilience and Stability in the Present System* (WORLD SCIENTIFIC 2010) 4
<<https://www.worldscientific.com/worldscibooks/10.1142/6979>> accessed 7 April 2024.

²⁵¹ Organization of the Islamic Conference (n 210) 133.

²⁵² Balibek, Emre (n 135).

²⁵³ International Islamic Financial Market (n 35) 10, 174.

²⁵⁴ Mohamed, Hassan and Lahsasna (n 42) 257.

to issue sovereign Sukuk.²⁵⁵ This law allowed the use of various Islamic contracts such as *Ijarah*, *MuMuah*, *M*, *Musharakah*, and *Istiira* backed by state assets via SPVs, while allowing the government to retain legal ownership. The act provides detail issues on issuance, management, and types of underlying assets for government Sukuk.²⁵⁶ However, the Ministry of Finance has issued several regulations to detail issuance procedures, such as Regulation No. 11/PMK.08/2009 for auctions in the domestic primary market, Regulation No. 218/PMK.08/2008 for retail Sukuk, Regulation No. 118/PMK.08/2008 for book building mechanisms, and Regulations No. 152/PMK.08/2008 and No. 129/PMK.08/2009 for foreign currency-denominated Sukuk.²⁵⁷

At regulatory level, Indonesia established a Financial Services Authority or *Otoritas Jasa Keuangan* (OJK). Before the establishment of the OJK in 2011, regulatory oversight was shared by Bank Indonesia and BAPEPAM (Capital Market Supervisory Agency). OJK, which assumed full regulatory and supervisory functions by the end of 2013, became the sole authority overseeing both conventional and Islamic financial services, including Sukuk.²⁵⁸

Corporate Sukuk regulation primarily falls under the conventional regulations. However, the application of convention laws created challenge because it failed to accommodate the unique aspect of Sukuk sharia principles.²⁵⁹ As a result, the issuance of OJK Regulation No. 18/POJK.04/2015, later amended by Regulation No. 3/POJK.04/2018 provide a clear regulatory framework for Sukuk. It requires all Sukuk issuances in Indonesia must be approved by a Sharia advisor registered with the OJK. Prior to this, corporate Sukuk issuance relied on general capital market rules and fatwas issued by Indonesia's National Sharia Board.²⁶⁰ Additional rules, such as IX.A.13, IX.A.14 2006, and II.K.1 2007, provided detailed legal and Sharia-based provisions that outline prohibited activities, permissible contract types (such as *Ijarah*, *Istisna*, *Kafalah*, *Mudharabah*, *Musharakah*,

²⁵⁵ *ibid.*

²⁵⁶ *ibid* 259.

²⁵⁷ Mohamed, Hassan and Lahsasna (n 42).

²⁵⁸ *ibid* 258.

²⁵⁹ Ghezal Mohamed, Rusni Hassan And Ahcene Lahsasna, 'Legal And Regulatory Approaches In Şukūk Issuance: A Comparative Analysis' (2022) 13 UUM Journal Of Legal Studies 249, 267.

²⁶⁰ Mohamed, Hassan and Lahsasna (n 259).

and *Wakalah*), and issuance mechanisms. These instruments collectively ensure that Sukuk are both Sharia-compliant and legally enforceable, supporting the growth of a robust Islamic capital market. The law's implementation enabled Indonesia to tap Sukuk as an alternative financing tool for budget support and infrastructure development, beginning with *Ijārah*-based sovereign Sukuk.

Indonesia has strengthened its Islamic financial system by adopting international standards from bodies such as the IFSB, AAOIFI, and the Organization of Islamic Conference (OIC) *Fiqh* Academy. It also supports global collaboration through its membership in key institutions like the IIFM,, Islamic Development Bank (IDB), and IFSB.²⁶¹

B. Sharia governance frameworks

The issuance of Sukuk by both government and corporate comply with Islamic principles. In Indonesia, sharia compliance of Sukuk ensured through established sharia supervision bodies. It operates on two levels: the National Sharia Board *or Dewan Sharia Nasional-Majelis Ulama Indonesia* (DSN-MUI) at the national level and the Sharia Supervisory Board (SSB) at the institutional level. This dual-tiered framework is established under Law No. 21 of 2008 and PBI No. 6/24/PBI/2004. The DSN-MUI has published a series of fatwas that serve as essential guidelines for Sukuk structures, issuance procedures, and their conformity with Islamic law. These "*fatwas*" provide the scholarly opinions of the adherence of Sukuk structures, issuance methodologies like as auctions and book building, and regulations governing transactions like sale and lease-back arrangements to Islamic philosophy.²⁶² OJK regulations integrate and enforce the fatwas issued by DSN-MUI, requiring all Islamic financial institutions to comply with these rulings in their operations.²⁶³ This ensure consistence in sharia interpretation across the institutions and minimize sharia risk.

²⁶¹ Hafas Furqani, 'The Current Situation of Islamic Economics in Indonesia.' (IKAM Research Centre for Islamic Economics 2017) Project Report 17.

²⁶² Fatwa No. 69/DSN-MUI/VI/2008 on Sharia Sovereign Securities. Fatwa No. 70/DSN-MUI/VI/2008, which governs issuance methods like auctions and bookbuilding; Fatwas No. 71, 72, and 76 issued between 2008 and 2010, which regulate sale and lease-back sukuk and Ijarah asset leasing mechanisms.

²⁶³ Mohamed, Hassan and Lahsasna (n 42).

In addition to central sharia compliance, Indonesia regulatory frameworks require the establishment of SSBs with the Islamic financial institutions, and the issuance of Sukuk must be based on fatwas issued by the DSN-MUI and supervised by the issuer's SSB.²⁶⁴ This two-tier sharia supervision of Indonesia plays a crucial role standardization and harmonization of sharia provisions and boost investors' confidence in Sukuk investment.

C. Dispute settlement

In Indonesia, the adjudication of legal disputes arising from Islamic finance transactions falls within the jurisdiction of the Religious Courts. This is stipulated in Law No. 3 of 2006, which amends Law No. 7 of 1989 and further revised by Law No. 50 of 2009, establishing that matters related to Sharia economic activities are to be resolved by the Religious Court system.²⁶⁵ Article 49 of Law No. 3 of 2006, grants Indonesia's Religious Courts the authority to adjudicate not only personal matters like marriage, inheritance, wills, *hibah*, *waqf*, *zakat*, *infaq*, and *shadaqah*, but also Sharia economic disputes. It expands the previous Law No. 7 of 1989 by formally adding *zakat*, *infaq*, and Islamic economic matters which include Islamic banking, microfinance, insurance, mutual funds, and Sukuk under the court's jurisdiction.²⁶⁶ The act undeniably clarified and broadened the jurisdiction of the religious courts by explicitly encompassing the resolution of disputes related to Sukuk. The amendments have strengthened the authority of the Religious Courts and provided greater legal certainty for adjudicating matters arising from Islamic financial instruments, including Sukuk.

Judges serving on the Sharia court are required to have knowledge in both Islamic financial jurisprudence and countries legal frameworks. Furthermore, they must possess a solid understanding of modern financial systems, given that many Islamic finance disputes

²⁶⁴ OJK regulation no.18/PO.04/2015.

²⁶⁵ Atharyanshah Puneri, 'Dispute Resolution for Islamic Banks in Indonesia' (2021) 4 International Journal of Islamic Economics and Finance (IJIEF) 161–162 <<https://journal.umy.ac.id/index.php/ijief/article/view/10084>> accessed 9 April 2024.

²⁶⁶ *ibid* 161.

involve contemporary financial practices.²⁶⁷ Nevertheless, the law allowed judges to refer DSN-MUI Fatwas or invite to the court to give expert witness.²⁶⁸

In addition to court litigation Indonesia accommodate alternative dispute settlement mechanism for Islamic finance. The prominent achievement in this regard was the establishment of National Sharia Arbitration Board.

D. Tax treatments

Prior to 2010, Indonesia's income tax laws lacked clear provisions regarding the taxation of Sharia-based commercial activities. This regulatory ambiguity led to disagreements and disputes between taxpayers and the tax authorities over how the income tax laws should be applied in such contexts.²⁶⁹ To address this challenge and ensure a level playing field for Islamic finance, the Indonesian Government has implemented reforms to its tax legislations. Amendment to Income Tax Act was made for Sharia-based commercial activities which formally regulated under Government Regulation No. 25/2009. However, due to the regulation's broad scope, the Ministry of Finance issued two detailed guidelines in 2011, Regulation No. 136/PMK.03/2011 on Sharia-based financing and Regulation No. 137/PMK.03/2011 on Sharia banking to clarify the income tax treatment applicable to these sectors.²⁷⁰ According to the regulation, the transactions of asset transfer to meet the sharia principles are excluded from the ambit of income tax or capital gain tax.²⁷¹ Hence, underlying Sukuk assets transfer between originator and SPVs are not subject to income tax. Additionally, transactions between the SPV and Sukuk holders are treated as debt arrangements. As a result, any income in form of profit-sharing made by the SPV to the Sukuk holders are classified as interest and, therefore, receive the same tax treatment as interest on conventional bonds.²⁷² Furthermore, the government of Indonesia removed

²⁶⁷ *ibid* 163.

²⁶⁸ *ibid*.

²⁶⁹ 'Income Tax Treatment of Shariah-Based Banking and Financial Institutions in Indonesia' (*ITR*, 1 February 2012) <<https://www.internationaltaxreview.com/article/2a68rfy5bw2ycq13xdq0y/income-tax-treatment-of-shariah-based-banking-and-financial-institutions-in-indonesia>> accessed 11 April 2024.

²⁷⁰ *ibid*.

²⁷¹ Indonesia, Regulation of the Minister of Finance No 136/PMK.03/2011 concerning the Imposition of Income Tax on Shariah-based Financing Activities. 2011, 7.

²⁷² *ibid* 5.

withholding tax on interest payments for government securities, including Sukuk.²⁷³ This was aimed to encourage investment in Islamic financial products, especially to attract foreign investors.

Moreover, Indonesia's Financial Services Authority (OJK) has implemented reforms such as streamlining Sukuk issuance procedures, reducing fees, and offering registration discounts measures designed to ensure fair competition between Islamic and conventional financial instruments.²⁷⁴ Despite some tax and fiscal measures, Indonesia has been criticized for not having adequate tax incentives for Sukuk.²⁷⁵

3.3.3. Nigeria Experience

Nigeria, which hosts a significant Muslim population in Africa constituting around 53% of its total population, offers a promising environment for the development and expansion of Islamic financial industry.²⁷⁶ In 2011, the central bank of Nigeria (CBN) issued guidelines for the regulation and supervision of Islamic financial service providers.²⁷⁷ As reported in the State of Enterprise Report 2024,²⁷⁸ Nigeria's Islamic finance industry expanded significantly, growing from Nigerian Naira (NGN) 1.5 trillion in 2022 to NGN2.5 trillion in 2023. Islamic banking dominated with NGN 1.36 trillion in assets, followed by outstanding Sukuk.

According to IIFM report of 2024, Nigeria emerged as foremost Sukuk issuer in the African region, holding a market share of 1.18%.²⁷⁹ It has been using Sukuk as an alternative means of financing infrastructure development and diversifying its source of

²⁷³ Organisation of Islamic Cooperation (n 205) 121.

²⁷⁴ *ibid* 128.

²⁷⁵ Rusni Hassan and Muhammad Syafiq Majid, 'Taxation Framework for Sukuk in Malaysia and Indonesia' in Abdalmuttaleb MA Musleh Al-Sartawi (ed), *Artificial Intelligence for Sustainable Finance and Sustainable Technology*, vol 423 (Springer International Publishing 2022) 371 <https://link.springer.com/10.1007/978-3-030-93464-4_37>.

²⁷⁶ 'Islamic-Finance-in-Nigeria-2024-Year-in-Review-and-2025-Outlook.Docx.Pdf' 1 <<https://uubo.org/wp-content/uploads/2024/12/Islamic-Finance-in-Nigeria-2024-Year-in-Review-and-2025-Outlook.docx.pdf>> accessed 13 April 2025.

²⁷⁷ Atta, A., 'The Legal and Regulatory Framework for Non-Interest Banking in Nigeria' (2011) 35 CBN Bullion 13.

²⁷⁸ 'State-of-Enterprise-2024-Report.Pdf' 68 <<https://enterprisengr.com/wp-content/uploads/2024/08/State-of-Enterprise-2024-Report.pdf>> accessed 12 April 2025.

²⁷⁹ International Islamic Financial Market (n 8) 77.

funding. In 2013, the Osun State government issued a sub-national *ijara* Sukuk worth approximately \$62 million (N11.4 billion) to finance school construction projects. Later, in 2017, the Federal Government of Nigeria (FGN) launched a sovereign Sukuk valued at \$277.93 million (N100 billion) aimed at funding the rehabilitation and construction of road infrastructure across the country. Since its inception the Nigeria's Sukuk market has grown significantly. By the end of 2023, the market had recorded ten issuances totaling NGN 1.164 trillion (USD 1.36 billion).²⁸⁰ The success of these Sukuk issuances is largely attributed to the regulatory reforms and institutional frameworks integrated into Nigeria's capital markets, which have created an enabling environment for Sukuk.

A. Enabling Legal and Regulatory Framework for Sukuk

Regarding Islamic finance Nigeria lacks specific legislations however; its development has been supported by adapting existing conventional finance laws. Key statutes such as Companies and Allied Matters Act (CAMA) 1990, Banks and Other Financial Institutions Act (BOFIA) 1991, Central Bank of Nigeria (CBN) Act 2007 and the Investment and Securities Act (ISA) 2007,²⁸¹ among others, have provided the legal basis for establishing Islamic financial institutions. These laws have empowered regulators to introduce targeted regulations that have enabled the growth of the Islamic finance sector in the country.

