

innovation in islamic finance

CORPORATE FINANCE • FINANCIAL INSTITUTIONS • ENERGY AND INFRASTRUCTURE • TRANSPORT • TECHNOLOGY



innovation in islamic finance

a full business law service

A NORTON ROSE GROUP CAPABILITIES STATEMENT
OCTOBER 2008

Legal 500 2007 and 2008

“The leader in this sector by a substantial margin”

Chambers and Partners 2008

“The firm most dedicated to Islamic finance”

Islamic Business and Finance

Best Islamic finance law firm 2007

Islamic Finance News

Best Islamic finance law firm 2007

Only legal adviser sitting on the Islamic Finance Experts Group of Her Majesty’s Treasury in the UK

Member of HM Revenue & Customs’ Islamic Finance Tax Technical Working Group

Member of the UK Financial Services Authority’s Consultative Committee on Islamic Finance

Preface

For over 20 years Norton Rose Group has been involved in documenting and advising on a wide variety of financings arranged for the benefit of Islamic investors. We are market leaders in the Islamic finance sector.

We have represented many financial institutions (both Islamic and conventional) actively involved in the structuring of Islamic financial transactions. We are therefore well acquainted with the principles to be observed in structuring transactions to comply with the principles and policies approved by the Shariah Committees of those Islamic financial institutions.

I invite you to find out more about us and our approach to the work that our clients instruct us on: commercial, pragmatic, innovative.

Neil D Miller

Partner

Head of Islamic finance



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Norton Rose Group

Norton Rose Group is a leading international legal practice. We offer a full business law service from offices across Europe, the Middle East and Asia. We are strong in corporate finance; financial institutions; energy and infrastructure; transport; and technology. The Group comprises Norton Rose LLP and its affiliates.

www.nortonrose.com

Global reach

We have offices in 24 very different cities around the world and an extensive network of correspondent lawyers, enabling us to operate in every market and every jurisdiction.

We have offices in

Abu Dhabi
Amsterdam
Athens
Bahrain
Bangkok
Beijing
Brussels
Dubai
Frankfurt
Hong Kong
Jakarta (associate office)
Tokyo

London
Milan
Moscow
Munich
Paris
Piraeus
Prague
Riyadh (associate office)
Rome
Shanghai
Singapore
Warsaw

Our global offices



*associate office

Industry knowledge

We make a clear connection between law and industry knowledge and were one of the first legal practices to form international business groups based on the industries in which our clients operate.

Our international business groups cover

- aviation
- communications, media and technology
- energy and utilities
- financial institutions
- food, pharmaceuticals and biotechnology
- infrastructure
- insurance
- mining and metals
- rail
- real estate
- shipping

Practice areas

We offer a full business law service and work in teams that cut across national and jurisdictional boundaries. We provide expert advice, innovation and a commercial outlook.

Our practice areas cover

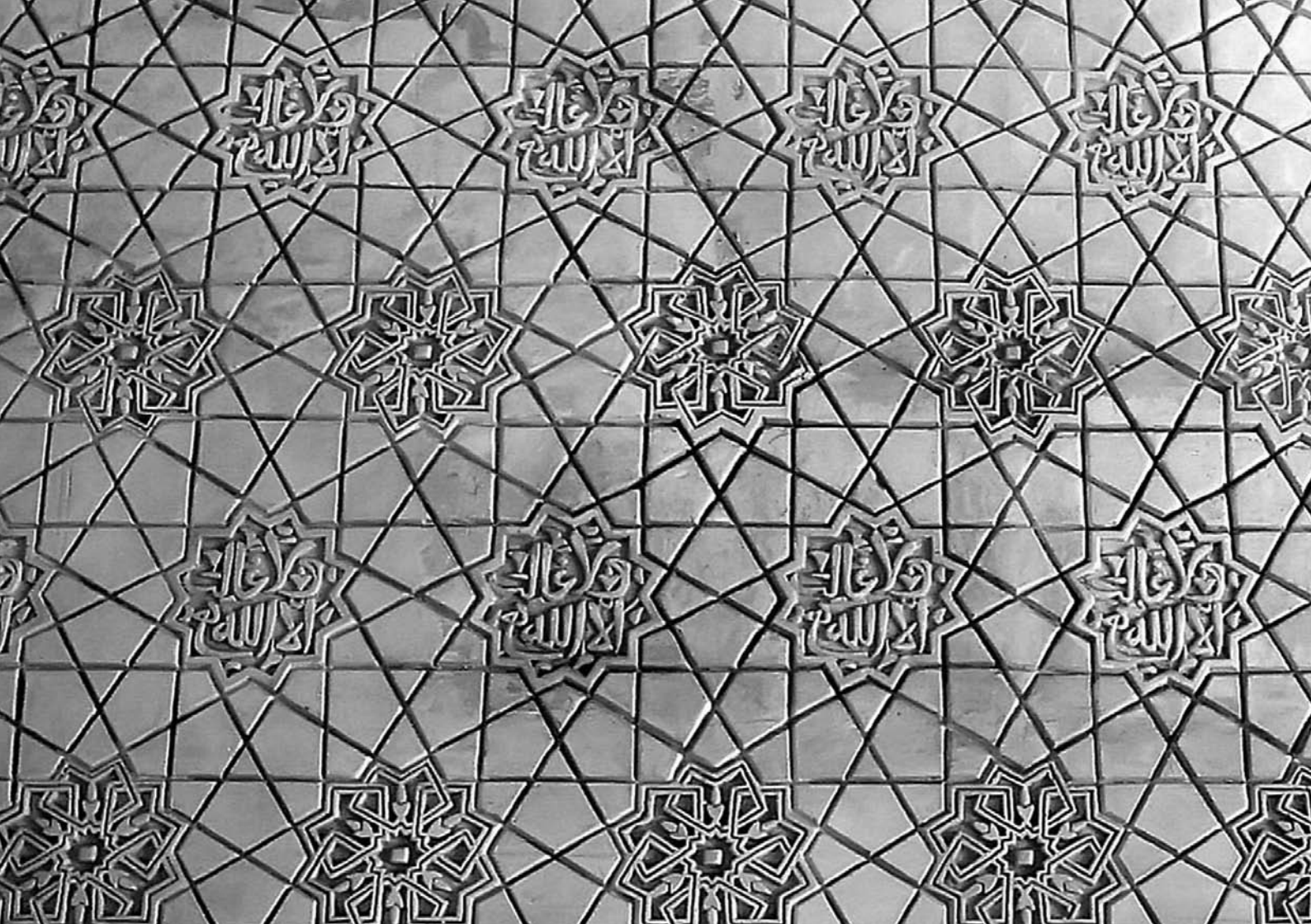
- banking
- communications and technology
- competition, regulatory and EU
- corporate finance
- dispute resolution
- employment, pensions and employee benefits
- real estate
- tax

Key strengths

We provide our clients with a customised, not commoditised, service. This requires us to understand their businesses, industries and markets and to respond commercially to their needs, taking a pragmatic, results-orientated approach. Clients come first for us.

Our key strengths cover

- corporate finance
- financial institutions
- energy and infrastructure
- transport
- technology



Islamic finance at Norton Rose Group

Introduction

Our relationship with scholars

Project finance

Asset finance

Structured finance

Sukuk

Banking and liquidity

Corporate finance

Investment funds

Real estate

Regulatory advice

Shariah governance

Takaful

Introduction

Justice, equity and fairness are values that underpin the Islamic finance system. These are values that we consider integral to our Islamic finance practice.

We have over 50 partners and associates across the world advising on Islamic finance matters. We have extensive experience of advising on and documenting numerous types of Islamic transactions. Our clients include Islamic financial institutions and conventional banks, as well as major corporates and governments. Our Islamic finance group includes specialists in aviation, shipping, projects, acquisition finance, banking and structured finance, international securities and collective investments. We continue to be at the forefront in advising the UK Government on the taxation of Islamic finance products.

