DRAFT

Standing Committee
For Economic and Commercial Cooperation
of the Organization of Islamic Cooperation

REAL ESTATE SECURITIES EXCHANGE INITIATIVE

FOR COMCEC MEMBER STATES

Report of the Secretariat of the COMCEC Capital Market Regulators Forum[1]

November 2015

[1] Secretariat of the COMCEC Capital Market Regulators Forum kindly thanks "Securities Commission Malaysia" and "Securities & Exchanges Organisation of Iran" for the contribution they have provided for the preparation of the Report.

LIST OF ABBREVIATIONS

AAOIFI	Accounting and Auditing Organisation for Islamic Financial Institutions
ABS	Asset-Backed Securitisation
CSD	Central Securities Depository
CMB	Capital Market Board, Turkey
COMCEC	The Standing Committee for Economic and Commercial Cooperation of the Organization of the Islamic Cooperation
COMCEC CMR	COMCEC Capital Markets Regulators Forum
ETFs	Exchange traded funds
GCC	Gulf Council Countries
ICM	Islamic capital market
IDB	Islamic Development Bank
IFSB	Islamic Financial Services Board
IFSI	Islamic financial services industry
IILM	Islamic Liquidity Management Corporation
IOSCO	International Organization of Securities Commissions
IRTI	Islamic Research and Training Institute
ISRA	International Shariáh Research Academy for Islamic Finance
MENA	Middle East and North Africa
OECD	Organisation for Economic Co-operation and Development
OIC	Organization of Islamic Cooperation
REITs	Real estate investment trusts
REMFs	Real Estate Mutual Funds
RES	Real Estate Certificate
SEO	Securities and Exchange Organization, Iran
SC Malaysia	Securities Commission Malaysia
SPV	Special Purpose Vehicle
UAE	United Arab Emirates

FOREWORD

At the Opening Ceremony of the Ministerial Meeting of the 30th Session of the COMCEC held on 27 November 2014, in Istanbul under the chairmanship of H.E. Recep Tayyip Erdoğan, President of the Republic of Turkey, H.E. Erdoğan stated that real estate sector reflects a new value for the OIC countries and there would be great benefits of establishing a joint real estate securities exchange within the context of the COMCEC. In line with this statement, at the 13-14 May 2015, COMCEC Follow-Up Committee meeting, by referencing with the aforementioned remarks, the Committee made a decision[2] on requesting the *Secretariat of the COMCEC Capital Market Regulators Forum* (COMCEC CMR Forum, Forum) to conduct a study on the feasibility and the ways and means of realizing the proposal and submit it to the 31st Session of the COMCEC in November 2015.

In accordance with the abovementioned decision, COMCEC CMR Forum Secretariat has prepared this exploratory report on the economic, legal and financial aspects of the topic. Due to the COMCEC level nature of the initiative, the Forum Secretariat has resorted cooperation with the Forum Task Force Chairs. *Securities Commission Malaysia* and *Securities & Exchanges Organisation, Iran* have generously contributed the work as with their respective markets and approaches to the issues.

In the last decade, for the COMCEC member states emerging economies, real estate has been an increasingly important asset class for conventional and Islamic finance. While Islamic finance has used real estate as an investable, tangible asset class on which to base its financial structures, the focus on real estate investment has tended to be on assets such as, residence, hotels or large office headquarter buildings. Within this background, financial markets, instruments and innovation in finance have also been instrumental for the necessity to raise funds for the large real estate projects. In this regard, real estate investment trusts, securitization and sukuk issuance have been most active areas of Islamic real estate finance both before and after the global financial crisis.

As with Turkey's experience on the matter, similarly with other COMCEC member states, need for major infrastructure projects, demographic challenges have made the real estate industry as a booming sector in the economy and the Turkish capital market regulator CMB has regulated

[2] Please refer to the Paragraph 99 of the Report for the abovementioned decision. http://www.comcec.org/UserFiles/File/31-isedak-izleme/kitap/31FC-REP-eng.pdf

some securities associated with real estate finance, such as the stocks and debt instruments of real estate investment trusts, participation units of real estate mutual funds, covered bonds, mortgage-backed securities, asset-backed securities, sukuk (lease certificates) and real estate certificates. The secondary market for those type of securities is provided by Borsa Istanbul and some of them are currently traded on Borsa Istanbul's relevant markets.

The Report touches upon the value of real estate sector for an economy, financial markets and within this background elaborates the possibilities for a more effective functioning real estate market. In this regard, the Report scrutinizes two possible exchange models. One model concentrates on setting up an electronic trading platform for physical real estate and the other examines the feasibility of establishing a real estate securities exchange/market/trading platform.