To incorporate Sukuk into the regulatory framework, the Securities and Exchange Commission (SEC), under Section 313(6) of the Investment and Securities Act 2007, issued comprehensive Sukuk Rules in 2013, which define Sukuk as Sharia-compliant investment certificates backed by tangible assets or services. These rules provide guidance on Sharia compliance, require the appointment of a Sharia adviser, and restrict Sukuk issuance to public companies, SPVs, and government entities.²⁸² It also aligns with general Sharia principles and standards, particularly those established by AAOIFI or other

²⁸⁰ *ibid* 157.

²⁸¹ COMCEC Coordination Office, *Infrastructure Financing through Islamic Finance in the Islamic Countries* (2019) 116–118.

²⁸² Nigerian Securities Commission, SEC Rules and Regulations 2013.

recognized standard-setting bodies approved by the Commission.²⁸³ However, the regulations do not cover all types of Sukuk; recognized forms of Sukuk include Sukuk *Ijarah*, *Musharakah*, *Istisna*, and *Murabahah*.²⁸⁴ The regulation of stock market and Sukuk is mainly supervised by the Securities and Exchange Commission.²⁸⁵

Additional regulatory milestones include the launch of the Non-Interest Capital Market Products Master Plan by SEC (2015), Local Loans (registered stocks and securities act) 2004 Central Bank of Nigeria guidelines granting liquidity status to state-issued Sukuk 2016, and Pension Commission regulations on pension fund investments in Sukuk.²⁸⁶ Together, these measures have laid the foundation for a more enabling environment for Sukuk issuance and growth in Nigeria.

B. Sharia governance

In terms of sharia compliance, the Nigeria's regulatory framework for Islamic finance adopted two-tier sharia governance structure like Malaysia and Indonesia: the Financial Regulation Advisory Council of Experts (FRACE) operates at the macro level under the Central Bank of Nigeria (CBN) to provide sharia guidance on regulatory matters, while the Advisory Committee of Experts (ACE) functions at the institutional (micro) level within individual Islamic financial institutions to ensure Sharia compliance in their operations and product offerings.²⁸⁷ FRACE also empowered to offer expert advice to the Securities and Exchange Commission (SEC) on issues concerning Sukuk and other Sharia-compliant asset-backed instruments.²⁸⁸ Notably, it has evaluated and certified every Sukuk issuance undertaken by the Federal Government. However, it has no any role regarding corporate Sukuk issuance unlike to Malaysia SAC and Indonesia national sharia advisor. When it comes to resolving disputes involving Islamic financial institutions, FRACE has no

²⁸³ *ibid* 570 (3).

²⁸⁴ *ibid* 571(1).

²⁸⁵ Nigeria, Investment and Securities Act, 2007 s 313(1).

²⁸⁶ COMCEC Coordination Office (n 281) 116–118.

²⁸⁷ COMCEC Coordination Office, 'Improving Shariah Governance Framework in Islamic Finance' (2020) 87.

²⁸⁸ Abdulqadir I. Abikan and Ibrahim B. Ahmad, 'Shariah Governance of Islamic Financial Institutions (IFIS): An Analysis of the Central Bank of Nigeria (CBN) Regulatory Guidelines' (2017) 3 NIU Journal of Social Sciences, 306, 306.

jurisdiction or role in court proceedings or arbitration processes.²⁸⁹ For corporate Sukuk issuance, the SEC rule requires the issuer to appoint a sharia adviser who is either registered with or recognized by the SEC.²⁹⁰ Sharia adviser is responsible for guiding the structuring and documentation of the Sukuk, issuing a certification explaining the sharia basis for the issuance, and ensuring ongoing compliance with relevant sharia principles and rulings.²⁹¹

However, the sharia governance framework is not comprehensive like to Malaysia and Indonesia. As a result the industry has encountered with the issue harmonization and standardization of sharia issues. Abdulqadir and Ibrahim highlighted that Nigeria's Islamic finance sector faces key challenges due to the absence of comprehensive sharia harmonization and standardization. These include insufficient training of ACE members, poor disclosure of their activities, and unclear institutional compliance levels contribute to information asymmetry and undermine stakeholder confidence.²⁹²

C. Taxation

To address tax-related barriers to Sukuk issuance, the Nigerian government revised relevant laws to ensure Sukuk are taxed similarly to conventional bonds. The prominent measure taken was tax incentives. Hence, proceeds from the sale or transfer of Sukuk are exempt from capital gains tax and stamp duty, owing to a 10-year tax waiver approved by the federal government in March 2010.²⁹³ This waiver exempts all categories of bonds, including Sukuk issued by all levels of government and corporate entities, from company income tax, personal income tax, value-added tax, capital gains tax, and stamp duties.²⁹⁴

²⁸⁹ Zakariya Mustapha, Sherin Kunhibava and Aishath Muneza, 'Court Referral and Nigeria's Financial Regulation Advisory Council of Experts (FRACE)' (2019) 11 ISRA International Journal of Islamic Finance 206, 215–216.

²⁹⁰ Nigerian Securities Commission, SEC Rules and Regulations 2013 r 574.

²⁹¹ *ibid.*

²⁹² Abdulqadir I. Abikan and Ibrahim B. Ahmad (n 288) 316.

²⁹³ Organization of the Islamic Conference (n 210) 172.

²⁹⁴ *ibid.*

However, after the expire of 10 year tax exemption, the Federal Inland Revenue Service introduced the Non-Interest Finance (Taxation) Regulations in April 2022, aligning taxation with Islamic commercial law.²⁹⁵ These regulations subject Sukuk to the same tax provisions as conventional bonds under the Companies Income Tax Act, which Exempt Bonds and Short Securities from income tax.²⁹⁶ However, the tax exemption expired in January 2022, and now only Sukuk issued by the Federal Government remain exempt from income tax.²⁹⁷

D. Dispute Settlement Mechanisms

Nigeria has no a dedicated dispute resolution mechanism for Islamic banking and finance; consequently, all Sukuk-related disputes are handled by the civil courts. Under Nigeria's 1999 Constitution, banking and finance fall under the Exclusive Legislative List, granting only the Federal Government legislative authority. Jurisdiction over such matters, including Islamic finance, is vested in the federal and state high courts.²⁹⁸ Its implication is that Sukuk dispute all under civil court jurisdiction. Given that the high court's primarily specialize in conventional banking and finance matters, it is argued that they may lack the necessary expertise to adjudicate Islamic banking and finance disputes, especially those involving Sharia principles.²⁹⁹ This shows that Nigeria needs an effective dispute resolution mechanism for Islamic finance.

In conclusion, the above selected nations employ diverse strategies to enhance their Sukuk markets. By analyzing the experience taken by Malaysia, Indonesia, and Nigeria, we can identify both similarities and differences in the regulation of Sukuk. The study indicates that all three countries have implemented a unified regulatory framework for Sukuk securities. They modify existing laws to oversee both Sukuk and conventional bonds, ensuring equitable treatment for each type of security. Accordingly, from the experiences,

²⁹⁵ Harlem, 'Analysis Of The Firs' Non-Interest Finance (Taxation) Regulations 2022 – Harlem Solicitors' (6 February 2023) <<https://www.harlemsolicitors.com/2023/02/06/analysis-of-the-firs-non-interest-finance-taxation-regulations-2022/>> Accessed 16 April 2025.

²⁹⁶ Nigeria Federal Inland Revenue Servies, Non-Interest Finance Regulations(Taxation) 2022 2022 s 12.

²⁹⁷ Harlem (N 288).

²⁹⁸ Mustapha, Kunhibava and Muneeza (n 289) 211.

²⁹⁹ *ibid.*

key insights emerge for countries like Ethiopia to develop a legal and institutional framework of Sukuk.

Firstly, A Sukuk market's effectiveness relies on a robust, Sharia-compliant legal infrastructure that integrates conventional securities regulation with Islamic finance requirements. Their experience highlights the need for a harmonized dual-layered regulatory framework, where general securities laws are complemented by specific Islamic capital market (ICM) rules, ensuring financial integrity and religious compliance. Aligning national laws with international standards set by AAOIFI, IIFM, and IFSB enhances coherence, trust, and comparability. Developing comprehensive Sukuk regulations or guidelines is highly important to address its unique aspects and ensure sharia compliance

Secondly, institutional mechanisms are vital for Sukuk to maintain market integrity. Robust Sharia governance, including Sharia Supervisory Boards (SSBs) at regulatory and institutional levels, is essential for sharia compliance validation. The development Sukuk market highly relies on an effective sharia compliance and standardization framework. One of the best experiences in relation to Sukuk issuance is the establishment of a central sharia advisory council (SAC) at the national level in addition to institutional level sharia advisor. Regarding central sharia governance, Malaysia adopted centralized a regulatory-based approach. Indonesia has also established centralized but Non-regulator National Sharia Board to oversee Sukuk compliance. On the other hand, Nigeria relies on self-regulation for Sukuk among transaction parties for sharia compliance for corporate Sukuk and lacks an effective framework from the government in this regard.

Thirdly, adequate dispute settlement mechanisms which operated in line of sharia principles are very important for Sukuk market growth and ensure investor confidence. Accordingly, Malaysia and Indonesia take regulatory reforms to ensure favorable Sukuk dispute resolutions mechanisms. But they have taken different approach as to Sukuk dispute settlement mechanisms. Malaysia established specialized bench within the civil court structure to adjudicate Islamic banking and finance, including Sukuk. Indonesia on the other hand extended the jurisdiction of sharia courts to accommodate Sukuk related disputes.

In addition to formal ways adjudication, they developed alternative ways of dispute settlements institutions like Mediation and Arbitration centers for Islamic finance. The availability of a diverse range of dispute resolution options has significantly contributed to the growth and stability of Sukuk market in both countries. Nigeria is still in need of an efficient mechanism for resolving disputes associated with Sukuk transactions because they fall under civil court jurisdiction.

Fourthly, in each of the nations, they have introduced tax neutrality and incentives for Sukuk in order to attract more Sukuk investment from foreign investors, to ensure equal level playing field with conventional bonds, to protect the interest of investors, and to make Sukuk an attractive investment. There are many regulatory and fiscal incentives specifically for Sukuk investment in each of those countries. Accordingly, Malaysia, Nigeria, and Indonesia take many reforms in tax legislations mainly on income tax and stamp duty. However, the extent of favorable taxation treatment is different in each jurisdiction. For instance, Malaysia adopted a comprehensive tax treatment, including tax incentives for Sukuk, unlike Indonesia and Nigeria. These supportive government tax policies broaden the Sukuk market and viable instrument for capital rising.

Last but not least, the overall experiences of those countries demonstrate important progress in integration of Sukuk in their financial system and development, supported by robust legal and institutional frameworks.

Hereafter, in the fourth chapter, this thesis mainly analyses the suitability of Ethiopia's legal framework for Sukuk and outlines the relevant regulatory framework based on these experiences.

CHAPTER FOUR

4. ACCOMMODATING SUKUK SECURITIES UNDER THE ETHIOPIAN FINANCIAL SYSTEM

4.1. INTRODUCTION

In this chapter, this thesis analyses the suitability of Ethiopia's legal framework for accommodating Sukuk and analytically outlines comparative lessons noted from the selected countries on its legal and institutional frameworks. First, it discusses and analytically introduces the development of Islamic financing and Sukuk in Ethiopia. Second, it discusses the potential advantages of Sukuk for Ethiopia. Third, it examines Ethiopia's legal and regulatory institutional framework, it draws the limitations regarding the regulation and issuance of Sukuk, Sharia governance and challenges of dispute resolution mechanisms and taxation. Then, based on the comparative lessons documented from the well-developed Islamic finance of Malaysia, Indonesia and Nigeria, it analytically outlines the foundational elements necessary for an effective Sukuk regulatory regime in Ethiopia. These comparative experiences serve as benchmarks to identify the legal and institutional reforms of Ethiopia.

4.2. DEVELOPMENT OF ISLAMIC FINANCE AND SUKUK IN THE ETHIOPIAN LEGAL FRAMEWORK

Ethiopia holds a significant position in Islam, having welcomed Muslim migrants from Mecca on two occasions, and it is one of the earliest countries to embrace Islam, following Mecca. In Ethiopia, the total population of Muslim people is estimated to be more than 34% of the total population, based on the 2007 Population and Housing Census Report.³⁰⁰ Despite these significant demographic statistics, Islamic finance products were absent in Ethiopia until recent years. As a result, the Muslim community and their Islamic finance values are not effectively integrated in the formal financial sector, mainly interest-based

³⁰⁰ Mohammed Ibrahim, 'The Progress To Allow Fully Fledged Interest Free Banking Business In Ethiopia' (2019) No 14 European Journal of Islamic Finance 2019, 1.

transactions that are prohibited under Islamic Sharia law.³⁰¹ The National Financial Inclusion Strategy of 2017 admitted the low level of financial inclusion in Ethiopia and noted the limited availability of Sharia-compliant financial services, despite the country's substantial Muslim population.³⁰²

Due to Ethiopia's substantial Muslim population and the strong demand for Sharia-compliant financial products and services, Ethiopian Muslims have long been asking for the introduction and authorization of Islamic finance in the country.³⁰³ In response to strong public demand and the need to strengthen economic ties with Muslim countries, the National Bank of Ethiopia (NBE) introduced regulatory reforms to accommodate Islamic finance. The preamble of the NBE Directive highlights this demand as a key policy motivation for allowing conventional banks to offer interest-free banking services.³⁰⁴

The legal recognition of Interest-Free banking in Ethiopia began with the Banking Business Proclamation No. 592/2008 (replaced by proclamation No. 1360/2025), which gave the NBE the authority to regulate non-interest banking through directives. By virtue of the proclamation, the first directive, SBB/51/2011, permitted only conventional banks to offer interest-free banking through windows without recognizing fully-fledged Islamic banks. However, this directive was vague, lacking clarity on Sharia compliance and product standards. In response to increasing public demand, particularly driven by *Zamzam* Bank's proposal, the NBE introduced a revised directive in 2019, (SBB/72/2019), which finally authorized both window-based and fully fledged Islamic banks.³⁰⁵ Accordingly, full-fledged interest free banks started to operate. However, this updated directive remains broad, offering limited detail on Sharia governance and compatibility with conventional banking regulations, potentially posing risks of operational inconsistency.³⁰⁶ While it

³⁰¹ *ibid.*

³⁰² National Bank of Ethiopia, 'National Financial Inclusion Strategy' 21.