Our relationship with scholars

We have guided numerous financial institutions through the process of achieving Shariah compliance. We have helped financial institutions and investment funds set up Shariah Supervisory Committees and develop relationships with some of the industry's leading scholars. We take a proactive role in ensuring the highest standards of Shariah observance and work closely with the scholars at every opportunity. Following the landmark case of *Shamil Bank v Beximco* (where we represented the successful plaintiffs in proceedings that reached the Court of Appeal), we developed "best practice" advice on what clients can do to ensure that their documents are enforceable by the English courts.

We have a close working relationship with many scholars considered experts in the fields of commercial Islamic jurisprudence and finance. We have worked extensively with the following scholars.



Sheikh Nizam
Yaquby



Dr Hussain Hamed
Hassan



Dr Mohamed Elgari



Mufti Barkatullah

Project finance

We advise on innovative and market leading projects.

Our infrastructure team has an outstanding international reputation. We are also one of the leading legal practices in the energy and utilities sector. We have a dedicated environmental and health & safety practice and provide practical support through highly technical claims and disputes.

Our experience in Islamic project finance transactions is extensive, particularly with regard to projects in the Gulf States and other parts of the Middle East. The surge in infrastructure projects to develop the region has enabled us to structure non-recourse financings, where the financier looks to the specific assets to generate the cash flow needed to service its obligations.

Deals

Middle East project finance
deal of the year 2007

*International Financial
Law Review*

Al-Waha petrochemical project

Al-Waha petrochemical project

We advised a consortium of major GCC banks, led by HSBC, on all aspects of a \$631 million Shariah-compliant financing for the design, construction, commissioning and operation of a polypropylene plant and a propane dehydrogenation plant in Jubail, Kingdom of Saudi Arabia. This was the first time that commercial lenders have structured a project financing where both the financing and security package are on an entirely Islamic basis.

Al-Salam Bank-Bahrain B.S.C.

We advised on the financing of a 100,000 tonnes per annum biodiesel project in Hong Kong. We advised on the Islamic structuring and the Islamic finance documents (which included a reducing commodity *Murabaha (Tawarruq)*). The project involved our advising on the design and construction agreements and technology licensing agreements, the structuring of the joint venture and the subsequent sell-down to external investors of interests in the project.

Middle East transport
deal of the year 2007

Project finance deal
of the year 2007

Euromoney

Queen Alia International Airport

Deals of the year 2007

Islamic Finance News

Queen Alia International Airport
SREI Infrastructure Finance Ltd

Project finance deals

Queen Alia International Airport

We advised on a dual-tranche conventional and Islamic facility – the first of its type – for the renovation, extension and operation of the Queen Alia International airport in Amman. Our PPP project finance team acted for International Finance Corporation on the US\$675 million transaction and our Islamic finance team acted for Islamic Development Bank, with support from our construction and structured derivatives lawyers. The financing included a US\$100 million *Istisna'a* and *Ijara* facility.

See case study on page 19.

KARO Aromatics

We advised on the multi-sourced financing of KARO Aromatics which became the first project finance deal in the oil and gas sector in Kuwait without an international sponsor. Additionally, for the first time in Kuwait, an Environmental and Social Action Plan was provided to the banks. This resulted in clear confirmation from the banks' technical adviser that the project was on track to conform to the intent of the Equator Principles.

See case study on page 21.

Project finance case study 1

Queen Alia International Airport

A Middle East PPP project financing

The Queen Alia transaction is believed to be the first PPP transaction in the Middle East and is further unique by its inclusion of an Islamic finance tranche.

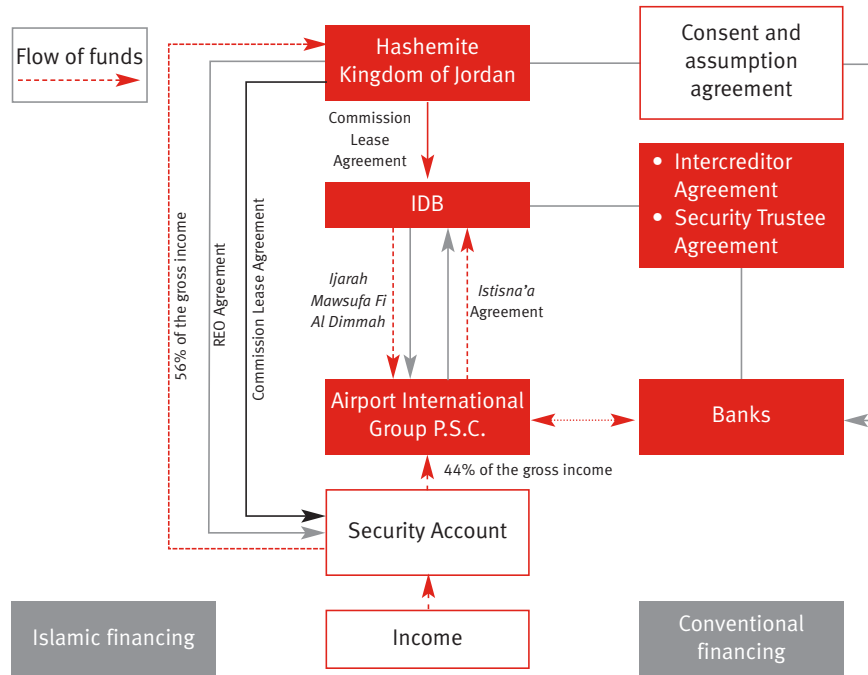
Involving an important public asset, the Islamic tranche had to be structured sensitively to ensure that the conventional arrangements were not disturbed and the timing for completion of the transaction was not delayed.

The resulting *Istisna'a* combined with *Ijara Mawsufah fi al Dimmah* permits construction period financing and the *Ijara* element allows for rental to be charged post completion.

From the intercreditor perspective, the Islamic tranche is *pari passu* with the conventional tranche facility and a mechanism has been put in place which will enable the leasing arrangements to revert back to the Kingdom of Jordan once the lease financing has been paid out.

Project finance case study 1

Queen Alia International Airport



Project finance case study 2

KARO Aromatics deal structure

We advised the commercial lenders and the Islamic lenders, and guided both tranches through a number of the more complex intercreditor issues, such as total loss, security sharing and prepayment.

Despite market perception that the inclusion of an Islamic tranche can slow down the execution timetable for a multi-sourced project financing, the Finance Documents were signed within 8 weeks after formation of the MLA group (a quick turnaround for a project of this complexity).

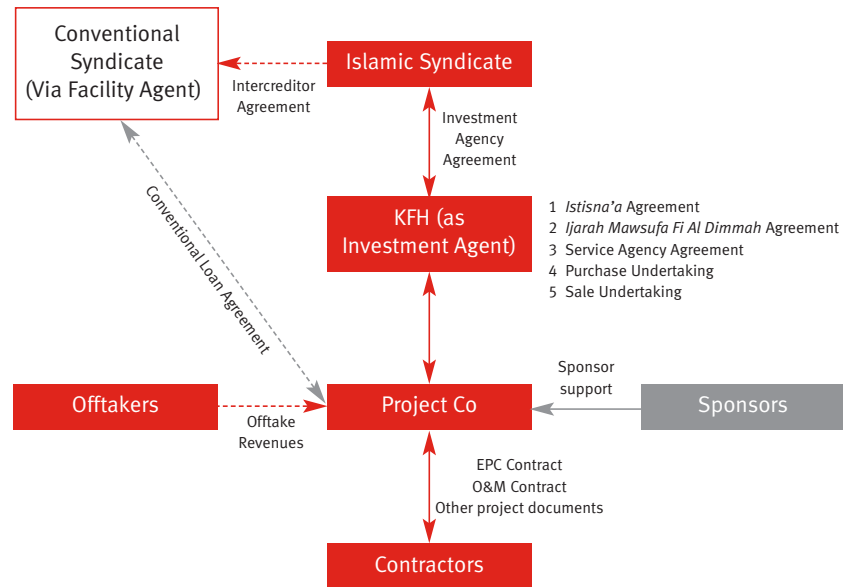
This was the first project financed deal without an international sponsor in the oil and gas sector.

For the first time in Kuwait, the banks were given an Environmental and Social Action Plan. The banks' technical adviser was able to confirm that the project was on track to conform to the Equator Principles.