Bringing together the supply and demand sides for physical real estate on an accessible electronic trading platform would integrate national real estate markets and hence would ease the tradability of real estate internationally which may invigorate the sector and the related economies eventually. This kind of international platform can be a convenient place to be used when buying and selling a property, since it would minimize the agency cost and the information asymmetry among the investors and maximize the benefit of economies of scale, the international accessibility to any property to be sold, the liquidity of properties and the determination of fair value of properties.

Concerning the alternate proposal on establishing a real estate securities exchange/market/trading platform, the report explores the opportunities equity finance could offer for the fund raising and investment in real estate sector within a collaborative COMCEC level approach. In the context of indirect financing of the housing market, the report focusses on real estate investment trusts, real estate mutual funds, sukuk, sukuk participation funds, real estate certificates and waqf assets as well-founded instruments. The market facts and regulatory frameworks relevant to each of these instruments are worked out in Section 2 of the Report. The feasibility and the ways and means of realizing the proposal for establishing a market/electronic platform/ exchange for trading COMCEC member states' real estate securities is also a crucial part of this COMCEC initiative and is scrutinised in the relevant Sections.

EXECUTIVE SUMMARY

In the last decade, for the COMCEC member states economies, real estate has been an increasingly important asset class for conventional and Islamic finance, with this background at the opening ceremony of the Ministerial Meeting of the 30th Session of the COMCEC held on 27 November 2014, in Istanbul, the chairmanship of H.E. Recep Tayyip Erdoğan, President of the Republic of Turkey, underlined the importance of real estate sector and the benefits of establishing a joint real estate securities exchange within the context of the COMCEC. In line with this statement, at the COMCEC Follow-Up Committee 2015 meeting, the Committee requested the *Secretariat of the COMCEC Capital Market Regulators Forum* (COMCEC CMR Forum, Forum) to conduct a study on the feasibility and the ways and means of realizing the proposal and submit it to the 31st Session of the COMCEC in November 2015.

This report prepared in accordance with the abovementioned mandate touches upon the value of real estate sector for an economy, financial markets. More specifically, this study elaborates the possibilities for providing a trading platform for real estate or real estate securities, which in turn supports liquidity and transparency in real estate sector within a collaborative COMCEC level approach. According to the Report's findings, setting up a COMCEC level organized real estate exchange in the form of a web site bringing together the buyers and sellers can be useful for standardization issues and would integrate national real estate markets and ease the tradability of real estate internationally. This kind of international platform can be a convenient place to be used when buying and selling a property, since it would minimize the agency cost and the information asymmetry among the investors and maximize the benefit of economies of scale, the international accessibility to any property to be sold.

On the other hand, regarding the concept of a securities exchange dedicated to real estate related capital market instruments is a novel initiative for the COMCEC region capital markets but also for other financial markets as well. However due to real estate sector's speciality about representing a tangible asset class, working on the topic is particularly important for Shariah compliant instruments. The Forum Secretariat has made research for determining the most suitable capital market instruments and possible trading venues. In addition to determining feasible instruments and establishing convenient forms of trading platforms, another primary requirement or condition for success is ensuring a minimum degree of liquidity to the market for real estate securities. In this context, securitization of real estate in various forms such as sukuks, real estate investment trusts securities, real estate mutual funds, sukuk participation funds, real estate certificates and waqf assets are considered as real estate securities. The global market facts especially for sukuks and REITs prove that for these instruments there is a solid growing market. Sukuk presents an opportunity to restructure the leverage into a Shariah-compliant form, by allowing a greater investor universe to develop and in turn strengthening markets.

In addition to the determining feasible real estate instruments, the Report discusses proper trading platform alternatives. Among the market/electronic trading platform/exchange options elaborated in the report, the pros and cons of these possibilities should be evaluated by the member states. According to this study's findings, with respect to the feasibility of realizing a secondary market for real estate securities establishing an electronic trading platform may represent a convenient model with its practicalities for essential requirements of securities trading on disclosure, listing, clearing and settlement rules.

Further cooperative work by the COMCEC Capital Market Regulators Forum and its members on advancing and deepening the studies for the ultimate goal of establishing a joint real estate electronic trading platform or a real estate securities exchange has the potential and economic value for the COMCEC member states and it could be a mutually beneficial form of cooperation with its benefits of economies of scale, a bigger pool for liquidity for real estate securities that could contribute to the development of real estate finance system and ultimately to the capital markets in the Islamic world.

I. REAL ESTATE INVESTMENT and FINANCIAL MARKETS

Real estate, as a general term describing the built environment plays a vital role in every aspect of the economy, society and environment. Businesses and society can not function without the services of commercial property, including the provision of offices, shops, factories, housing and many other forms of real estate. The commercial property sector provides and manages the infrastructure needed for entrepreneurship to prosper therefore real estate sector constitutes a fundamental source of employment and economic growth.