³⁰³ Suadiq and Nissar (n 21) 10.

³⁰⁴ Ethiopian Business Interest-free bank directive, No, SBB / 51/ 2011.

³⁰⁵ Fuad Mohammed, 'Dispute Resolution in Islamic Banking Industry of Ethiopia: Law and Practice' (LLM Thesis, Hawassa University 2022).

³⁰⁶ *ibid* 34–35.

acknowledges Sharia compliance, it does not define it clearly, leaving gaps in regulatory precision and implementation.

After this milestone, the National Bank of Ethiopia broadens the provision of interest-free finance to other sectors such as insurance and microfinance. Thus, it enacted directives that authorize the interest-free finance services to the insurance sector and micro financial institutions.³⁰⁷ Presently, the Islamic financial sector in Ethiopia comprises three Islamic financial institutions, such as Islamic insurance, Islamic banking, and Islamic micro financial institutions.

To advance broader financial inclusion in area of Microfinance, Microfinance Business (Amendment) Proclamation No. 1164/2019 permitted the operation of Interest free microfinance institutions. The proclamation empowers the NBE to issue directives that delineate further standards for the licensing, supervision, and authorization of comprehensive interest-free microfinance and interest-free microfinance windows.³⁰⁸ Accordingly, the National Bank of Ethiopia issued "Directive No. MFI/32/2021," entitled "Licensing and Authorization of Interest-Free Microfinancing Businesses."³⁰⁹ This allows the operation of interest free finance by microfinance institutions as per the Islamic financial principles.

Ethiopia made a significant steps in integration of Islamic finance in its broader financial system. The most critical steps were legal authorization of Islamic finance services in Ethiopia. All the directives mentioned above recognize sharia law as the basis for their operations, prohibition of interest (*riba*), and requiring the adherence to Islamic financial principles. Nowadays, interest free banks, microfinance institutions and interest free window insurances are established.

³⁰⁷ Licensing and Supervision of Interest-free Microfinance Business Directives to Interest-free Microfinance Business Operators and Authorize Directives No. MFI/32/2021 (n 28).

³⁰⁸ Federal Democratic Republic of Ethiopia, amendment Microfinance business proclamation No. 1163/2019, Federal Negarit Gazette, 26th years.

³⁰⁹ Licensing and Supervision of Interest-free Microfinance Business Directives to Interest-free Microfinance Business Operators and Authorize Directives No. MFI/32/2021 (n 28).

This signifies the legal authorization of Islamic finance services in Ethiopia. The general position of the law is that, interest-free transactions, including Sukuk is allowed. Because the financial sectors laws that mentioned above permits the engagement of institutions in interest-free transactions in accordance with sharia principles. Sukuk, as Islamic financial product, fall under the broader interest-free commercial transactions. Although there is legal support for Islamic financing in Ethiopia, the regulatory frameworks are still underdeveloped regarding Islamic financial products like Sukuk. Many writers argued that the current legal environments are not conducive for Islamic finance. It lacks adequate legal and institutional frameworks that accommodate the unique features of the Islamic financial industry.³¹⁰ The current laws did not specify what constitutes Sharia principles, their meaning, or what Sharia products entail. This will defeat the very purpose of allowing interest-free finance in Ethiopia. Moreover, the current financial instruments like government bonds and treasury bills issued are exclusively conventional interest-based ones. This situation has practically excluded interest-free financial instruments, which not only results in missed opportunities for the government to raise capital from these institutions but also prevents them from participating in investments in government securities.

Additionally, the industry faces challenges due to a shortage skilled manpower, negative perceptions among non-Muslim communities, and lack of awareness.³¹¹ Despite the challenges, recently the interest-free finance in Ethiopia mobilized a huge amount of capital. As of March 2025, the total mobilized capital in the banking sector reach 330 billion birr, which constitutes 10% of the sector.³¹² This shows a high demand for sharia-compliant products and potential untapped capital in Ethiopia. Therefore, appropriate

³¹⁰ Kamil Abdu, 'A Critical Appraisal of The Regulatory Regime Of Islamic Banking In Ethiopia' (Msc, Hamad Bin Khalifa University 2021); Mohammed Ibrahim, 'Islamic Banking in Ethiopia and Its Legislative Challenges' (2020) 16 *Manchester Journal of Transnational Islamic Law & Practice* 62; Farid Tayib, 'Assessing "Takaful" Insurance Business Regulation in Ethiopia against Sharia Norms: A Comparative Analysis' (2020) 12 *Jimma University Journal of law*; Suadiq and Nissar (n 21).

³¹¹ Suadiq and Nissar (n 21) 13.

³¹² National Bank of Ethiopia, 'Ethiopian Economic Forum-Afternoon Session' <<https://www.youtube.com/live/6s8gv3jjovY?si=MtXub8DzzCjiq4Nd>> accessed 15 May 2025.

investment legal frameworks in line with Sharia principles not only ensure financial inclusion but also contribute to the economic growth of the country.

Besides, Ethiopia recently established a capital market in order to support the financial market and economic growth of the country. To facilitate this, the capital market proclamation created the capital market authority as an independent body responsible for regulating Ethiopia's capital market. Accordingly, the ECMA was officially established in June 2021 as an independent federal government organization. Its establishment was integral to Ethiopia's comprehensive economic reforms designed to liberalize the financial sector and promote private investment.³¹³ The Capital Market Proclamation No. 1248/2021, which serves as the legal basis for the capital market. It regulates the trading and issuance of securities in Ethiopia. As per the proclamation, securities includes shares, bonds, convertible instruments, public debt instruments, derivatives, units in collective investment schemes, and other instruments deemed securities by the authority.³¹⁴ Sukuk as one category of securities it will be regulated by the broader definition of securities under the proclamation. However, the proclamation is primarily formulated based on conventional financial instruments and devoid of any reference to ICM products or any resembles to sharia principles. But the ECMA fee directive recognizes Sukuk as 'Sukuk bond' and defines it as 'a debt security that is compliant with Islamic law and sharia principles'.³¹⁵ This definition mixes the term Sukuk with debt securities. As discussed in the previous sections, Sukuk represents ownership interest in the underlying asset and quite different from a debt instruments. Accordingly, it is neither a shares nor a bond, but a hybrid of both securities. The definition given by the directive is misleading that confuses Sukuk with interest-based instruments. Hence, the authority should distinguish Sukuk with that of bond or interest-based securities. In this regard the comprehensive definitions provided by international Islamic financial standards setting institutions such as IFSB and AAIOF are crucial to establish the legal base for Sukuk that differentiate it with conventional debt-based instruments and shares. This would help to have Sukuk structure

³¹³ 'Ethiopian Capital Market Authority' <<https://ecma.gov.et/about/>> accessed 7 January 2025.

³¹⁴ Capital Market Proclamation No. 1248 /2021 'Federal Negarit Gazette No. 33, Addis Ababa, 23rd July, 2021' art 2(62).

³¹⁵ Ethiopian Capital Market Authority's Fee Directive No. 996/2024 art 2(12).

that comply with the very tenet of sharia principles. Apart from the legal recognition there is no comprehensive regulation for Sukuk in Ethiopia.

4.3. POTENTIAL OPPORTUNITIES AND SOCIOECONOMIC RELEVANCE OF SUKUK FOR ETHIOPIA

Nowadays, Sukuk become the most effective alternative financing mechanisms across different countries. It is firmly recognized as a viable source of financing for corporate and financial institutions' general-purpose needs, capital adequacy, project financing, state budgetary and fiscal deficit, and liquidity management purpose.³¹⁶ Thus, Sukuk serves as an important source of fund for investment, alternative means for mobilization of financial resources and play an important role for economic development of the countries by ensuring financial inclusion. Introduction of Sukuk in Ethiopia financial system could also bring various advantages. It includes the followings;

Firstly, Sukuk can be used as a tool for infrastructure financing and alternative source of fund for Ethiopia. Developing nations exhibit significant demand for infrastructure projects, including educational institutions, healthcare facilities, transportation networks, and utilities such as water and electricity.³¹⁷ Ethiopia, like many developing countries, faces an infrastructural deficit, with a financial gap that constrains the provision of basic infrastructures. Ethiopian Vision 2030³¹⁸ recognizes significant deficiencies in infrastructure like roads, railways, energy, irrigation, and various infrastructural development activities. The African Development Bank report also estimated that Ethiopian infrastructural development properties need around quarter billion dollars to meet sustainable development goals by 2030, which is estimated to be 13.2 percent of Gross Domestic Product.³¹⁹ The deficiency of essential infrastructure in Ethiopia has impeded the nation's economic growth potential.³²⁰ The survey of countries experience

³¹⁶ International Islamic Financial Market (n 8) 24.

³¹⁷ Asli Osman (n 11) 46.

³¹⁸ Ethiopian Planning and Development Commission, 'Ten Years Development Plan: A Pathway to Prosperity(2021-2030)' 5.

³¹⁹ African Development Bank, 'Driving Ethiopian Transformation; The Reform of the Global Financial Architecture' (2024) Country Focus report 20.

³²⁰ Federal Democratic republic of Ethiopia, 'A Homegrown Economic Reform Agenda:A Pathway to Prosperity' 2.

shows that they have been using Sukuk to finance projects and fill financial deficit in addition to conventional borrowing. Sukuk provides the benefit of utilizing risk-sharing financial instruments to finance infrastructure projects, thereby mitigating the prevailing trend of debt creation and accumulation.³²¹ In this regard, Sukuk structuring can finance public service like health centers, schools and roads in Ethiopia. The experience of Malaysia, Nigeria and Indonesia show that Sukuk is viable financing mechanism for public infrastructure. Nowadays a high amount of capital exists in Islamic financial institutions which haven't been used due to the non-existence recognized sharia compliant. As a result, Sukuk introduction and regulation can provide a means for the government to trace untouched capital for the economic growth of the country. Furthermore, Sukuk is regarded as a more advantageous for infrastructure financing that enhances financial stability by connecting the financial sector with other economic sectors, owing to its asset-based or project-based characteristics, in comparison to other options.

Secondly, Sukuk promotes financial inclusion. The demand for Islamic finance in Ethiopia is high due to a largely unexplored market that favors investment in sharia-compliant financial assets.³²² The need for Islamic financing in Ethiopia is propelled by the pursuit of ethical investing and the necessity for financial inclusion. Accordingly, Sukuk can significantly contribute to advancing financial inclusion in Ethiopia. The Islamic financial sector in Ethiopia remains nascent, and many Muslims in the country lack access to sharia-compliant financial products.³²³ Hence, Sukuk provides an investment opportunity for the substantial Muslim population of the country who are excluded due to their religious ground. Not only for Muslims, but also for individuals seeking the opportunity for ethical investment. In addition to financial inclusion, it can attract foreign investor especially from Muslim world countries. Furthermore, it could help the development of Islamic financial institutions. Since Islamic financial institutions are allowed in Ethiopia, Sukuk provides an investment scheme in the financial market and manage their liquidity issues. One of the

³²¹ Asli Osman (n 11) 46–47.

³²² Samson Tsedeke, 'The Case for Shariah-Compliant Capital Market Products in Ethiopia' <<https://multilinkconsult.com/2023/09/22/the-ethiopian-securities-exchange-and-the-future-of-shariah-compliant-capital-markets/>> accessed 10 May 2024.

³²³ *ibid.*

problems in our country is that Islamic financial institutions are not able to invest in government bonds and treasury bills.

4.4. REGULATORY CHALLENGES OF SUKUK IN ETHIOPIA

Sukuk involves a complex legal and financial structure that spans multiple legal domains, including banking, securities, and company laws. As a result, it demands a sophisticated legal and regulatory framework. However, in the Ethiopian context, it encounters several legal and regulatory challenges to accommodate and implement Sukuk securities efficiently. The thesis has identified the following regulatory challenges of Sukuk in Ethiopia.

4.4.1. Legal challenges to issue Sukuk

In Ethiopia, the Commercial Code, the Federal Financial Administration Proclamation, along with its subsequent regulations and directives issued by the Ministry of Finance and the National Bank of Ethiopia, as well as the capital market laws, contain provisions governing the issuance of transferable securities.

The commercial code contains numerous provisions regarding the issuance of securities by share companies. These provisions are critical for evaluating the legal compatibility of the code with the requirements for Sukuk. Specifically, how the current legal framework facilitates or hinders the issuance of Islamic financial instruments, like Sukuk.

Firstly, concerning securities, the code recognizes shares and debentures as means of financing companies. While the commercial code provides a solid foundation for regulating conventional financial instruments primarily issued by companies, it presents limitations when it comes to Sukuk. One of the primary challenges lies in the types of securities under the commercial code, which refers to transferable instruments issued by share companies, typically representing debentures or shares. According to Article 407 of the code, a debenture refers to a tradable debt instrument through which a company promises to pay fixed interest over a set period and return the principal amount at

maturity.³²⁴ This definition clearly shows that a debenture is an interest-based instrument to raise capital of the company. It's a type of negotiable or transferable securities that represent claims against the issuing company, and the holder is not the owner of the company.³²⁵ A bond, like a debenture, is a document evidencing the indebtedness of a company which the holder entailed to a certain amount of interest and repayment of principal at maturity.³²⁶ Bonds are mainly issued by federal states and local governments to raise capital.³²⁷ From these definitions, one can understand that both debentures and bonds are conventional debt-based instruments issued with interest. This does not align with the unique structure and Sharia-compliant nature of Sukuk, which are based on asset ownership and profit-and-loss sharing principles rather than interest-bearing debt. As previously discussed, Sukuk represents a novel form of hybrid security that combines features of both shares and bonds, yet it does not fully qualify as either. The commercial code only mentioned shares and debentures as means to raise capital. Shares are equity securities that represent an interest in the company, while debentures are debt securities that holders are creditors of the company.³²⁸ Unlike to both, Sukuk represent ownership of the underlying asset of originator. As a result, Ethiopian commercial law cannot be applied to Sukuk.