The deal was oversubscribed in the bank market despite the perception that banks are becoming more cautious about their returns in the GCC. The pricing on the project was one of the lowest for petrochemical financings in the GCC; a notable achievement given the absence of a foreign sponsor.

Project finance case study 2

KARO Aromatics deal structure



Asset finance

Norton Rose LLP is renowned for its capabilities in transportation and asset finance. The firm's Head of Islamic Finance used to specialise in shipping and aviation finance, so it is no surprise that we have been involved in structuring some of the most complex Shariah compliant asset finance transactions that have taken place.

Our respective teams of asset finance lawyers and Islamic finance lawyers regularly work closely together and have been involved in Islamic financings throughout the world. They are at the forefront of advising on innovative structures enabling sovereigns and corporates alike to comply with Shariah requirements. Work ranges from single vessel or aircraft financings to complex fleet financings (both during and post construction and manufacture) to investment funds that facilitate equity and sectoral plays or balance sheet re-structuring.

Some of the most recent asset finance transactions in which Norton Rose LLP acted as lead adviser are included on the next pages.

Asset finance deals

Brunei Gas Carriers

Our London and Singapore offices worked together to advise Fortis Bank, Standard Chartered Bank, Brunei Investment and Commercial Bank and Société Générale on a US\$505 million Islamic lease financing of two newbuild LNG tankers for Brunei Gas Carriers.

Air Asia

Our Paris and London offices worked together to advise BNP Paribas and Natixis on the first ever French optimised lease combined with Islamic financing. The transaction had a value of US\$336 million and involved eight Airbus A320 aircraft for Air Asia.

Deals

Structured finance deal of the year 2007

Marine Money

National Shipping Company
of Saudi Arabia – Islamic
shipping facility (acting for
the lead arrangers)

The National Shipping Company of Saudi Arabia (NSCSA)

Our Paris and London offices worked together to advise the mandated lead arrangers consisting of BNP Paribas (Suisse) S.A., Samba Financial Group, Arab petroleum Investments Corporation and Gulf International Bank for the purchase of six newbuild VLCCs by NSCSA. The financing structure was based on the principles of *Murabaha*.

See case study on page 26.

Dubai Islamic Bank and GE

We advised Dubai Islamic Bank and GE on the establishment of a *Musharakah* based co-investment fund for the acquisition and leasing of six aircraft, described by Dar al Shariah as “one of the most Islamic structures ever completed”.

Asset finance case study 1

The National Shipping Company of Saudi Arabia (NSCSA)

A typical commodity *Murabaha* (*Tawarruq*) transaction

The financing structure for this multi-vessel construction facility adopted principles of commodity *Murabaha* or *Tawarruq*.

It is probably fair to comment that this technique is not well liked by scholars. However, there is an AAOIFI standard that governs its application and it can be deployed as ‘last resort’ technique where others cannot be used.

In this transaction both the arrangers and the customer had explored other options – particularly *Ijara*-based – in some depth but eventually had to conclude that for legal and commercial reasons leasing would not be an effective solution.

The *Tawarruq* structure that was put in place differed from those used in vanilla working capital facilities and adopted a cash utilisation mechanism to ensure that the cash resulting from the commodity trading was properly deployed in paying instalments of the shipbuilding contracts.

If *Tawarruq* is to be used in future asset finance transactions, we believe the approach in this deal provides a good model for future best practice.

Asset finance case study 1

The National Shipping Company of Saudi Arabia (NSCSA)



Structured finance

Our Islamic capital markets team brings together our Islamic finance group and our highly regarded international securities group. This specialised team has a strong track record on the creation of innovative Shariah-compliant structured products, having been heavily involved in structuring and documenting a wide range of Shariah-compliant capital markets, derivatives and securitisation products. In recognition of its achievements, the team was recently awarded the Finance Team of the Year 2008 at The Lawyer Awards.

Deals

Finance team of
the year 2008
The Lawyer
the Oasis Certificate Programme
(acting for Citigroup Global
Markets Limited)

MTN Issuance

The Oasis Certificate Programme is a \$20 billion issuance programme allowing for the issue of Irish listed Shariah-compliant certificates, including equity, index and fund linked certificates. The programme uses traditional Islamic finance structures to provide for cash flows and delivery obligations normally created by conventional swap transactions in other, similar, MTN programmes. This is one of the first programmes of its type.

Shariah dual currency option

We advised BNP Paribas on the creation of an Islamic deposit product designed to achieve the characteristics of a dual currency option deposit arrangement on a Shariah-compliant basis. Using the traditional Islamic finance technique of *Wakala*, the product offers Islamic investors higher returns than traditionally possible with an exposure to currency fluctuations.

Structured finance deals

Equity and commodity linked notes

We have advised several banks on a variety of structured notes that provide Shariah-compliant returns linked to commodities and/or equities or equity indexes utilising *Murabaha* and undertaking based techniques.

Islamic hedging products

We advised Citigroup on the creation of a suite of Shariah-compliant hedging products. Established Shariah techniques have been utilised and rearranged in a novel security based structure that enables Citigroup to offer a comprehensive range of hedging instruments. In particular, fixed to floating profit rate, floating to fixed profit rate and currency swap transactions can all now be offered.

See case study on page 31.

Structured finance case study

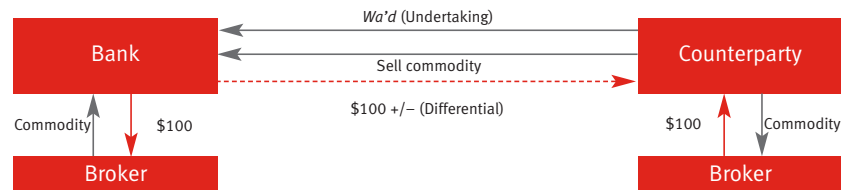
Islamic hedging products

Using *Wa'd* principles

Islamically structured hedging may be achieved by using a combination of the Islamic finance techniques of *Wa'd* (undertakings) and *Murabaha* (a cost plus purchase transaction).

Embedded within the terms of the *Wa'd* is the right for the Bank to require a Counterparty to enter into *Murabaha* transactions on agreed dates in the future. The terms of such *Murabaha* transactions will facilitate the payment of the differential between the two profit rates agreed.

Consideration will need to be given to the termination values associated with the *Wa'd* and the future *Murabaha* transactions. Net present value is a problematic concept under Shariah due to the implicit reference it makes to the loss of bargain and the value it attaches to the future obligations over time.



Sukuk

Our understanding of all types of *Sukuk* transactions is derived from extensive transactional experience. Members of our *Sukuk* team have helped to develop many of the concepts used in the market today and have advised the lead arrangers on such innovative transactions as the US\$3.5 billion pre-IPO convertible *Sukuk* issued by PCFC¹ and the first rated Shariah-compliant securitisation of RMBS issued by Tamweel¹. We have advised on *Sukuk* issuances in Bahrain, Kuwait, Qatar, Saudi Arabia and the UAE. Notably we recently advised on the first sovereign *Sukuk* to be listed on the London Stock Exchange.

¹ Transaction completed at prior firm

Deals

Bahrain – first sovereign *Sukuk* to be listed on the London Stock Exchange

Advising the Kingdom of Bahrain in connection with its US\$350 million sovereign *Sukuk al Ijara* listed on the London Stock Exchange – the first sovereign *Sukuk* to be listed on the London Stock Exchange.

See case study on page 34.

PCFC pre-IPO convertible *Sukuk al Musharakah*

Advising Barclays Capital and Dubai Islamic Bank as joint lead managers on the US\$3.5 billion *Sukuk al Musharakah* issued by PCFC Development FZCO.

See case study on page 36.

Tamweel – Shariah-compliant true sale securitisation

Advising Emirates National Securitisation Corporation as securitisation structurer and adviser, and Morgan Stanley and Standard Chartered Bank as managers in connection with Tamweel's issue of US\$210 million Floating Rate Secured Notes due 2037.

See case study on page 38.

Sukuk case study 1

Government of Bahrain US\$350m *Sukuk*

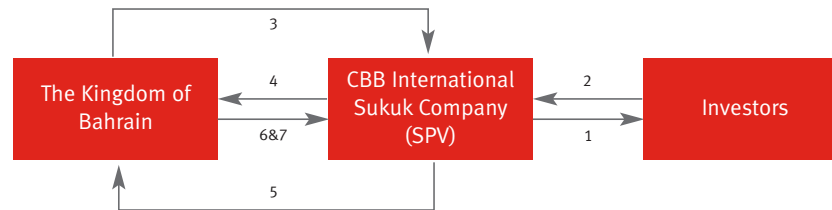
Trust certificates were issued by CBB International Sukuk Company, a special purpose company wholly owned by the Central Bank of Bahrain, using an *Ijara* structure in respect of a parcel of land.

The *Sukuk* contained extensive early redemption provisions linked to Government action, including payment default and cross default on external debt, as well as a negative pledge and a waiver of sovereign immunity.

The UKLA treated the *Sukuk* as a debt security issued by a sovereign for the purposes of disclosure under the Prospectus Directive whilst the *Sukuk* was treated as an unregulated collective investment scheme for regulatory purposes.

Sukuk case study 1

Government of Bahrain US\$350m Sukuk



Notes

- 1 US\$350 million Trust Certificates (*Sukuk al-Ijara*) issued to investors
- 2 *Sukuk* proceeds received by Issuer
- 3 Grant of 100 year *Ijara* Head Lease of Land Parcel to Issuer
- 4 Payment of US\$350 million Advance Rental by Issuer for *Ijara* Head Lease
- 5 Grant of five year *Ijara* Sub Lease of Land Parcel to Issuer
- 6 Payment of semi-annual rental payments to Issuer
- 7 Termination Payment of US\$350 million funds redemption of *Sukuk* payable on maturity/early dissolution

Sukuk case study 2

PCFC – Pre-IPO Convertible *Sukuk al Musharakah*

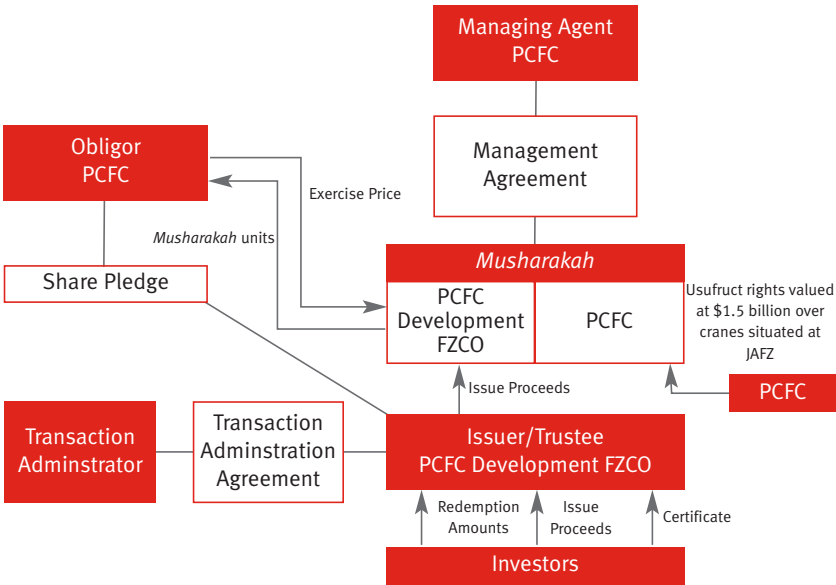
The transaction was used to partially fund Dubai Ports acquisition of P&O under the UK public offers regime, and so needed to satisfy the requirement for “certain funds”.

The *Sukuk* allowed investors to participate in future IPOs by companies that were to be created after a post-issue reorganisation of the Dubai World group, giving rise to look-back rights for *Sukuk*-holders and a variable return on the *Sukuk* which would be increased if no IPOs had in fact taken place at maturity.

PCFC granted security to the *Sukuk*-holders and addressed intercreditor issues between *Sukuk*-holders and conventional bank lenders through the imposition of a suspension period for enforcement upon a default.

Sukuk case study 2

PCFC – Pre-IPO Convertible *Sukuk al Musharakah*



***Sukuk* case study 3**

Tamweel – Sharia-compliant true sale securitisation

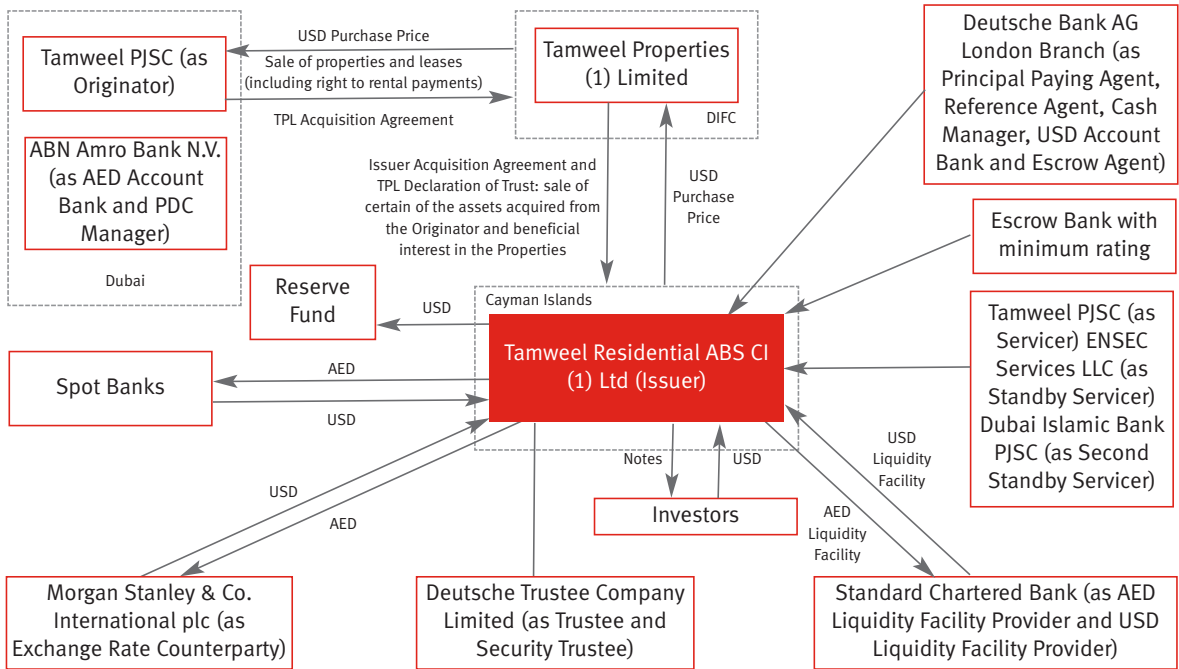
The most innovative feature in the structure was the achievement of tranching in a Sharia compliant manner through each noteholder, as a result of its acquisition and holding of a note, being deemed to agree that its right to receive payments under the notes is reserved and could be used to make payments to another (more senior) class of noteholder in priority to it. This mechanism ensured that both losses and profits could be shared (by mutual agreement) between the different investor classes in a way that is consistent with a conventional securitisation.

The portfolio of *Ijara* contracts that make up the Tamweel securitisation comprise properties acquired by Tamweel, then rented on a long-term lease basis to the company's customers for an agreed rent and specified period.

The transaction uses a dual SPV structure, whereby Tamweel passes the legal title and assigns the lease rentals and all the associated rights and receivables in respect of the properties to an SPV incorporated in the Dubai International Financial Centre. The rights and lease rental receivables are then assigned to a separate, Cayman Islands-registered, SPV.

Sukuk case study 3

Tamweel – Sharia compliant true sale securitisation



Banking and liquidity

We are responsible for advising on a large variety of Islamic banking products, ranging from plain vanilla *Murabaha* and *Ijara* based transactions to sophisticated, bespoke trade finance transactions.

We regularly advise upon interbank funding and liquidity arrangements and have developed many banking products and facilities which form part of the everyday transactions of many Islamic financial institutions. We also provide strategic advice and guidance on the Islamic finance industry to new entrants and help these clients to establish entry-level products and programmes.