Secondly, the federal financial administration's proclamation No. 648/2009, Regulation No. 190/2010, and Treasury bill directives of NBE primarily regulate the issuance of securities to raise funds for the government through borrowing and public debt management. The term securities is defined under Art 2(20) of the proclamation No.648/2009, as something given or pledged to secure a financial commitment or a financial obligation and includes treasury bills, notes and bonds.³²⁹ The phrase 'something

³²⁴ Commercial Code Of Ethiopia Proclamation No. 1243/2021" 'Federal Negarit Gazette Extra Ordinary Issue Addis Ababa , 12th Day April, 2021. 407.

³²⁵ Tewodrows Meheret, 'The Nature of Preferred Shares and Debentures under the 1960 Commercial Code of Ethiopia' (LLM Thesis, Addis Ababa University 2005) 9.

³²⁶ Workneh Alula, 'Debentures and Bonds Under Ethiopian Law' (2017) 2 The International Journal of Ethiopian Legal Studies 1, 11–12.

³²⁷ *ibid* 12.

³²⁸ Lantera Nadew Anebo, 'Debenture as Alternate Scheme of Raising Investment Fund and Its Prospects under Ethiopian Company Law' (2019) 13 Mizan Law Review 333, 341.

³²⁹ Ethiopian Financial Administration Proclamation No. 648/2009 art 2(20).

given or pledged to secure financial promise or obligation’ provides the broader scope. But it’s not clear whether Sukuk securities may fall under this category or not. One may argue that Sukuk may fall under this category. However, it’s important to look at the subsequent regulations whether the meaning of securities is elaborated. In this regard, as far as the researcher’s knowledge is concerned, no regulation or directive comes up with the term Sukuk or any resemblance to means for raising funds in line with sharia principles or standards. The capital market proclamation also defines government securities as a debt instrument.³³⁰ Until today, the available instruments to raise funds needed for government are bonds and treasury bills issued by the National Bank of Ethiopia. Hence, this challenges the issuance of sovereign Sukuk by the Ethiopian government because the financial administration laws are based on conventional debt means of fundraising like traditional bonds and treasury bills. The laws have to be amended to accommodate Sukuk as an alternative means of finance for the governments. Different countries like the United Kingdom, Indonesia, Turkey and Luxembourg accommodate Sukuk as a part of public financing by providing clear legal frameworks.³³¹

Thirdly, the capital market laws also govern the issuance of securities in Ethiopia. The regulation of capital market in Ethiopia begins with the enactment of the Capital Market Proclamation No.1248/2021. It aims to regulate the market fairly and efficiently, protect investors, and prevent systematic risk.³³² To fulfill its regulatory responsibilities, the Proclamation established the ECMA as an autonomous government regulatory body.³³³ The primary objectives of ECMA include investor protection, promoting fair, transparent, and efficient market operations, minimizing systemic risks, and fostering an enabling environment for long-term investment.³³⁴ To this end, Ethiopia's capital market framework established a dedicated regulatory body to oversee and supervise market participants. The ESX was also established and launched on January 10, 2025, as a platform for listing and

³³⁰ Capital Market Proclamation No. 1248 /2021 ‘Federal Negarit Gazette No. 33, Addis Ababa,23rd July, 2021’ art 2(54)and 2(63)d.

³³¹ Balibek,Emre (n 135) 17–18.

³³² Capital Market Proclamation No. 1248 /2021 ‘Federal Negarit Gazette No. 33, Addis Ababa,23rd July, 2021’ Pt Preamble.

³³³ *ibid* 3.

³³⁴ *ibid* 5.

trading securities.³³⁵ It is expected to provide a platform for listing and trading various debt instruments, including treasury bills, government and corporate bonds, as well as Sharia-compliant securities such as Sukuk.³³⁶ Nowadays, different companies are expected to be listed on ESX.

The issuance of Sukuk as per the capital market laws could be difficult due to the following legal reasons: As per the proclamation, securities includes shares, bonds, convertible instruments, public debt instruments, derivatives, units in collective investment schemes, and other instruments deemed securities by the authority.³³⁷ This provision grants the ECMA a wider power to determine and introduce additional securities. Even though, there is no a single provision regarding Sukuk securities under the proclamation, the ECMA fee directive recognized Sukuk.³³⁸ Despite the recognition, no regulation enacted yet to regulate Sukuk by the CMA. Additionally, the directive on the public offering and trading of securities also doesn't address the requirements to issue Sukuk.³³⁹ Rather, it addresses only traditional securities like shares and debt securities. It specifies the essential documents that issuing companies must submit to the ECMA, like prospectus, financial statements, and others.³⁴⁰ However, it does not account for certain documents commonly required for Sukuk issuance, particularly the Islamic financing contracts that underpin the structure of Sukuk. This may obstruct the issuance and trading of Sukuk on ESX. Because Sukuk requires special prospectuses which have to be inline of sharia principles and contains the sharia compliance issues start from issuance up to the redemption of it, unlike to debt-based financing. Therefore, the ECMA directive on public offering and trading of securities didn't include Sukuk. Hence, the above directive is not suitable to issue Sukuk in Ethiopia.

³³⁵ 'ESX: Press Release on ESX Launch 10th Jan 2025' (n 25).

³³⁶ *ibid.*

³³⁷ Capital Market Proclamation No. 1248 /2021 'Federal Negarit Gazette No. 33, Addis Ababa,23rd July, 2021' art 2(62).

³³⁸ Ethiopian Capital Market Authorit's Fee Directive No. 996/2024 art 2(12).

³³⁹ ECMA, Directive on the public offering and trading of securities no. 1030/2024.

³⁴⁰ *ibid* 4.

Furthermore, the legal challenge could also arise in relation to the establishment of SPVs. As discussed in pervious chapter, the establishment of SPV is the most important step in Sukuk issuance, as they allow the certificates to be issued through a legally separate entity from the originator, helping shield investors from the originator's bankruptcy risks.³⁴¹ SPV created by originator as intermediate for the purpose of Sukuk issuance and acts as a trust for Sukuk holder in the administration of underlying asset. However, the commercial code specifies seven forms of business organizations: general partnership, limited partnership, limited liability partnership, joint venture, share company, private limited company, and single person private limited company.³⁴² There is no such kind of business organization or a specific legal form for a special purpose company, and no existing company structure closely resembles it.

However, the capital market proclamation under Art. 2(73) includes the concept of a special purpose institution as a legal entity created specifically to either hold the assets backing asset-backed securities or to issue those securities, or both.³⁴³ It shows that asset-backed securities like Sukuk will be issued by SPV. Despite this indication, it doesn't provide a clear instance as to the type of institution to be established. As well, there is no indication as to whether this entity issues Sukuk in light of sharia principles or standards. As per the commercial code, only share companies are allowed to issue transferable securities.³⁴⁴ Since Sukuk is a transferable security, we can say the SPV that issues Sukuk will be a Share Company. Even though Sukuk is not a share, even if it were treated as such, issuing through share companies could be impractical due to strict legal requirements. For instance, the formation requirements include incorporation documents, a minimum of five members, and specific capital requirements.³⁴⁵ These conditions are

³⁴¹ Mohamed Ghezal, Rusni Hassan and Ahcene Lahsasna, 'The Feasibility of Issuing Şukūk under the Current Laws and Regulations in Algeria (Kelayakan Mengeluarkan Şukūk Di Bawah Undang-Undang Dan Peraturan Semasa Di Algeria)' (2020) 17 Journal of Islam in Asia (E-ISSN 2289-8077) 269, 280.

³⁴² Commercial Code of Ethiopia Proclamation No. 1243/2021" 'Federal Negarit Gazette Extra Ordinary Issue Addis Ababa , 12th Day April, 2021. art 174.

³⁴³ Capital Market Proclamation No. 1248 /2021 'Federal Negarit Gazette No. 33, Addis Ababa,23rd July, 2021' Art 2(73).

³⁴⁴ Commercial Code Of Ethiopia Proclamation No. 1243/2021" 'Federal Negarit Gazette Extra Ordinary Issue Addis Ababa , 12th Day April, 2021. Art 180.

³⁴⁵ Commercial Code Of Ethiopia Proclamation No. 1243/2021" 'Federal Negarit Gazette ExtrA Ordinary ISSUE Addis Ababa , 12th Day April, 2021.

incompatible with the structure of SPVs, which are typically established as orphan entities, separate from the originator, and not intended to meet such rigorous requirements.³⁴⁶ Furthermore, if we treat Sukuk as a bond, other challenges may arise because the code requires companies to have capital that is fully paid and to have been in business for at least one year and have financial statements approved by a general meeting.³⁴⁷ Therefore, this underscores the need to have a clear legal framework for the establishment of SPVs. To effectively accommodate Sukuk, clearer and more detailed legal provisions are needed to regulate their issuance from start to end, particularly through the framework of SPVs, distinct from share companies. These would help to clarify which types of entities are authorized to issue such instruments and under what legal powers.

4.4.2. Sharia Governance Challenge

Sharia governance refers to the institutional and organizational structures established to ensure that Islamic Financial Institutions (IFIs) operate in accordance with Sharia principles.³⁴⁸ As an Islamic financial instrument, Sukuk must adhere to sharia principles throughout all stages of structuring, issuance, and trading. Sharia compliance is a fundamental aspect that differentiates Sukuk from conventional securities. Any deviation from sharia rules can impede the growth and credibility of the Sukuk market. Therefore, a comprehensive sharia regulatory framework is essential to oversee the entire issuance process. This requires the establishment of an independent sharia supervisory board to ensure effective oversight and compliance.³⁴⁹

The sharia Committee of AAOIFI outlines that the role of sharia boards should go beyond merely issuing fatwas (legal pronouncements) on Sukuk structures.³⁵⁰ They must thoroughly examine all contracts and transaction documents, supervise the actual

³⁴⁶ Balibek, Emre (n 135) 19.

³⁴⁷ Commercial Code of Ethiopia Proclamation No. 1243/2021" 'federal Negarit Gazette Extra Ordinary Issue Addis Ababa , 12th Day April, 2021. art 408; ECMA, Directive on the public offering and trading of securities no. 1030/2024 art 19.

³⁴⁸ Zulkifli bin Hasan, *Shari'ah Governance in Islamic Banks* (Edinburgh University Press 2012) 46.

³⁴⁹ Abu Umar Faruq Ahmad and M Kabir Hassan, 'Legal and Regulatory Issues of Islamic Finance in Australia' (2009) 2 International Journal of Islamic and Middle Eastern Finance and Management 305, 311–312.

³⁵⁰ Organisation of Islamic Cooperation (n 205).

implementation, and ensure that the process remains compliant with sharia principles at every stage. This includes ensuring whether Sukuk proceeds are invested and converted into assets using sharia-compliant methods.³⁵¹

According to the literature, different countries adopt various organizational structures for sharia governance. The prominent models are two: two-tier centralized sharia governance and decentralized sharia governance. Countries employing a two-tier centralized Sharia governance model, like Malaysia, necessitate that Sukuk structures receive clearance from the Sharia Advisory Council (SAC) under the regulator, in addition to endorsement from registered Sharia advisers or institutional Sharia committees. In contrast, non-centralized models allow individual institutions to appoint their own Sharia committees to assess compliance, with no centralized oversight.

In the case of Ethiopia, despite the recognition of Islamic finance, a fully developed Sharia governance framework for the Islamic banking and finance sector has not yet been established by the NBE. However, directive No, SBB/72/2019 requires the boards of directors of banks engaged in Islamic finance to develop detailed policies and procedures for Sharia oversight. Although the directive does not explicitly mandate the establishment of sharia boards, both full-fledged Islamic banks and conventional banks with Islamic windows have voluntarily established their own Sharia advisory boards at the institutional level.³⁵²

When we came to the capital market aspect, the capital market proclamation as well as the subsequent laws didn't contain any specific article as to the establishment of a central sharia advisory council at the capital market authority to monitor sharia-compliance of ICM products. However, the directive on capital market service providers' licensing and supervision no. 980/2024 under Article 59 gives green light for the appointment of a sharia advisor by the issuers to ensure the sharia compliance of ICM products, including Sukuk. This requires or imposes responsibility on individual issuer institutions to ensure sharia-compliance by appointing sharia advisors licensed by the authority. Apart from this the

³⁵¹ *ibid.*

³⁵² Kamil Abdu (n 310).

proclamation and the subsequent directives are silent about the establishment of centralized sharia board. One major challenge arising from the absence of a centralized Sharia supervisory authority is the lack of uniformity in *fatwas* (sharia pronouncements), which is critical for investor trust and market predictability.³⁵³ In a decentralized model, varying opinions among Sharia advisers stemming from differences in Islamic schools of thought pose a frequent challenge for market participants in jurisdictions that lack a unified or standardized Sharia governance framework.³⁵⁴ Without a unified *fatwa* (sharia law pronouncement) framework, consistency and predictability in the market may suffer. Additionally, the absence of such a central body under the oversight of the CMA can lead to imbalances in regulatory roles, potentially undermining investor trust and the credibility of the capital market.³⁵⁵ To tackle this issue at the national level, various countries have set up centralized Sharia supervisory boards to ensure that all Sukuk issuances conform to the sharia principles recognized within their jurisdictions. In this regard, the Malaysia and Indonesia experience shows the proactive sharia governance strategy.

4.4.3. Dispute Settlement Framework

Sukuk structured according to sharia principles, hence adequate dispute settlement in line of sharia principles and countries' substantive law paramount importance for investor protection as well as market growth. In Islamic jurisdictions, sharia rules are typically either codified directly into national legislation or applied interpretatively by courts and executive bodies.³⁵⁶ In contrast, Ethiopia operates under a secular legal system, and Sariah is not formally incorporated into the country's substantive laws. Nonetheless, only matters of Islamic personal law such as marriage, divorce, and *waqf* are adjudicated by sharia courts established under Article 34(5) of the FDRE Constitution and art 4 of Proclamation

³⁵³ Abdullah Abdullatef A Al Elsheikh and Joseph Tanega, 'Sukuk Structure and Its Regulatory Environment in the Kingdom of Saudi Arabia' (2011) 5 Law and Financial Markets Review 183, 190–193.