Deals

The Islamic Bank of Asia

We have acted as lead adviser to the recently established Islamic Bank of Asia in relation to their *Murabaha* facilities offered to (predominantly) Arab clients.

Kaupthing Singer & Friedland

We advised this Icelandic bank on the establishment of its *Murabaha* deposit product offered to its growing base of clients requiring Shariah-compliant products and services.

Bank of London and The Middle East plc (BLME)

We have advised BLME on a number of its banking transactions including working capital facilities and real estate financings for customers in England, France and Germany as well as some innovative limited and non-recourse trade financing facilities for customers in Ukraine, England and the Gulf.

Banking and liquidity deals

Dana Gas US\$470 million *Murabaha* facility

We advised Dana Gas PJSC on a US\$470 million syndicated structured Islamic facility provided by Citi Islamic Investment Bank E.C. The facility, based on the Islamic financing technique of *Murabaha* was used to part-finance Dana Gas's US\$950 million acquisition of Centurion Energy International Inc, listed on the Toronto Stock Exchange and AIM.

BP

We acted for BP on an Islamic working capital facility for a Malaysian petrochemicals subsidiary; the facility was arranged by Standard Chartered Bank and is the first Islamic financing transaction undertaken by BP.

Corporate finance

Our corporate team provides a full business law service for the global corporate sector with our key strengths in financial institutions, energy and infrastructure, transport and technology, and corporate finance.

We have combined our corporate strength with our specialist Islamic expertise and have worked on a range of Islamic corporate transactions including advising Barclays Global Investors on the first ever Shariah-compliant exchange traded fund to be listed on the London Stock Exchange.

We keep abreast of legal developments across our international network of offices and work with our clients on innovative structures, for example, advising The Family Shariah Fund. With new DIFC legislation passed to encourage very wealthy families to establish single family offices to manage such wealth from the DIFC, this looks set to become a new growth area.

Corporate finance deals

The Family Shariah Fund Limited

We advised The Family Shariah Fund Limited on its admission to trading on AIM and associated placing of \$31.55 million. The fund will be managed by The Family Office Company B.S.C. (Closed) (The Family Office), a multi-family office based in Bahrain, with the objective of generating stable long-term capital appreciation across a market cycle through a diversified pool of investments, in strict accordance with Shariah principles. The Family Office has a track record of managing and advising on a number of investments and specific mandates from GCC-based high net worth families and individuals.

See case study on page 47.

Al Baraka Group IPO

We advised the Al Baraka Group on its US\$450 million private placement and innovative US\$572 million initial public offering – marking the first dual listing of shares on the Bahrain Stock Exchange (BSE) and the Dubai International Financial Exchange (DIFX). The shares of ABG listed and began trading on both the DIFX and the BSE on 4 September 2006.

Deals

Barclays Global Investors

We advised Barclays Global Investors (BGI) on the establishment of three funds under the iShares programme, concerning the iShares operational processes and the fund documentation for the iShares.

Each fund is designed to offer investors a long term return by tracking closely the performance of (i) the MSCI World Islamic Index, (ii) the MSCI Emerging Markets Index and (iii) the MSCI USA Islamic Index, by investing in a portfolio of Shariah-compliant equities that mirrors the component constituents of the relevant index. Unlike conventional MSCI Indices, the Shariah-compliant iShares have a higher exposure to the energy, materials and technology sectors than to the financial sector. The product was subsequently launched on the London Stock Exchange.

Corporate finance deals

Fajr Capital

We acted for Fajr Capital PLC, a Shariah-compliant financial institution, on their incorporation and initial fundraising and we advised them on implementing Shariah-compliant work procedures, including drafting Shariah-compliant employment contracts, an employee handbook and a share incentives scheme.

PTCL acquisition

We advised Emirates Telecommunications Corporation (Etisalat) on a US\$2.6 billion *Murabaha* facility intended to be utilised to purchase a stake in Pakistan Telecommunications Company as part of the Pakistani government's privatisation programme.

Corporate finance case study

The Family Shariah Fund Limited

This transaction involved the formation of a multi-asset fund.

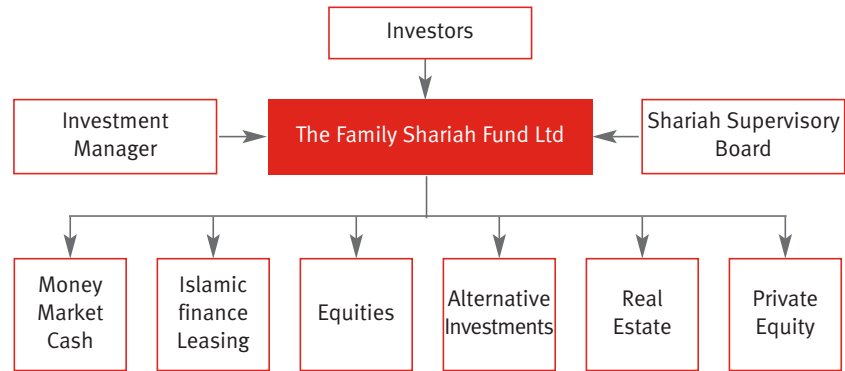
The Family Shariah Fund Ltd is a Cayman Islands-exempted closed-end fund whose principal place of business is located in Bahrain.

The investments made by the fund will utilise a range of Islamic financing techniques, including *Sukuk*, *Ijara* and *Musharakah*.

The fund has been listed on AIM in London.

Corporate finance case study

The Family Shariah Fund Limited



Investment funds

“a strong professional outfit, with the resources and back-up [to handle all aspects of fund work]”
Chambers 2008

Equity team of the year 2007
Financial News

There is a growing universe of Shariah compliant and Shariah based investment funds. Equity funds have developed into a convenient and favoured method of channelling Islamic funds into a wide variety of asset classes.

We have advised on a range of Shariah-compliant funds, both asset-based and equity-based, including the first Shariah-compliant UCITS III equity fund. A defining feature of a Shariah-compliant fund is the requirement for a Shariah board to be appointed to ensure that the fund’s activities and its underlying investments comply with Shariah. We are experienced in advising on the establishment of Shariah boards, in its composition and remit. We have also advised on Shariah-compliant shipping and aviation funds: on tax-efficient equity arrangements and on the structuring of debt arrangements needed to support asset acquisitions whilst maintaining overall Shariah compliance for the equity investors.

Investment fund deals

Al-Safi

We advised Barclays Capital in their role as structured product developer of the Al-Safi trust, a Cayman-based multi-asset trust which seeks to provide an innovative, Shariah-compliant structure to enable investors to access a broader range of exposure profiles for Shariah-compliant equities by utilising the *Arbun* contract. A Shariah board, consisting of four leading Shariah scholars, has been appointed with a remit to oversee the business, activities and investments of the sub-trusts and to provide a Shariah oversight function. In addition, an expert Shariah advisor has been appointed to advise the Al-Safi platform and will provide day-to-day monitoring of the investments of the trust.

UCITS III

We advised Deutsche Bank on the establishment of what was believed to be the first UCITS III Shariah-compliant equity investment fund. Five sub funds were launched under the DWS family of products.

Deals

Islamic Shipping Fund

We advised DVB Bank AG and a syndicate of banks in respect of a loan of US\$60 million to assist in financing the acquisition of mv Mars Glory by Mars Shipholding Limited. The equity portion of the purchase price for the vessel was provided by an Islamic equity fund. Following the purchase, the owner leased the vessel to an SPC which is a subsidiary of the Islamic equity fund under a Shariah-compliant *Ijara wa iqtina*. The transaction combined traditional Western debt financing with Islamic lease financing techniques.

Millennium Aircraft Leasing Company (“MALC”)

We advised MALC on a US\$200 million private placement of its equity and related US\$800 million aircraft lease financing which complies with the requirements of Shariah.

See case study on page 52.

Investment fund case study

Millennium Aircraft

The Millennium Aircraft Leasing Fund was the first Shariah compliant aircraft investment fund. It has subsequently acquired and managed in the region of 15 aircraft.

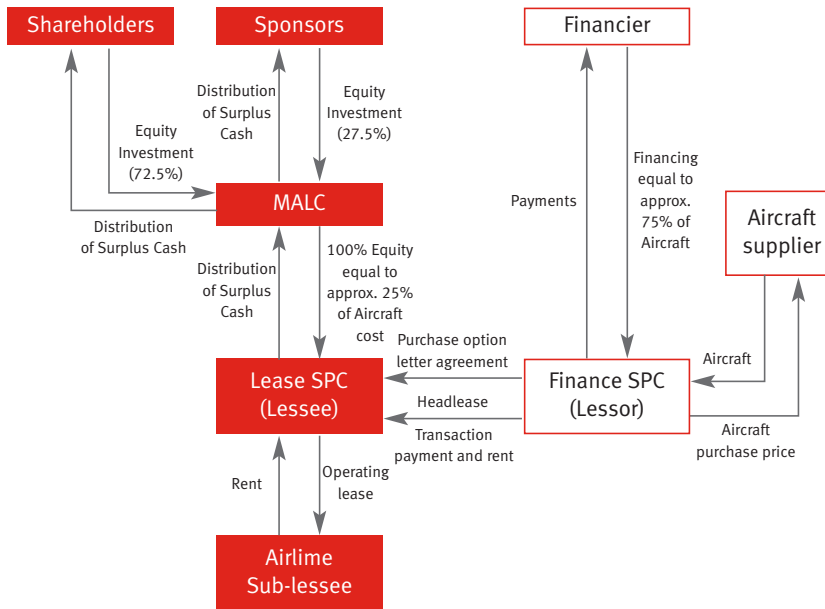
Established shortly after 9/11 it was also one of the first transactions that demonstrated the re-birth of Islamic finance methods after a short hiatus.

The fund utilised conventional leverage via an external orphan SPV structure and developed the earliest *Ijara* and call option technology to facilitate equity protection.

Each investment was backed by the underlying asset and whilst aircraft operated by the same airline were cross-defaulted the portfolio as a whole was not, thereby preserving the overall integrity of the fund even if individual airlines encountered difficulties.

Investment fund case study

Millennium Aircraft



Real estate

Real estate is one of the assets most favoured by Islamic investors. The asset class is well suited to a wide variety of Shariah instruments. It is well known that Middle Eastern investors have favoured real estate in London, New York and various European capitals. Historically, much of their investment has been cash-based or along conventional lines where financing was needed. There is little doubt that this trend is changing and we increasingly find that our instructions require us to provide Islamic solutions.

The United Kingdom has been the leading country in the non Muslim majority world to promulgate changes to its tax system that facilitate Shariah- compliant investment methods. As a consequence, the principal Islamic contractual forms of *Murabaha*, *Istisna'a*, *Ijara* and *Musharakah* can all be used for real estate financing in a tax efficient manner.

We have helped clients develop sophisticated products for residential finance and commercial property finance. We have devised *Istisna'a* based development financing techniques and most notably, we have recently completed the acquisition financing of the Chelsea Barracks which is described in the following pages.

Deals

US\$1 billion Islamic financing for Emaar Properties PJSC

We advised Emaar Properties PJSC on a US\$1 billion syndicated *Musharakah* facility provided by Citi Islamic Investment Bank E.C. The facility will be used by Emaar for general corporate purposes.

Sanctuary Buildings Bank plc, London

We advised Lloyds TSB on the provision of a credit facility to one of the partners in a *Murabaha*-based acquisition of Sanctuary Buildings, London, by a consortium headed by TAB (Bahrain) and Dominion Asset Management (HK).

Residential home finance

We advised United National Bank of Pakistan on the United Kingdom's first Shariah compliant residential *Ijara*-based home finance product aimed at ordinary customers and designed to mitigate the costs of previous products that only appealed to high net worth individuals. This was rapidly followed by *Ijara* and *Musharakah*-based products developed for the al Buraq brand of ABC International Bank which were subsequently adopted by Lloyds TSB and the Islamic Bank of Britain to become the United Kingdom's leading Islamic home finance product.

Real estate deals

Albait UK Real Estate Fund Limited

We advised Albait UK Real Estate Fund Limited on the £44.6 million financing and acquisition of various commercial properties in the UK and the subsequent disposal of the portfolio to the European Islamic Investment Bank.

Chelsea Barracks

We advised the mandated lead arrangers HSBC Bank Middle East Limited, Calyon, BNP Paribas, Qatar National Bank and Masraf Al Rayan on a US\$2,467,875,000 Shariah-compliant *Ijara* financing made available to Project Blue (Guernsey) Limited (a joint venture between Qatari Diar and the Candy brothers) to finance the acquisition of the Chelsea Barracks in London from the UK Ministry of Defence.

See case study on page 57.

Real estate case study

Chelsea Barracks

A UK *Ijara* property financing

An *Ijara*-based acquisition financing of Chelsea Barracks from the Ministry of Defence.

The transaction involved a joint venture between Qatari Diar and CPC Group.

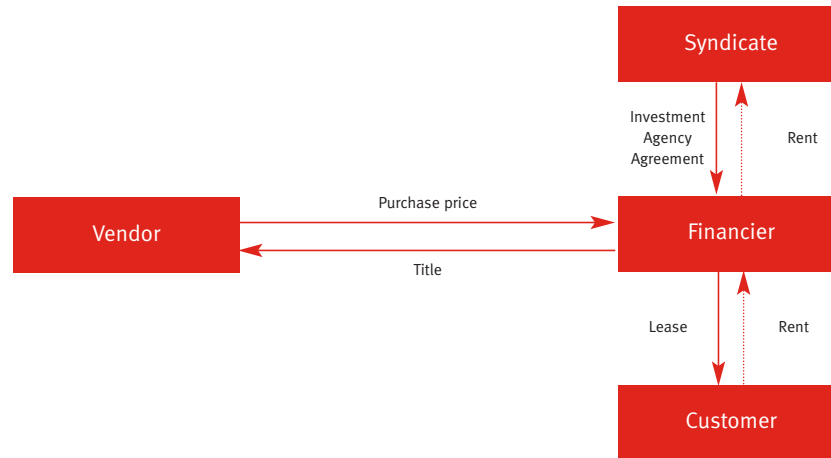
US\$2.5 billion – largest wholly Shariah compliant arrangement on a UK property transaction

Innovative syndication and trust structuring to enable syndication within the UK's 'alternative finance regime'.

Trust structure to allow *pari passu* hedging and subordinated “equity of redemption”.

Real estate case study

Chelsea Barracks



Regulatory advice

On 28 November 2007 the FSA published a paper describing its role in Islamic finance which demonstrated its commitment to the growth of the area in the UK. The paper described the UK as the major European financial centre for Islamic financial products and services. Norton Rose has been actively promoting the growth of Islamic finance in the UK and we regularly advise clients on a wide range of regulatory and governance matters.

Of the seven Islamic financial institutions that have received FSA authorisation by the third quarter of 2008 (5 banks, 1 investment manager and 1 *Takaful* company) we have provided legal advice to all of them in one area of their business or another. In many cases, the advice given extends beyond the regulatory side and will include advice regarding their establishment as well as product development and transaction execution.

Regulatory advice deals

Islamic Bank of Britain

When the UK's first wholly Shariah-compliant retail bank was authorised by the FSA, we advised the Islamic Bank of Britain on its entire portfolio of products launched to the Muslim consumer.



Bank of London and the Middle East

We advised the promoters of this new Islamic financial institution on the legal and compliance elements of the FSA authorisation process and related legal aspects of their establishment in the United Kingdom. We have provided detailed advice on the regulatory treatment of *Mudaraba*, *Wakala* and other Islamic contracts for UK regulatory purposes from a regulatory categorisation and capital perspective.



Gatehouse Bank Limited

We advised the major shareholder and promoter of this new Islamic financial institution on the legal elements of the FSA authorisation process. The advice given has extended to matters affecting the observance of Shariah in employment matters and the construction of a Shariah-compliant benefit and incentives package for the bank.

Shariah governance

Just as corporate governance and good regulatory practice are under the spotlight in the conventional world, so Shariah governance finds itself an area of growing importance. As the industry increasingly discusses whether a product is Shariah-compliant or Shariah-based, the fundamental Shariah credentials of individual products and the wider regulatory framework under which Islamic banking and finance is conducted becomes more important.