³⁵⁴ Organization of the Islamic Conference (n 210) 40–41.

³⁵⁵ Al Elsheikh and Tanega (n 352) 190–193.

³⁵⁶ Michael JT McMillen, 'Contractual Enforceability Issues: Sukuk and Capital Markets Development' (2007) 7 Chicago Journal of International Law 427, 440.

No. 188/1999.³⁵⁷ However, Islamic financial matters, including those related to Sukuk, are not included in the jurisdiction of these courts. As a result, disputes arising from Islamic finance transactions cannot be resolved by sharia courts.

In Ethiopia, the authority to legislate on financial sector matters and to adjudicate disputes arising within that sector is vested in the federal government. The FDRE Constitution explicitly states that the federal government shall formulate and implement the country's financial, monetary, and foreign investment policies and strategies.³⁵⁸ Similarly, Article 6 of the Federal Courts Proclamation No. 1234/2021 provides that federal courts shall have jurisdiction over suits involving business organizations registered or established under federal government organs. Articles 6 and 7 of the same proclamation further stipulates that federal courts are limited to apply federal substantive and procedural laws. Accordingly, banking and commercial matters clearly fall within the jurisdiction of federal law and courts.³⁵⁹ As Islamic banking and finance are categorized under the broader domain of banking and commerce, it follows that any disputes arising from Islamic financial transactions, including Sukuk, will be subject to adjudication by the federal civil courts. Since Sukuk governed by sharia principles the application of sharia in judicial proceedings, particularly in cases involving Islamic financial instruments like Sukuk, remains uncertain. Although parties to a Sukuk agreement in Ethiopia may stipulate that the transaction be governed by Sharia principles, the enforceability of such provisions in Ethiopian courts is questionable. The FDRE Constitution affirms judicial independence, requiring that judges act solely under the authority of the law.³⁶⁰ As a result, the current Ethiopian legal framework does not provide space for judges to apply or consider sharia principles when adjudicating Islamic financial disputes, including those involving Sukuk. Additionally, judges in civil courts are not experts in Islamic finance.³⁶¹ This presents a

³⁵⁷ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995; Federal Courts of Sharia Consolidation Proclamation No. 188/1999 'Federal Negarit Gazette Extra Ordinary Issue Addis Ababa , 7th Day December, 1999.

³⁵⁸ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995 art 51(11).

³⁵⁹ Mohammed Ibrahim, 'The Law and Practice of Islamic Banking in Ethiopia: A Critical Review of Constitutional Legitimacy and Dispute Resolution' (2021) 17 Manchester Journal of Transnational Islamic Law & Practice 205, 216.

³⁶⁰ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995 art 79(3).

³⁶¹ Fuad Mohammed (n 305) 58.

significant legal challenge to the regulation and growth of Sukuk in Ethiopia. The absence of a specialized legal framework for Islamic financial dispute resolution mirrors challenges observed in Nigeria, where the lack of dedicated mechanisms has hindered the effective development of Islamic finance.³⁶² Therefore, Ethiopia current dispute resolution set up is not favorable for Islamic financial transactions including Sukuk.

4.4.4. Taxation Challenge

In contrast to conventional securities, Sukuk structures often involve several asset transfers between the originator and the SPV. Each of these transfers can give rise to various tax obligations, such as stamp duty and income tax. These additional tax costs may complicate the transaction and reduce its overall attractiveness to issuers and investors.

Firstly, a major legal barrier to Sukuk structure in Ethiopia would be the application of stamp duty on each asset transfer involved in Sukuk structuring. Pursuant to Article 3 of the Stamp Duty Proclamation No. 110/1998, instruments such as contracts, leases, transfers, and property title documents are subject to stamp duty.³⁶³ This presents a challenge for sale-based Sukuk (e.g., *ijarah Sukuk*), which require multiple transfers between the originator and SPV or back to the originator. For example, in an *ijarah Sukuk* structure, stamp duty may be levied, when the asset is transferred from the originator to the SPV, when the SPV leases the asset back to the originator, and again at maturity when the asset is repurchased by the originator. Each transfer triggers stamp duty. It is paid when ownership in property is transferred³⁶⁴ and lease transfer. Despite being components of a single financial arrangement, each of these transactions would be treated as a separate taxable event under Ethiopian law, leading to double or even triple taxation. This double taxation arises because the law does not exempt or disregard these intermediary transactions, unlike in countries such as Indonesia and Malaysia. This significantly raises

³⁶² Mustapha, Kunhibava and Muneeza (n 289) 211.

³⁶³ Stamp Duty Proclamation No. 110/1998 'Federal Negarit Gazette Extra Ordinary Issue 4th Year No. 36 Addis Ababa- 12th 'may, 1998 Art 3.

³⁶⁴ Mohammed Ibrahim, 'Islamic Banking in Ethiopia and Its Legislative Challenges' (n 310) 71.

the cost of Sukuk compared to conventional bonds, which do not require such intermediate transfers.³⁶⁵

Secondly, in addition to stamp duty concerns, Sukuk transactions in Ethiopia would be exposed to capital gains tax. According to the Income Tax law, a 15% tax is imposed on gains from the disposal of immovable property, provided that the sale consideration exceeds the acquisition cost of the asset.³⁶⁶ Further, the tax framework broadens the definition of taxable transactions to include activities such as the acquisition, transfer, exchange, cancellation, redemption, or surrender of legal title for consideration.³⁶⁷ This expansive interpretation likely results in the application of capital gains tax to every asset transfer involved in Sukuk structuring, including transfers between the originator and SPV. This imposes an extra tax burden on Sukuk transactions. Ethiopian income tax law currently provides no exemptions or mechanisms to disregard intermediary asset transfers in Islamic finance transactions.³⁶⁸ Consequently, the application of capital gains tax at each stage inflates the transactional costs of Sukuk and undermines their commercial viability relative to conventional bonds. Without legal reforms to exempt or consolidate the taxation of underlying Sukuk transactions, the growth of Ethiopia's Islamic financial markets will remain significantly constrained.

Additionally, the Ethiopian tax system does not recognize Sukuk returns as equivalent to interest, meaning that profit distributions to investors may not qualify for the same tax deductions or exemptions as conventional interest payments, resulting in unfair treatment and undermining tax neutrality between sharia-complaint instruments like Sukuk and conventional finance such as bonds.³⁶⁹

³⁶⁵ Kassim Kuffa, 'Taxation of Islamic Finance (IF) and Its Exposure to Tax Costs under Ethiopian Tax Law' (2023) 13 Bahir Dar University Journal of Law 403.

³⁶⁶ Ethiopia Federal Income Tax Proclamation No. 979/2016 Federal Negarit Gazette Extra Ordinary Issue Addis Ababa 20th August, 2016 art 58; Income Tax Regulation 410/2017 art 6.

³⁶⁷ Ethiopia Federal Income Tax Proclamation No. 979/2016 Federal Negarit Gazette Extra Ordinary Issue Addis Ababa 20th August, 2016 66–70.

³⁶⁸ Kassim Kuffa (n 364) 436.

³⁶⁹ *ibid* 440–446.

Taking *Sukuk ijarah* as an example, taxation issues can be observed at three main stages. In the first stage, the originator sells the underlying asset to the Special Purpose Vehicle (SPV). This transfer triggers corporate income tax on the payment received by the originator, and stamp duty is imposed on the asset transfer. In the second stage, the SPV leases the asset back to the originator, with the rental payments received by the SPV treated as taxable income subject to corporate income tax. Profits distributed to Sukuk holders are also treated as investment income and are thus subject to taxation. Additionally, stamp duty obligations arise from the leasing arrangement. In the final stage, the SPV sells the underlying asset back to the originator upon the maturity of the Sukuk. This resale again attracts corporate income tax and stamp duty, as in the initial transfer.

Due to these multiple asset transfers and the associated stamp duty and income tax liabilities at each stage, the overall tax burden on Sukuk transactions would be heavier than that on conventional securities, placing Sukuk at a competitive disadvantage compared to traditional financial instruments.

In conclusion, this study reveals that the current legal frameworks challenge the regulation and issuance of Sukuk in Ethiopia with many critical issues. First, an outright regulatory framework for Sukuk issuance and treatment is absent at the moment. Secondly, a Sharia governance system that plays a fundamental role so Sukuk are sharia compliant is not well organized at the central level. Thirdly, the prevailing tax regime is not favorable to Sukuk, as multiple taxes, including stamp duty and capital gains tax, make Sukuk transactions more expensive than conventional ones. Fourth, there is no specific legal framework for dealing with disputes that arise from the structure of Sukuk according to sharia principles. Yet, Ethiopia can learn quite a lot from countries like Malaysia, Nigeria, and Indonesia that made successful entries into Sukuk market.

4.5. COMPARATIVE REGULATORY LESSON AND REFORM PROPOSAL FOR ETHIOPIA

As pointed out in the above discussion, the current legal and regulatory frameworks are not suitable to accommodate Sukuk in Ethiopia. Above all, the legal frameworks of Islamic

finance and Sukuk in Ethiopia are at nascent stage and no specific law for Sukuk. The experiences of Malaysia, Indonesia, and Nigeria highlight that the successful development of Sukuk market is closely linked to strong governmental support and the establishment of an appropriate legal and institutional frameworks. To regulate and foster the growth of Sukuk in Ethiopia, the government needs to establish a supportive legal and regulatory infrastructure. Drawing on the successful models of these countries, Ethiopia's Sukuk regulatory regimes should incorporate the following key components:

4.5.1. Regulation of Sukuk

In the previous chapter, the experience of Malaysia, Indonesia, and Nigeria has already discussed. Similarly, in the above sections it's already discussed the current Ethiopian regulatory challenges concerning Sukuk. This section analyses the experiences and legislation of selected nations. This will be undertaken to deduce and conclude how these countries integrate Sukuk in their financial laws, into draw experiences and lessons for Ethiopia. One of the challenges discussed above under current Ethiopian principal legislation is the absence of recognition of Sukuk as a security.

The Malaysian, Indonesia and Nigeria govern Sukuk by their principal legislations as well as subsequent laws. The surveys of these jurisdictions' approaches shows that in order to incorporate and address the unique aspect of Sukuk, the widespread legal reforms were made to provide a legal foundation. Important laws pertaining to finance, including the sovereign debt management laws, Capital Market laws, and Securities Commission Act have been modified in this respect. For instance, Malaysia clearly incorporates Sukuk under its Company Act and Government Funding Act. The Malaysia Companies Act 2016 under its article 2 recognized Sukuk as a security that a company issues in order to raise capital. This article provides a legal foundation for companies to issues Sukuk. Similarly the Government Funding Act 1983 also allows the government to issuance of any securities in accordance with sharia principles as approved by BNM SAC. Additionally, CMSA 2007 also amended in 2011 to incorporate specific provisions dedicated to Islamic capital market products, including Sukuk. Likewise, Indonesia also clearly enact sovereign Sukuk Law No. 19/2008 on State Sharia Securities (SBSN Law), which granted the

government authority to issue sovereign Sukuk for the purpose of financing budget and projects.³⁷⁰ Concerning corporate Sukuk, Indonesia firstly governs it by conventional capital market laws, then after enacted specific regulations for Sukuk because the conventional one was not consistent with sharia principles. Unlike Malaysia and Indonesia, Nigeria government issues Sukuk based on the provisions of Local Loans (registered stocks and securities act) 2004 which didn't specifically authorize to issuance Sukuk. Rather, it empowers the government to issue conventional debt securities. Concerning corporate Sukuk Nigeria, like Indonesia, issued specific regulation dedicated for Sukuk.

When we come to Ethiopian laws, one of the challenges raised above is the absence of Sukuk recognition under the principal financial legislations like the commercial code, federal government financial administration, and capital market proclamation. Since Sukuk is new to Ethiopia, to regulate Sukuk in Ethiopia the legislator should take a lesson in this regard to establish a legal foundation for Sukuk in Ethiopia. This is critical to establish legitimacy to issue Sukuk for the government as well as for corporates. Hence, the key financial legislations, including the commercial code, federal financial administration laws, and capital market law, should be amended to accommodate Sukuk as financial securities.

Concerning specific regulations of Sukuk, the Malaysia, Nigeria and Indonesia enact specific regulations and guidelines in addition to existing conventional laws. A comprehensive set of rules that define Sukuk, its structuring, securitization, issuance, disclosure requirements, sharia-compliance requirements, transfer, dispute resolution, accounting principles, and its maturity will ensure the integrity of the financial market. The efficacy of a Sukuk market depends on a strong Sharia-compliant legal framework that harmonizes conventional securities regulation with the stipulations of Islamic finance. Malaysia emphasizes the necessity for a cohesive unified regulatory structure, wherein standard securities legislation is supplemented by specific Islamic financial market regulations, thereby insuring financial integrity and adherence to sharia principles. In this regard, the SCM developed and updated several guidelines for Sukuk issuance, addressing detailed issues unlike any other jurisdictions. It includes the guidelines for offering asset-

³⁷⁰ Mohamed, Hassan and Lahsasna (n 42) 257.

backed securities, private debt securities, Sukuk guidelines, and private debt securities to retail investors, as well as the guidelines for trust deeds, prospectuses, and sharia adviser registration, among other things.³⁷¹ Unlike to Indonesia and Nigeria, Malaysia develops extensive guidelines for Sukuk regulation. That's why Malaysia considered to have well-developed Sukuk regulation unlike any other nations. Thus, the Malaysian experience on Sukuk guideline would be a good blueprint for Ethiopia. As per the capital market proclamation, ECMA has the power to issue directives to regulate the issuance of securities, including Sukuk.³⁷² In this regard, the ECMA should enact detail guidelines to regulate Sukuk issuance from start up to its redemption. Here, the Malaysian experience provides a good example.