We regularly advise clients on how to establish a Shariah supervisory board. In addition, we increasingly find ourselves being asked to consider wider matters of Shariah governance: how can Shariah scholar conflicts of interest be avoided? What levels of disclosure should be made regarding the basis on which a fatwa has been issued supporting a particular Islamic financial product? What are the risks and consequences (reputational or otherwise) if an Islamic financial product is deemed to be non-compliant in the future?

All of these and many more issues are still the subject of ongoing discussion. The Islamic financial industry continues to work through various organisations, including AAOIFI¹ and the IFSB², to develop Shariah solutions to many governance and related questions.

¹ AAOIFI – the Accounting and Auditing Organisation for Islamic Financial Institutions is based in Bahrain

² IFSB – The Islamic Financial Services Board is based in Malaysia.

Shariah governance deals

BNP Paribas

We advised BNP Paribas when it decided to establish its Shariah Supervisory Board.

Lloyds TSB

We advised this UK High Street bank when it established a four-panel Shariah Supervisory Board, helping with introductions to the appropriate scholars and drafting the terms of engagement.

Deals

Barclays Capital

We advised Barclays Capital when it decided to establish a unique ‘panel’ arrangement which provides several members of the Barclays Group with flexible access to scholars that can be tailored to reflect specific product and accessibility requirements.

Independent Shariah advisory firms

In addition to regularly helping investment funds establish bespoke Shariah Supervisory arrangements for particular investments and products, we also work with the various independent Shariah advisory firms that have formed in recent years.

Takaful

**Best Takaful Law firm
2008
International Takaful
Summit Awards**

By utilising our expertise in Islamic finance and insurance, we have developed a significant practice in *Takaful*. We advise on start-ups, joint ventures, acquisitions and disposals, structuring, IPOs, distribution of products and regulatory issues in various jurisdictions worldwide.

Our work in *Takaful* has been recognised by the Financial Times in its Innovative Lawyer awards as well as by the *Middle East Business Forum* when we were awarded “Best Takaful Law Firm” 2008.

Deals

Principle Insurance Company Limited

We acted for Principle Insurance Company Limited, the first *Takaful* operator to be authorised by the UK Financial Services Authority in May 2008, including regulatory and structuring advice, advice on policy wordings and outsourcing.

Saudi Arabia

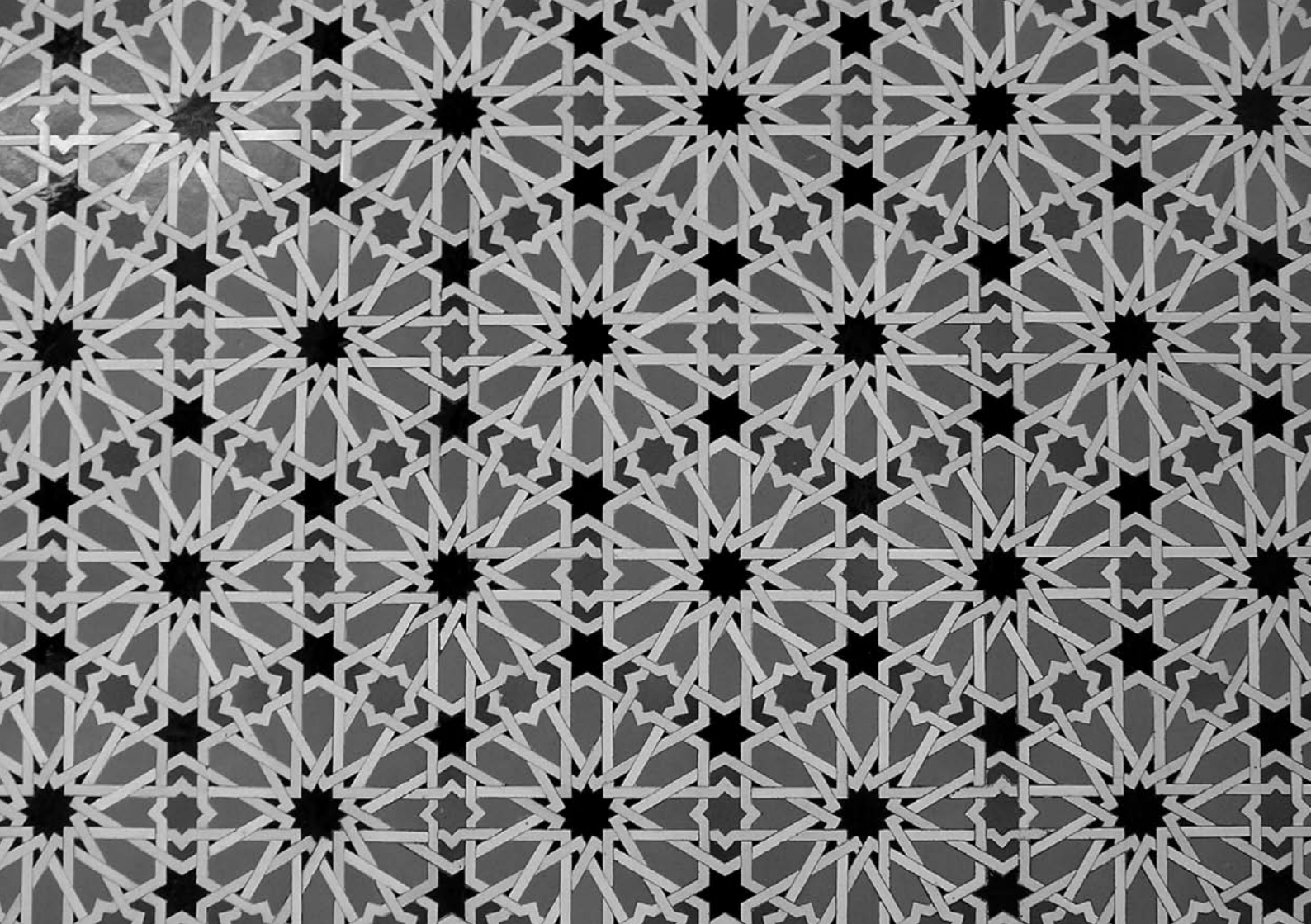
We advised a Saudi bank on its joint venture with a UK insurer to offer *Takaful* products in Saudi Arabia.

Malaysia

We advised a Malaysian joint venture company on the proposed launch of a *Takaful* investment-linked product in the Middle East, Singapore and the UK.

HSBC Amanah

Advising on policy terms and conditions for its suite of *Takaful* products.



Contacts

Key contacts

Neil D Miller (Head of Islamic finance)

Farmida Bi

Davide Barzilai

Anthony Pallett

Gulf regional offices

Global offices

Key contacts



Neil D Miller

Partner

Norton Rose LLP

Tel +44 (0)20 7444 3353

neil.d.miller@nortonrose.com

Neil D Miller is head of Islamic finance and the founder in 2000 of our global Islamic finance group. Now based in London, he spent five years running our office in Bahrain. He is a member of the Islamic Finance Experts Group (advisers to the Government) and a known commentator on the subject.

He specialises in Islamic products covering different asset types, investment classes and industry sectors. He helps clients to create Shariah-compliant instruments for asset and wealth management purposes and hedging and risk management solutions. He advises on Shariah governance issues and on cross-border transactions involving issues around Shariah compliance, governing law and *gharar* (uncertainty). Neil has advised on a number of *Sukuk*.



Farmida Bi
Partner
Norton Rose LLP
Tel +44 (0)20 7444 5842
farmida.bi@nortonrose.com

Farmida Bi advises on conventional and Islamic capital markets transactions. She has specialised in capital markets for over 16 years.

She has acted for lead managers on many leading *Sukuk* issues. This includes advising Emirates National Securitisation Corporation as securitisation structurer and adviser and Morgan Stanley & Co. International plc and Standard Chartered Bank as managers in connection with a US\$210 million Floating Rate Secured Notes due 2037 Shariah-compliant RMBS securitisation by Tamweel PJSC. She also advised Barclays Capital and Dubai Islamic Bank as joint lead managers on the issue by PCFC Development FZCO of US\$3.5 billion pre-IPO convertible trust certificates (*Sukuk al-Musharakah*) due 2008.



Davide Barzilai

Partner

Norton Rose LLP

Tel +44 (0)20 7444 3249

davide.barzilai@nortonrose.com

Davide Barzilai has substantial expertise in Islamic and conventional asset finance, Islamic treasury management and Islamic project finance and real estate finance. He is based in our London office.

He spent more than two years in our Singapore office (from 2005 to 2007), where he was responsible for our Islamic finance practice in East Asia. His client base includes financial institutions in Europe and throughout Asia, including the Gulf region. He has advised on Islamic products in Singapore, Malaysia, Indonesia, Hong Kong and China, covering Sukuk, Shariah-compliant REITs, project finance, real estate finance, equipment leasing, treasury management and general working capital facilities.

Davide graduated from the University of Manchester in the UK, with an honours degree in Arabic and Middle Eastern politics.



Anthony Pallett

Partner

Norton Rose (Middle East) LLP

Tel +971 (0)4 369 6322

anthony.pallett@nortonrose.com

Anthony Pallett specialises in Islamic finance and syndicated lending, focusing on real estate, telecommunications and leveraged finance. He is based in Dubai and has been active in the region for over 10 years.

He was part of the team on the UK's most expensive residential property deal, the acquisition of Chelsea Barracks (involving a US\$2.4 billion Shariah-compliant financing). He has advised on property funds combining Islamic equity with conventional debt and on real estate developments in Qatar involving parallel *Istisna'a* contracts. He advised on an award-winning syndicated US\$1.2 billion *Murabaha* financing in the telecoms sector and on Shariah-compliant financings and acquisitions in shipping and aviation. He advised on the Al-Jaili Power Plant in Sudan and the subsequent *Ijara wa iqtina* leasing arrangement. He also advised on the refinancing of Pakistan's Rousch IPP and the rescheduling of four syndicated *Murabaha* financing facilities.

Gulf regional offices



Global offices

Abu Dhabi

Norton Rose (Middle East) LLP
Villa 213/2
H.H. Sheikha Fathima Villas
Street 25
Mushrif Area
PO Box 105708
Abu Dhabi, United Arab Emirates

Tel +971 (0)2 415 1300
Fax + 971 (0)2 415 1350

Amsterdam

Norton Rose LLP
24th floor, Rembrandt Tower
Amstelplein 1
1096 HA Amsterdam
PO Box 94142
1090 GC Amsterdam
The Netherlands

Tel +31 (0)20 46 29 300
Fax +31 (0)20 46 29 333

Athens

Norton Rose LLP
Building K1
1 Palea Leoforos Posidonos & 3
Moraitini Street
175 64 Delta Paleo Faliro
Athens
Greece

Tel +30 210 94 75 300
Fax +30 210 94 75 301

Bahrain

Norton Rose (Middle East) LLP
Unitag House
Government Avenue
PO Box 20437
Manama
Kingdom of Bahrain

Tel +973 17 226 424
Fax +973 17 229 810

Bangkok

Norton Rose (Thailand) Limited
Floor 14, Tower 2, Sindhorn Building
130-132 Wireless Road
Bangkok 10330
Thailand

Tel +662 263 2811
Fax +662 256 6703/5

Beijing

Norton Rose LLP
Office C-801, Lufthansa Center
50 Liangmaqiao Road
Chaoyang District
Beijing 100125
People's Republic of China

Tel +86 (10) 8448 8881
Fax +86 (10) 8448 6220

Brussels

Norton Rose LLP
Avenue Louise 489
1050 Brussels
Belgium

Tel +32 (0)2 237 61 11
Fax +32 (0)2 237 61 36

Dubai

Norton Rose (Middle East) LLP
4th Floor
Gate Precinct Building 3
Dubai International Financial Centre
PO Box 103747
Dubai
United Arab Emirates

Tel +971 (0)4 369 6300
Fax +971 (0)4 369 6350

Frankfurt

Norton Rose LLP
Stephanstrasse 15
60313 Frankfurt am Main
Germany

Tel +49 (0)69 505096-0
Fax +49 (0)69 505096-100

Hong Kong

Norton Rose Hong Kong
38/F Jardine House
1 Connaught Place
Central
Hong Kong SAR

Tel +852 3405 2300
Fax +852 2523 6399

Jakarta*

c/o Lubis Ganie Surowidjojo
Menara Imperium, 30th Floor
Jalan H Rangkayo Rasuna Said
Kav 1 Kuningan, Jakarta 12980
PO Box 6006 MT Jakarta, Indonesia

Tel +62 (0)21 831 5005/5025
Fax +62 (0)21 831 7522

London

Norton Rose LLP
3 More London Riverside
London SE1 2AQ
United Kingdom

Tel +44 (0)20 7283 6000
Fax +44 (0)20 7283 6500
DX 85 London

Milan

Norton Rose Studio Legale
Piazza Diaz, 1
20123 Milan
Italy

Tel +39 02 8635 941
Fax +39 02 8635 94 44

Moscow

Norton Rose (Central Europe) LLP
Bolshoi Sukharevsky Pereulok 26
Moscow 127051
Russian Federation

Tel +7 495 244 3639
Fax +7 495 244 3968

Munich

Norton Rose LLP
Theatinerstrasse 11
80333 Munich
Germany

Tel +49 (0)89 212148-0
Fax +49 (0)89 212148-900

Paris

Norton Rose LLP
Washington Plaza
42, rue Washington
75408 Paris Cedex 08
France

Tel +33 (0)1 53 89 56 00
Fax +33 (0)1 53 89 56 56

Piraeus

Norton Rose LLP
126 Kolokotroni Street
185 35 Piraeus
Greece

Tel +30 210 42 87 602 & 3
Fax +30 210 42 87 601

Prague

Norton Rose v.o.s.
Betlémský palác
Husova 5
110 00 Praha 1
Czech Republic

Tel +420 2 5719 9025
Fax +420 2 5719 9027

Riyadh*

The Abdulaziz Al-Assaf Law Firm
Kingdom Tower
24th Floor
King Fahad Road PO Box 90217
Riyadh 11613
Saudi Arabia

Tel +966 1 211 2000
Fax +966 1 211 0808

Rome

Norton Rose Studio Legale
Via di Parione 12
00186 Rome
Italy

Tel +39 06 684109 1
Fax +39 06 684109 44

Shanghai

Norton Rose LLP
27F, Plaza 66 II
1366 Nanjing Road West
Jing An District
Shanghai 200040
People's Republic of China

Tel +86 (21) 6137 7000
Fax +86 (21) 6137 7088

Singapore

Norton Rose (Asia) LLP
One Raffles Quay
31-01 North Tower
Singapore 048583

Tel +65 6223 7311
Fax +65 6224 5758

Tokyo

Norton Rose (Asia) LLP
Regus ARK Hills Center
Ark Mori Building WEST 12th Floor
1-12-32 Akasaka Minato-Ku
Tokyo 1076012

Tel +81 (0)3 4360 9143

Warsaw

Norton Rose Piotr Strawa and Partners
LP
Metropolitan Building
Plac Piłsudskiego 1
00-078 Warszawa
Poland

Tel +48 22 581 4900
Fax +48 22 581 5950

*associate office

Our promise

Business conducted in compliance with Shariah principles is founded on good relationships, which develop over time. We have more than 50 lawyers worldwide involved with Islamic finance. Our team focuses on helping our clients achieve their commercial objectives in accordance with Shariah principles. We believe this builds sustainable relationships.

We promise

- the highest standard of integrity
- people who are good to work with
- no unfair gain, no speculation and no uncertainty
- a commercial, pragmatic and innovative approach
- substantial global connections and a track record to match
- a thorough knowledge of classical Islamic jurisprudence.

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innovation in islamic finance

Norton Rose Group is a leading international legal practice. We offer a full business law service from offices across Europe, the Middle East and Asia. We are strong in corporate finance; financial institutions; energy and infrastructure; transport; and technology. Justice, equity and fairness are values that we consider integral to our Islamic finance practice. We are market leaders in the Islamic finance sector.

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