All three jurisdictions align their Sukuk regulations with international Islamic finance standard setting institutions like IFSB, AAOIF, and IIMF. This harmonization of national Islamic finance and Sukuk legislations with international standards fosters coherence, investor confidence, and comparability. This would be informative for Ethiopia for the proper regulation of Sukuk. The ECMA and NBE should accept standards and recommendations established by international Islamic financial institutions standard setters, including IIFM, AAOIFI, and IFSB, for Sukuk issuance. For instance, the Sharia Board of AAOIFI has revised standards and issued several recommendations regarding how Sukuk should be structured, including the issues that deal of ownership, repurchasing, and compliance.³⁷³ Since it's the compilation of *fiqh* reasoning in the area of *fiqh al-muamalat*(of Islamic financial transactions jurisprudence) around the globe, reference to these recommendations could help Ethiopia to craft sound sharia compliant Sukuk which help to uphold market creditability by reducing sharia risks.

All jurisdictions discussed above started Sukuk issuance with *Al-ijara* Sukuk which is the most common and simplest form of Sukuk in global Sukuk market. Accordingly, Ethiopia should initially only permit the issuance of the most common and simplest forms of Sukuk

³⁷¹ Ghezal, Hassan and Lahsasna (n 20) 37.

³⁷² Capital Market Proclamation No. 1248 /2021 'Federal Negarit Gazette No. 33, Addis Ababa,23rd July, 2021' arts 2, 76, 75, 108(2), 6.

³⁷³ 'The Accounting and Auditing Organization for Islamic Financial Institutions, Shari'ah Standards. (Manama: The Accounting and Auditing Organization for Islamic Financial Institutions, 2015)' (n 187) 463.

structures as a nascent stage. Accordingly, *Sukuk al-ijara*, *Sukuk wakala*, and *murabaha* should only be allowed. This because of there is a low level of awareness about Islamic finance and weak regulatory experience because Islamic finance new to the country.

4.5.2. Establishing Centralized Sharia Advisory

The development Sukuk market highly relies on an effective sharia compliance and standardization framework. One of the best experiences in relation to Sukuk issuance is the establishment of a central sharia advisory council (SAC) at the national level in addition to institutional level sharia advisor. For instance, the Malaysian CMSA requires the establishment of SAC at the SCM as a sole authority on sharia matters pertaining to ICM products, including Sukuk, in order to ensure sharia compliance. The SAC also served as the reference point for the court or the arbitrator in resolving disputes that involve Sharia issues on Sukuk issuance. This regulatory based approach to sharia governance helped Malaysia to ensure harmonized national sharia standards applicable uniformly to Islamic financial institutions. All the same, Indonesia established a National Sharia Board at the national level to issue fatwas that serve as essential guidelines for Sukuk structures, issuance procedures, and their conformity with Islamic law. All Sukuk issuers are obliged to follow fatwas issued by the board. These highly contribute to the harmonization of sharia standards and boost investor confidence. Members to the council are both experts in sharia and finance.

However, Nigeria also establishes a FRACE at the central level to provide Sharia guidance on regulatory matters and advise the Securities and Exchange Commission on issues concerning sovereign Sukuk and other Shariah-compliant asset-backed instruments.

As discussed above, In the case of Ethiopia, despite the acknowledgment of Islamic finance, a fully formed Sharia governance framework for the Islamic banking and finance sector has not yet been established at central regulatory level. Such will highly affect and leads to have different sharia interpretation, which then after undermine market stability, investor confidence, and cause sharia risks. The way forwards Ethiopia should considers from these experiences and proactively establish a sharia advisory council at ECMA that would advise it on the policy directions, regulatory, and supervisory reforms concerning

Islamic financial market issues. The council should be composed of sharia experts and Islamic financial law experts. It should be organized as the ECMA's independent unit, should have a more proactive role in the drafting of the Islamic financial instruments standards and policies. These standards should then be published by the ECMA and recognized as enforceable against the institutions that are involved in sharia compliant markets. SAC should be empowered to review the structure of Sukuk and provide guidance on Sukuk issuance. These after all ensure market integrity by minimizing sharia risks.

4.5.3. Setting up an appropriate forum of adjudication

The main concern with Sukuk investments is ensuring investor protection in case of default. Unlike conventional instruments, Sukuk lack traditional security and rely on the underlying asset for returns.³⁷⁴ Investor claims on these assets post-default depend on the legal structure and contracts of the Sukuk. There is no doubt that disputes that arise in relation to Sukuk will be resolved according to sharia principles. Hence, effective dispute settlement mechanisms are vital for establishing a robust legal framework, enhancing investor confidence, and clarifying potential disputes.³⁷⁵ As such, the issuance of Sukuk in Ethiopia requires a suitable forum for the resolution of Sukuk disputes.

As the researcher discussed above, the current legal setup of Ethiopia does not favor an adjudication of Islamic finance in general and Sukuk in particular. Nevertheless, the survey of countries' experiences would provide informative guidance to the nascent country like Ethiopia. Civil courts adjudication of Islamic banking and finance Malaysia has created challenge like different judicial pronouncement on similar issues because judges are not Islamic commercial law oriented. In order to tackle this problem Malaysia established specialized bench at high court that solely entertain Islamic banking and finance disputes. The bench consists of judges who are experts of sharia and country laws. Judges extensively take sharia-compliant investment training and capacity buildings. Additionally, it also established Alternative dispute resolution mechanisms solely to entertain Islamic finance issues

³⁷⁴ Asli Osman (n 11) 57.

³⁷⁵ Bakari (n 18) 201.

Indonesia also has encountered with similar challenge, like Malaysia in adjudicating Islamic finance dispute. To solve this problem, Unlike to Malaysia, Indonesia extended the jurisdiction sharia courts to adjudicate Islamic finance disputes. Like Malaysia, Indonesia also establishes sharia arbitration board for Islamic finance dispute. The availability of a diverse range of dispute resolution options has significantly contributed to the growth and stability of Sukuk market in both countries.

In Nigeria, Islamic finance dispute fall under the jurisdiction of civil courts. This has been challenging Nigerian Islamic financial system. Still didn't take any measure to accommodate Islamic finance disputes.

As discussed above, currently Ethiopia has not yet established any special dispute resolution mechanisms for Islamic banking and finance. Accordingly, Ethiopia might either establish a special dedicated bench for Islamic finance disputes like Malaysia, or extend the jurisdiction of sharia courts to adjudicate Sukuk disputes, like Indonesia, and establish alternative means of dispute settlement. The experience of Nigeria shows that civil court-based dispute settlement is not suitable for adjudication of Sukuk disputes. In the same manner, Sukuk in Ethiopia will face challenges like Nigeria.

Therefore, Ethiopia might extend the jurisdiction of sharia court. The Sharia courts in Ethiopia have limited function. According to Article 34 of the FDRE Constitution and Article 4 of sharia courts Proclamation No. 188/1999, the jurisdiction is confined solely to personal and family matters. This means that they cannot take on Islamic commercial disputes such as Sukuk or other interest free finances. Disputes related to Islamic finance, including Sukuk transactions, involve not only Islamic law but also the application of various financial laws. This indicates that Islamic banking and finance must adhere to both Islamic regulations and federal laws enacted by Parliament, such as those governing commercial and corporate matters.³⁷⁶ In this context, Sharia court judges face limitations; one, they are not trained in civil law application, and second, their authority is restricted by

³⁷⁶ Mohammed Ibrahim, 'The Law and Practice of Islamic Banking in Ethiopia: A Critical Review of Constitutional Legitimacy and Dispute Resolution' (n 358) 222.

the constitution to Sharia personal and family laws.³⁷⁷ On the other hand, the enforcement of civil law falls solely within the jurisdiction of civil courts. Consequently, any necessary constitutional or statutory amendments are challenging to implement due to the rigorous processes required for constitutional changes.³⁷⁸ And, it is highly probable that Sukuk investors include both Muslims and non-Muslims, and the rulings of Sharia courts may provide challenges for non-Muslims due to trust issues. Therefore, extending the jurisdiction of sharia court to accommodate Sukuk disputes like Indonesia experienced makes the forum in appropriate for adjudication of Sukuk in Ethiopia.

By recognizing that Sukuk as an Islamic financial instrument, this study suggests that the judiciary should proactively develop a specialized judicial framework tailored to the needs of the Islamic finance instrument, including Sukuk. The creation of a specific bench, similar to Malaysia's, within the civil court system that operates under both Islamic and civil law is crucial. This approach would help to address issues associated with expanding the jurisdiction of Sharia courts. However, it could be challenging for Ethiopia because judges in civil court are not experts in Islamic finance. Nevertheless, this challenge could be mitigated by appointing judges who are experts in both civil law and Islamic finance and providing extensive training for judges sitting on the benches. Furthermore, they can consult qualified jurists specialized in Islamic jurisprudence, thereby seeking expert guidance. This is what Malaysia and Indonesia have done. In this regard, the establishment of SAC at ECMA would be crucial.

Last but not least, Ethiopia should establish alternative means for Sukuk dispute settlement. Since the existing legal framework in Ethiopia is insufficient for managing Sukuk-related disputes, it is important to explore alternative dispute resolution methods, such as mediation and arbitration, as practical solutions for dispute resolution. In these procedures, all disputes would be referred to institutions recognized by Sharia experts. This approach would enhance the confidence of the parties involved in the expertise of mediators and arbitrators knowledgeable in Sharia law. This could help to address the regulatory risks linked to the resolution of Sukuk disputes and the lack of competency

³⁷⁷ *ibid.*

³⁷⁸ *ibid.*

among civil court judges and lawyers in Sharia law, Ethiopia should establish Alternative dispute resolution mechanisms specifically designed for Sukuk, like Malaysia and Indonesia. For instance, the country could establish a dedicated commission for arbitration or mediation that focuses exclusively on Islamic finance issues

4.5.4. Favorable taxation treatment

Tax neutrality is essential to ensure that Sukuk receive the same tax treatment as conventional bonds. Failing to achieve this will diminish the appeal and competitiveness of Sukuk compared to traditional bonds. That is why countries like Malaysia, Indonesia, and Nigeria implement tax-neutral policies for Sukuk. They all exempt transactions between the originator and the SPV from taxation and classify income generated from Sukuk as interest for tax purposes. In Ethiopia, there is no special tax treatment for Islamic finance products yet. Hence, as discussed above the application of Ethiopia tax laws to Sukuk cause double or triple taxation for a single financing transactions. To establish a fair competitive environment, Ethiopia should extend similar tax benefits to Sukuk as it does for conventional bonds. This means that profits payable to Sukuk holders should be considered as interest and treated as a deductible expense for tax purposes.

Firstly, regarding stamp duty, since sales or leases of underlying assets are not genuine transactions but rather to fulfill Sharia requirements, these should be exempt from stamp duty. The Ministry of Finance should formulate appropriate regulations for tax exemption on Sukuk-related transactions. Secondly, concerning income tax, interest on conventional bonds, including treasury and government bonds, is exempt from income tax. The same exemption should extend to sovereign Sukuk or Sukuk bills issued by the Ethiopian government. This will highly attract foreign investors to invest in the Ethiopian Sukuk market. Thirdly, the government should provide incentives for issuers for the development and issuance of more Sukuk in the country.

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATIONS

5.1. CONCLUSION

Sukuk, as the second-largest contributor to the Islamic finance sector, is not only one of the most rapidly expanding financial products globally but also the most successful Sharia-compliant product among Islamic financial institutions. It has emerged as an alternative financing mechanism to traditional bonds, attracting interest from international capital markets. It serves as a valuable alternative financing method that positively contributes to the robust growth of financial markets. For this reason, it is beneficial for Ethiopia to regulate Sukuk, not only to serve the substantial Muslim population but also to support the country's economic growth. The advancement of Sukuk requires a suitable regulatory framework.

This study finds that the current regulatory structure in Ethiopia does not support Sukuk. Sukuk encounters specific regulatory obstacles. Firstly, given that Sukuk is an emerging concept in Ethiopia, a regulatory mechanism and supervision frameworks are absent for Sukuk. Secondly, Sukuk must adhere to Sharia principles. Nevertheless, despite the acknowledgement of Islamic finance, Ethiopia lacks a Sharia regulatory authority to oversee the Sharia compliance of Islamic financial products. Third, Sukuk entails several asset transfers, potentially leading to tax liabilities. Consequently, the tax obligations associated with Sukuk are more onerous than those of conventional securities, placing Sukuk at a disadvantage compared to its traditional counterparts. Fourth, Ethiopia lacks an appropriate forum for the resolution of Islamic financial disputes. Ethiopia should learn from the regulatory practices of other nations to surmount these challenges.

This study also finds that the experience of Malaysia, Nigeria and Indonesia shows that supportive legislative, regulatory and supervisory frameworks are crucial for the development of Sukuk. Based on the study of these successful experiences, Ethiopia should amend its regulatory framework concerning the legislative recognition of Sukuk,

Sharia governance, tax treatment, and dispute resolution mechanisms. By doing so, Ethiopia can establish a conducive regulatory environment for the flourishing of Sukuk.

5.2. RECOMMENDATIONS

By considering the findings and concluding remarks, this thesis recommends the regulation of Sukuk securities into Ethiopia's financial system and outlines key actions for stakeholders to ensure their successful implementation. First, the existing laws, including the Commercial Code, financial administration laws, and capital market proclamation, should be amended to recognize Sukuk as capital-raising instruments. The ECMA must develop a comprehensive regulatory framework that aligns with Sharia principles, drawing on international standards such as those of AAOIFI and IFSB, and include clear guidelines on Sukuk structuring, transactions, and disclosures. Establishing a central Sharia advisory council within ECMA is vital to ensure oversight and harmonization of Islamic capital market products. A specialized forum for Sharia-based dispute resolution should also be introduced, either through dedicated civil court benches or Alternative dispute resolution mechanisms.

Strategically, Ethiopia should adopt a phased approach, starting with common Sukuk types like *Ijarah*, *Murabaha*, and *Wakala*. Tax laws, including stamp duty and income tax, should be revised to ensure tax neutrality and offer incentives, as seen in Malaysia, Indonesia, and Nigeria. Additionally, Ethiopia should collaborate with international Islamic finance standard-setting institutions regardless of its current development level. Finally, extensive capacity building and awareness creation are essential to address the shortage of skilled professionals and promote Sharia-compliant investment among regulators, judges, investors, and the public.

By adopting these recommendations, Ethiopia can develop an enabling legal and institutional atmosphere for Sukuk to flourish, enhance financial inclusion, address the demands of the Muslim community, promote ethical investment, and facilitate sustainable economic progress under Islamic principles.

BIBLIOGRAPHY

- AbdufetaH Hussien, ‘Introducing Islamic Insurance Scheme to Ethiopia as a Financial Inclusion Tool: Operational Models and Regulatory Frameworks’ (LLM Thesis, Haramaya University 2019)
- ‘Abdul Karim Abdullah, “Sukuk and Bonds: A Comparison”, in Mohammad Hashim Kamali and A. K. Abdullah (Eds), *Islamic Finance Issues in Sukuk and Proposals for Reform*. (Markfield: The Islamic Foundation, 2014)’
- Abdullah A, ‘A Comparison between Malaysia and Indonesia in Islamic Banking Industry’ (2017) 4 *Pressacademia* 276
- Abdullahi Busari S, Zakariyah L and Abdul Aziz A, ‘Sukuk Default Regulation in Malaysia and United Arab Emirates: Comparative Analysis’ (2019) 3 *International Journal of Fiqh and Usul al-Fiqh Studies* 90
- Abdulqadir I. Abikan and Ibrahim B. Ahmad, ‘Shariah Governance of Islamic Financial Institutions (IFIS): An Analysis of the Central Bank of Nigeria (CBN) Regulatory Guidelines’ (2017) 3 *NIU Journal of Social Sciences*, 306
- Abu Bakar A and Muhammad I, ‘Sukuk and Nation Building: An Overview of the Development and Impact of Sukuk Financing in Nigeria’ (2020) 5 *IKONOMIKA* 71
- Abu Umar Faruq Ahmed, ‘Legal, Regulatory and Other Issues of Sukuk: A Critical Analysis’, *International Congress on Islamic Economics and Finance (ICISEF), 21-23 October 2015, Sakarya, Turkey = Uluslararası İslam Ekonomisi ve Finansı Kongresi: bildiriler kitabı* (Sakarya Üniversitesi 2016)
- Abubakar YS and others, ‘The Concept of Sukuk and Its Applications in Contemporary Islamic Financial System’ (2023) 2 *Law and Humanities Quarterly Reviews*
- ‘Accounting and Auditing Organization for Islamic Financial Institutions’ <<https://aaoifi.com/ss-17-investment-sukuk/?lang=en>> accessed 31 January 2024
- ‘——’ <<https://aaoifi.com/ss-17-investment-sukuk/?lang=en>> accessed 31 January 2024
- ‘——’ <<https://aaoifi.com/about-aaoifi/?lang=en>> accessed 15 January 2025

- African Development Bank, 'Driving Ethiopian Transformation; The Reform of the Global Financial Architecture' (2024) Country Focus report
- Ahmad M. Abu-Alkheil, 'Ethical Banking and Finance: A Theoretical and Empirical Framework for the Cross Country and Interbank Analysis of Efficiency, Productivity and Performance' (PhD Thesis, University of Hohenheim 2012)
- Ahmed ER and others, 'Operational Definition for Doubtful Activities (Shubuhah) Based on Islamic Finance Perspective' (2021) 12 Journal of Islamic Marketing 1025
- ———, *The Challenges and Prospects of Sukuk: A Content Analysis-Based Study* (Cambridge Scholars Publisher 2022)
- Al Elsheikh AAA and Tanega J, 'Sukuk Structure and Its Regulatory Environment in the Kingdom of Saudi Arabia' (2011) 5 Law and Financial Markets Review 183
- Al-Ali S, *Raising Capital on Şukūk Markets: Structural, Legal and Regulatory Issues* (Springer International Publishing 2019) <<http://link.springer.com/10.1007/978-3-030-14536-1>> accessed 5 February 2024
- Alam N, Gupta L and Shanmugam B, *Islamic Finance: A Practical Perspective* (1st ed. 2017, Springer International Publishing: Imprint: Palgrave Macmillan 2017)
- Alamgir, M, Hossain, M.M. and Faisal, N.A., 'Issues and Challenges for Islamic Finance and Banking in Bangladesh in the Perspective of Global Development' (2017) 24 Research Monograph
- Al-Amine M al-BM, *Global Sukuk and Islamic Securitization Market: Financial Engineering and Product Innovation* (Brill 2012)
- Alharbi A, 'Development of the Islamic Banking System' (2015) 3 Journal of Islamic Banking and Finance <<http://jibfnet.com/vol-3-no-1-june-2015-abstract-2-jibf>> accessed 10 December 2024
- Ali Saeed Al-Shamrani, 'Islamic Financial Contracting Forms In Saudi Arabia: Law And Practice' (PhD Thesis, Brunel University 2014)
- Aliyu A, 'The Regulation and Supervision of Interest-Free Banking in Ethiopia' (LLM Thesis, Addis Ababa University 2015)

- Alshamrani A, ‘Sukuk Issuance and Its Regulatory Framework in Saudi Arabia’ (2014) 2 Journal of Islamic Banking and Finance
- Anebo LN, ‘Debenture as Alternate Scheme of Raising Investment Fund and Its Prospects under Ethiopian Company Law’ (2019) 13 Mizan Law Review 333
- Archer S (ed), *Islamic Finance: Innovation and Growth* (Repr, Euromoney Books [u.a] 2004)
- Ascarya and Diana, Y., ‘Comparing The Development of Islamic Financial/Bond Markets in Malaysia and Indonesia’ in S. S. Ali (ed), *ISLAMIC CAPITAL MARKETS* (Islamic Research and Training Institute 2008)
- Asli Osman M, ‘Sukuk as A Tool towards Development: How Kenya Can Use Sukuk as Alternative Source Of Funding Development Projects’ (LLM Thesis, University of Nairobi 2019)
- Atta, A., ‘The Legal and Regulatory Framework for Non-Interest Banking in Nigeria’ (2011) 35 CBN Bullion
- Ayub M, *Understanding Islamic Finance* (John Wiley & Sons 2007)
- Bakari A, ‘Mining and Infrastructure Development in Nigeria: Appraisal of the Legal and Policy Framework for Investment and Sukuk’ (PHD Thesis, University of East London 2019)
- Balibek, Emre, ‘Establishing a Legal Framework for Sovereign Sukuk Issuance : A Public Debt Management Perspective’ (*World Bank*) <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/907001497472893193/Establishing-a-legal-framework-for-sovereign-sukuk-issuance-a-public-debt-management-perspective>> accessed 5 February 2024
- Bogale S, ‘ESX Plans To Develop Shariah-Compliant Capital Market Products | The Reporter | Latest Ethiopian News Today’ (26 August 2023) <<https://www.thereporterethiopia.com/36153/>> accessed 2 February 2024
- Chong BS and Liu M-H, ‘Islamic Banking: Interest-Free or Interest-Based?’ (2009) 17 Pacific-Basin Finance Journal 125

- COMCEC Coordination Office, *Infrastructure Financing through Islamic Finance in the Islamic Countries* (2019)
- ———, ‘Improving Shariah Governance Framework in Islamic Finance’ (2020)
- DeLorenzo AU, ‘Building up an Islamic Capital Market: The Malaysian Example’ in M Kabir Hassan and Michael Mahlke (eds), *Islamic Capital Markets* (1st edn, Wiley 2012)
- Essia Ries Ahmed, Md. Aminul Islam and Ku Halim Ku Ariffin, ‘An Empirical Analysis on Legitimacy of Sukuk: An Insight of Malaysian Sukuk’ (2015) 11 *Asian Social Science* 84
- ‘ESX: Press Release on ESX Launch 10th Jan 2025’ <<https://fsdafrica.org/wp-content/uploads/2025/01/250109-Press-Release-on-ESX-Launch-F.pdf>> accessed 22 April 2025
- ‘Ethiopian Capital Market Authority’ <<https://ecma.gov.et/about/>> accessed 7 January 2025
- Ethiopian Planning and Development Commission, ‘Ten Years Development Plan: A Pathway to Prosperity(2021-2030)’
- Ethiopian Securities Exchange, ‘Rulebook of the Ethiopian Securities Exchange (Equities and Fixed Income Markets)’
- Farid Tayib, ‘Assessing “Takaful” Insurance Business Regulation in Ethiopia against Sharia Norms: A Comparative Analysis’ (2020) 12 *Jimma University Journal of law* <<https://journals.ju.edu.et/index.php/jlaw/article/view/3896>>
- Fatmah A. Al Maddah, ‘Islamic Finance and the Concept of Profit and Risk Sharing’ (2017) 1, *Middle East Journal of Entrepreneurship, Leadership and Sustainable Development* 89
- Federal Democratic republic of Ethiopia, ‘A Homegrown Economic Reform Agenda:A Pathway to Prosperity’
- Fuad Mohammed, ‘Dispute Resolution in Islamic Banking Industry of Ethiopia: Law and Practice’ (LLM Thesis, Hawassa University 2022)
- Gait A. H and Worthington A. C, ‘A Primer on Islamic Finance: Definitions, Sources, Principles and Methods’

- Gerard D’Cruz Rodney and Murni Zuyati Zulkifli Aziz, ‘Malaysia’ in John Dewar and Munib Hussain (eds), *The Islamic Finance and Markets Review* (4th edn, Law Business Research Ltd 2019)
- Ghezal M, Hassan R and Lahsasna A, ‘The Feasibility of Issuing Şukūk under the Current Laws and Regulations in Algeria’ (2020) 17 *Journal of Islam in Asia* (E-ISSN 2289-8077) 269
- ———, ‘Legal and Regulatory Requirements to Implement Sukuk in Algeria: Learning from Malaysian Experience’ (2021) 10 *journal of islamic finance*(E-ISSN 2289-2117 30
- Hafas Furqani, ‘The Current Situation of Islamic Economics in Indonesia.’ (IKAM Research Centre for Islamic Economics 2017) Project Report
- Hanif M, ‘Profit & Loss Sharing in Islamic Banking and Finance’ (Social Science Research Network, 27 April 2014) <<https://papers.ssrn.com/abstract=2430013>> accessed 18 December 2024
- HARLEM, ‘Analysis of the FIRS’ Non-Interest Finance (Taxation) Regulations 2022 – HARLEM SOLICITORS’ (6 February 2023) <<https://www.harlemsolicitors.com/2023/02/06/analysis-of-the-firs-non-interest-finance-taxation-regulations-2022/>> accessed 16 April 2025
- Hassan A, *Islamic Finance: Ethical Underpinnings, Products, and Institutions* (Palgrave Macmillan US 2018)
- Hassan A, Almaghaireh AI and Islam MS, *Islamic Financial Markets and Institutions* (Routledge, Taylor & Francis Group 2023)
- Hassan R and Majid MS, ‘Taxation Framework for Sukuk in Malaysia and Indonesia’ in Abdalmuttaleb MA Musleh Al-Sartawi (ed), *Artificial Intelligence for Sustainable Finance and Sustainable Technology*, vol 423 (Springer International Publishing 2022)
- Husna HN and Rahman RA, ‘Financial Distress–Detection Model for Islamic Banks’ [2012] *International Journal of Trade, Economics and Finance* 158
- IFSB, ‘Islamic Financial Services Industry Stability Report’ (2024) <<https://www.ifsb.org/wp-content/uploads/2024/09/IFSB-Stability-Report-2024-8.pdf>> accessed 24 November 2024

- ‘IFSB, “Capital Adequacy Requirements for Şukūk, Securitisations and Real Estate Investment” (IFSB, January 2009) 3’
- IIFM, ‘Internation Islamic Financial Market Şukūk Report’ (IIFM 2010)
- ‘Income Tax Treatment of Shariah-Based Banking and Financial Institutions in Indonesia’ (*ITR*, 1 February 2012) <<https://www.internationaltaxreview.com/article/2a68rfy5bw2ycq13xdq0y/income-tax-treatment-of-shariah-based-banking-and-financial-institutions-in-indonesia>> accessed 11 April 2024
- International Islamic Financial Market, ‘A Comprehensive Study of the Global Sukuk Market’ (International Islamic Financial Market 2023) IIMF Sukuk report 2023
- —, ‘IIFM Sukuk Report 2024’ (International Islamic Financial Market 2024)
- ‘International Islamic Financial Market-Corporate Profile’ <<https://www.iifm.net/about-iifm/corporate-profile>> accessed 15 December 2024
- International Organization of Securities Commissions, ‘Islamic Capital Market Fact Finding Report: Report of the Islamic Capital Market Task Force of the International Organization of Securities Commissions.’ (2004)
- Iqbal Z and Mirakhor A, *An Introduction to Islamic Finance: Theory and Practice* (2nd ed, John Wiley & Sons (Asia) 2011)
- Islamic Financial Service Board, ‘Guidance Note on Deepening the Islamic Capital Market’ <https://www.ifsb.org/wp-content/uploads/2023/10/GN-8_En.pdf> accessed 30 December 2023
- ‘Islamic Banking - Institute of Islamic Banking and Insurance’ (19 September 2023) <<https://islamic-banking.com/islamic-banking/>> accessed 18 December 2024
- ‘Islamic Capital Market Products: Introduction of Regulations for Sukuk to Sri Lankan Capital Market | Daily FT’ <<https://www.ft.lk/financial-services/Islamic-capital-market-products-Introduction-of-regulations-for-Sukuk-to-Sri-Lankan-capital-market/42-752537>> accessed 6 February 2024
- ‘Islamic Financial Services Board’ (*Islamic Financial Services Board*) <<https://www.ifsb.org/>> accessed 15 April 2024

- ‘Islamic-Finance-in-Nigeria-2024-Year-in-Review-and-2025-Outlook.Docx.Pdf’ <<https://uubo.org/wp-content/uploads/2024/12/Islamic-Finance-in-Nigeria-2024-Year-in-Review-and-2025-Outlook.docx.pdf>> accessed 13 April 2025
- Ismath Bacha O and Mirakhor A, *Islamic Capital Markets: A Comparative Approach* (Wiley 2013)
- Junaid Haider and Muhammad Azha, ‘Islamic Capital Market Sukuk and Its Risk Management in the Current Scenario’ (MA Thesis, Umea University 2010)
- Kalid Alsaeed, ‘Sukuk Issuance in Saudi Arabia: Recent Trends and Positive Expectations’ (PhD Thesis, Durham University 2012)
- Kamil Abdu, ‘A Critical Appraisal of The Regulatory Regime Of Islamic Banking In Ethiopia’ (Msc, Hamad Bin Khalifa University 2021)
- Kassim Kuffa, ‘Taxation of Islamic Finance (IF) and Its Exposure to Tax Costs under Ethiopian Tax Law’ (2023) 13 Bahir Dar University Journal of Law 403
- Khan, Tariqullah, ‘Legal And Regulatory Issues In Issuing Sukuk In South Korea Lessons From Developed Countries’ Experience’ II International Journal of Economics, Commerce and Management
- Lahsasna A, *Forward Lease Sukuk in Islamic Capital Markets: Structure and Governing Rules* (Palgrave Macmillan US 2018)
- Lahsasna A, Hassan MK and Rubi Ahmad, *Forward Lease Sukuk in Islamic Capital Markets: Structure and Governing Rules* (1st edition 2018, Palgrave Macmillan 2018)
- Latham & Watkins, *The Sukuk Handbook: A Guide To Structuring Sukuk*
- M. Sherif and C. T. Erkol, ‘Sukuk and Conventional Bonds: Shareholder Wealth Perspective’ (2017) 8 Journal of Islamic Accounting and Business Research 347
- Malaysia B, ‘Beginner’s Guide To Bond+Sukuk Malaysia’
- Malaysian Institute of Accountants, *Tax Treatment on Islamic Finance in Malaysia* (Malaysian Institute of Accountants (MIA) 2012)

- Md Akther Uddin, ‘Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir’ <<http://rgdoi.net/10.13140/RG.2.2.36029.20969>> accessed 13 December 2024
- Melika Mohammed, ‘Introducing Policy And Regulatory Framework For Accomodation Of Islamic Banking In Ethiopia’ (LLM Thesis, Addis Ababa University 2020)
- Michael JT McMillen, ‘Contractual Enforceability Issues: Sukuk and Capital Markets Development’ (2007) 7 *Chicago Journal of International Law* 427
- Mohamed Ariff, Iqbal M and Shamsheer Mohamad (eds), *The Islamic Debt Market for Sukuk Securities: The Theory and Practice of Profit Sharing Investment* (Edward Elgar 2012)
- Mohamed Ariff, Meysam Safari and Shamsheer Mohamad, ‘Sukuk Securities, Their Definitions, Classification and Pricing Issues’ in Mohamed Ariff, Munawar Iqbal and Shamsheer Mohamad (eds), *The Islamic Debt Market for Sukuk Securities; The Theory and Practice of Profit Sharing Investment* (Edward Elgar 2012)
- Mohamed G, Hassan R and Lahsasna A, ‘Legal And Regulatory Approaches In Şukūk Issuance: A Comparative Analysis’ (2022) 13 *UUM Journal of Legal Studies* 249
- ———, ‘Legal And Regulatory Approaches In Şukūk Issuance: A Comparative Analysis’ (2022) 13 *UUM Journal of Legal Studies* 249
- Mohamed Rafe Md. Haneef, ‘Recent Trends and Innovations in Islamic Debt Securities: Prospects for Islamic Profit and Loss Sharing Securities’ in Syed Nazim Ali (ed) (ed), *Islamic Finance: Current Legal and Regulatory Issues* (Cambridge, Mass: ILSP Harvard 2005)
- Mohammad Taqiuddin bin Mohamad and others, ‘The Historical Development of Modern Islamic Banking: A Study in South-East Asia Countries’ [2013] *African Journal of Business and Management*
- Mohammed Ibrahim, ‘The Progress To Allow Fully Fledged Interest Free Banking Business In Ethiopia’ (2019) No 14 *European Journal of Islamic Finance* 2019
- ———, ‘Islamic Banking in Ethiopia and Its Legislative Challenges’ (2020) 16 *Manchester Journal of Transnational Islamic Law & Practice* 62

- ———, ‘The Law and Practice of Islamic Banking in Ethiopia: A Critical Review of Constitutional Legitimacy and Dispute Resolution’ (2021) 17 *Manchester Journal of Transnational Islamic Law & Practice* 205
- Mustapha Z, Kunhibava S and Muneeza A, ‘Court Referral and Nigeria’s Financial Regulation Advisory Council of Experts (FRACE)’ (2019) 11 *ISRA International Journal of Islamic Finance* 206
- National Bank of Ethiopia, ‘National Financial Inclusion Strategy’
- ———, ‘Ethiopian Economic Forum-Afternoon Session’ <<https://www.youtube.com/live/6s8gv3jjovY?si=MtXub8DzzCjiq4Nd>> accessed 15 May 2025
- Nico P. Swartz and Pieter Coetzer, ‘Takaful: An Islamic Insurance Instrument’ (2010) 02 *Journal of Development and Agricultural Economics* 333
- Nigussie D, ‘National Bank Explores Treasury Bill Alternatives To Accommodate Islamic Banks | The Reporter | Latest Ethiopian News Today’ (16 September 2023) <<https://www.thereporterethiopia.com/36599/>> accessed 2 February 2024
- Organisation of Islamic Cooperation (ed), *The Role of Sukuk in Islamic Capital Markets* (COMCEC Coordination Office 2018)
- Organization of the Islamic Conference (ed), *The Role of Sukuk in Islamic Capital Markets* (COMCEC Coordination Office 2018)
- Oseni UA and Hassan MK, ‘The Dispute Resolution Framework for the Islamic Capital Market in Malaysia: Legal Obstacles and Options’ in M Kabir Hassan and Michael Mahlkecht (eds), *Islamic Capital Markets* (1st edn, Wiley 2012)
- ———, ‘The Regulation and Supervision of Sukuk in Global Capital Markets’ in M Kabir Hassan and Mervyn K Lewis (eds), *Handbook on Islam and Economic Life* (Edward Elgar Publishing 2014)
- Pegah Z, ‘An Introduction to Islamic Securities (Sukuk)’ (2017) <https://www.jur.uu.se/digitalAssets/563/c_563862-1_3-k_wps2017-2.pdf>
- Puneri A, ‘Dispute Resolution for Islamic Banks in Indonesia’ (2021) 4 *International Journal of Islamic Economics and Finance (IJIEF)*

- Rahman A, Halim AHA and Markom R, 'The Inevitability and Relevancy of Sukuk in Developing Country: A Case of Bangladesh' (2021) 6 Scholars Middle East Publishers, Dubai, United Arab Emirates 468
- Razak SS, Saiti B and Dinç Y, 'The Contracts, Structures and Pricing Mechanisms of Sukuk: A Critical Assessment' (2019) 19 Borsa Istanbul Review S21
- Safari M, Ariff M, and Shamsheer Mohamad, *Sukuk Securities: New Ways of Debt Contracting* (Wiley 2014)
- Salah O, *Sukuk Structures: Legal Engineering under Dutch Law* (Eleven International Publishing 2014)
- Samson Tsedeke, 'The Case for Shariah-Compliant Capital Market Products in Ethiopia' <<https://multilinkconsult.com/2023/09/22/the-ethiopian-securities-exchange-and-the-future-of-shariah-compliant-capital-markets/>> accessed 10 May 2024
- Shafiu Ibrahim Abdullahi, 'Sukuk as an Alternative Source of Funds for Nigerian Government .' in Kabir I. Dandago, Aliyu Dahiru Mohammed and Umar A. Oseni (eds), *Essentials Of Islamic Banking And Finance In Nigeria* (Benchmark Publishers Limited Kano 2013)
- Sole J and others, 'Operative Principles of Islamic Derivatives: Towards a Coherent Theory' (2012) 12 IMF Working Papers 1
- 'State-of-Enterprise-2024-Report.Pdf' <<https://enterprisengr.com/wp-content/uploads/2024/08/State-of-Enterprise-2024-Report.pdf>> accessed 12 April 2025
- Suadiq H and Nissar Y, 'Islamic Finance In Ethiopia: Current Status, Prospects And Challenges' (2021) 6 International Journal of Islamic Banking and Finance Research1
- Tamim Abdullah Bin Suliman, 'Shari'ah and Legal Risk Issues in Sukuk Structures: An Analytical Case Study on SABIC Sukuk in Saudi Arabia' (PhD Thesis, Durham University 2016)
- Tewodrows Meheret, 'The Nature of Preferred Shares and Debentures under the 1960 Commercial Code of Ethiopia' (LLM Thesis, Addis Ababa University 2005)

- ‘The Accounting and Auditing Organization for Islamic Financial Institutions, Shari’ah Standards. (Manama: The Accounting and Auditing Organization for Islamic Financial Institutions, 2015)’
- *The Holy Qur’ān Surah*
- Umar A. Oseni and Abu Umar Faruq Ahmad, ‘Dispute Resolution in Islamic Finance: A Case Analysis of Malaysia’ in Hatem A. El-Karanshawy et al. (eds) (ed), *Ethics, Governance and Regulation in Islamic Finance* (Bloomsbury Qatar Foundation 2015)
- Umar Faruq Ahmad A and Kabir Hassan M, ‘Legal and Regulatory Issues of Islamic Finance in Australia’ (2009) 2 *International Journal of Islamic and Middle Eastern Finance and Management* 305
- Venardos AM, *Current Issues in Islamic Banking and Finance: Resilience and Stability in the Present System* (World Scientific 2010)
- Vishwanath SR and Azmi S, ‘An Overview of Islamic Sukuk Bonds’ (2009) 14 *The Journal of Structured Finance* 58
- Visser H, *Islamic Finance: Principles and Practice, Second Edition* (Edward Elgar Publishing 2013)
- Wahida Ahmad and Rafisah Mat Radzi, ‘Sustainability of Sukuk and Conventional Bond during Financial Crisis: Malaysia’s Capital Market’ (2011) 4 *Global Economy and Finance Journal* 33
- Workneh Alula, ‘Debentures and Bonds Under Ethiopian Law’ (2017) 2 *The International Journal of Ethiopian Legal Studies* 1
- Zamir I, ‘Islamic Financial System’ (1997) 34 *Finance & Development* 42
- Zubair AA-Q, ‘An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia’ (2020) 11 *Jurnal Hukum Novelty* 164
- Zulkhibri M, *Islamic Finance, Risk-Sharing and Macroeconomic Stability* (Palgrave Macmillan US 2019)
- Zulkifli bin Hasan, *Shari’ah Governance in Islamic Banks* (Edinburgh University Press 2012)

- ———, *Shari'ah Governance in Islamic Banks* (Edinburgh University Press 2012)
- 'Abd al-Rahmân Y, *The Art of Islamic Banking and Finance: Tools and Techniques for Community-Based Banking* (J Wiley & sons 2010)
- 'Uṣmānī MT, *An Introduction to Islamic Finance* (Kluwer Law International 2002)
- A Directive to License a Takaful Operator or Authorize a Takaful Window Operator No. SBB/1/2020.
- Directive to License and Authorize Interest Free Banking Business No. SBB/72/2019
- Licensing and Supervision of Interest-free Microfinance Business Directives to Interest-free Microfinance Business Operators and Authorize Directives No. MFI/32/2021
- Bank Negara Malaysia. Guidelines on Shariah Governance Framework for Islamic Financial Institutions. 26 October 2010.
- Capital Market Proclamation No. 1248 /2021 'Federal Negarit Gazette No. 33, Addis Ababa, 23rd July, 2021'
- Capital markets and services act 2007
- Commercial Code of Ethiopia Proclamation No. 1243/2021" 'federal Negarit Gazette Extra Ordinary Issue Addis Ababa , 12th Day April, 2021.
- Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995
- ECMA, Directive on the public offering and trading of securities no. 1030/2024
- Ethiopia Federal Income Tax Proclamation No. 979/2016 Federal Negarit Gazette Extra Ordinary Issue Addis Ababa 20th August, 2016
- Ethiopia Financial Administration Proclamation No. 648/2009
- Ethiopian Income Tax Regulation 410/2017
- Ethiopian Business Interest- free bank directive, No, SBB / 51/ 2011

- Ethiopian Capital Market Authority's Fee Directive No. 996/2024
- Fatwa No. 69/DSN-MUI/VI/2008 on Sharia Sovereign Securities. Fatwa No. 70/DSN-MUI/VI/2008, which governs issuance methods like auctions and bookbuilding; Fatwas No. 71, 72, and 76 issued between 2008 and 2010, which regulate sale and lease-back sukuk and Ijarah asset leasing mechanisms.
- Federal Courts of Sharia Consolidation Proclamation No. 188/1999 'FEDERAL NEGARIT GAZETTE EXTRA ORDINARY ISSUE Addis Ababa , 7th Day December, 1999.
- Federal Democratic Republic of Ethiopia, amendment Microfinance business proclamation No. 1163/2019, Federal Negarit Gazette, 26th years
- Indonesia, Regulation of the Minister of Finance No 136/PMK.03/2011 concerning the Imposition of Income Tax on Shariah-based Financing Activities. 2011
- Malaysia, Guidline on Sukuk 2012
- Malaysia, Income Tax Act 1967(Act 53)
- Nigeria Federal Inland Revenue Services, Non-Interest Finance Regulations(Taxation) 2022 2022
- Nigeria, Investment and Securities Act, 2007
- Nigerian Securities Commission, SEC Rules and Regulations 2013
- OJK regulation no.18/PO.04/2015
- Stamp Duty Proclamation No. 110/1998 'federal Negarit Gazette Extra Ordinary Issue 4th Year No. 36 Addis Ababa- 12th May, 1998