Performance of the real estate sector is high when there is a rapid growth and development in the economy. This close relationship was observed since 2001 when World economy has shown a rapid growth and this has accelerated the development and deepening of the real estate sector on the global scale. Following the financial and economic crisis in 2008 and its implications in the economies of many countries, a new post-crisis era has emerged in the economy after the results of the crisis and as a result of the preconditions taken. The macro framework and conditions of this new period will create a new environment for the real estate sector.

Real estate is an important component of investment and in many countries housing makes up the largest component of wealth. The majority of households tend to hold wealth in the form of their homes rather than in financial assets. Housing also plays other key roles; for instance, mortgage markets are important in the transmission of monetary policy. Adequate housing can also facilitate labor mobility within an economy and help economies adjust to adverse shocks. In short, a well-functioning housing sector is critical to the overall health of the economy and as economies develop, a corresponding deepening and growth of housing markets are expected.

With real estate as a major capital asset that contributes to both the diversification and wealth creation of investors in the world economy, its importance is not covered to anyone, its contribution to the GDP and labor market is significant; therefore, governments around the globe provide stimulus to enhance real estate sector.

By way of financial markets which brings buyers and sellers together an efficient, fair, transparent medium, providing a trading platform for physical real estate or real estate securities would improve the current conditions of trading real assets. Thus, the concept of a fair secondary real estate market should be further analysed.

Globally home ownership is traditionally debtfunded. Not only in emerging countries but also in advanced economies, in recent years, following the global financial crisis, debtfunded homeownership has proved risky for some households and for whole economies; yet demand for owner-occupation remains strong. To meet such demand, it is considered that the possibilities and practicalities of balancing traditional debt funding with innovations in equity finance is necessary. A principle finding is that although debt funding dominates housing finance for the foreseeable future, equity finance offers a complementary approach that could ease affordability, reduce volatility and add to macro-economic stability[3]**.**

By looking at outstanding loans in banking system, it would be revealed that majority of them are mortgages or home financing loans, it could be argued that housing finance around the world takes place in banking system which is called as direct housing finance. Individuals can refer to a bank and request for a mortgage to buy a house. Not only individuals but also companies enjoy from banks' loans in order to provide necessary funds for constructing or buying a property. However, there are some other so-called indirect financing which both individuals and companies can apply in housing market. These indirect ways can take place through capital market. In the context of indirect financing of the housing market, the report focusses on real estate investment trusts, real estate mutual funds, sukuk participation funds, sukuk, real estate certificates and waqf assets as well-founded instruments.

Concerning real estate finance in MENA region; in a report by World Bank Report[4] it is stated that the development of the financial system in the region overall is prevented by some factors, especially the tradition of state intervention, dependence on oil revenues, lack of macroeconomic stability and lack of strong financial infrastructure. The report emphasizes that the region is behind other regions in terms of providing market resources for real estate investment and due to a number of structural reasons, securitization is still in its nascent phase. However, the report also states that *"growing housing needs, economic liberalization and sounder economic contexts have converged to spark new developments in markets resources in the past decade"*. In the meantime, we have witnessed substantial securitization and sukuk issuance increase in the Islamic sector and on the international and regional capital markets. The Report states that support from governments and financial regulatory authorities, establishment of appropriate legal, tax and accounting frameworks, introduction of prudential regulations for investors, standardization of securities are necessary conditions for establishing a solid mortgage related securities market. The report also suggests that another primary

[3] A role for equity finance in UK housing markets? Susan J. Smith, Christine M. E. Whitehead and Peter R. Williams **http://www.jrf.org.uk/sites/files/jrf/equity-finance-housing-markets-full.pdf**

[4] Olivier Hassler, *Housing and Real Estate Finance in Middle East and North Africa Countries*, World Bank Report, June 2011

requirement or condition for success is to ensure a minimum degree of liquidity to the market for mortgage securities as the key to the funding and liquidity management of relevant institutions and investors, and thus recommends that "secondary market organization should be part of a development strategy for a mortgage related securities market".

Financing real estate is a major difficulty for most countries but in addition to this, inefficient secondary markets for real estate further complicates the sector, in this respect, securitization presents an opportunity. As a matter of fact, securitization of real estate in various forms is in itself considered as a secondary market for real estate. However, securitization of real estate can function more effectively if there also exists secondary markets where those type of securities can be traded. Availability of such secondary markets is vital for the growth of real estate securities as an alternative mechanism of finance other than conventional sources including bank credits and as an alternative instrument for real estate investment other than direct ownership of the real estate.

Given the importance of real estate sector and its finance for Islamic world, advancing and deepening the studies for the potential and economic value for the COMCEC member states could be a mutually beneficial form of cooperation as it can grasp the benefits of economies of scale, acts as a bigger pool for liquidity for real estate securities, contribute to the development of real estate finance system and ultimately to the capital markets in the Islamic world.

II. REAL ESTATE EXCHANGE MODELS

Due to the illiquid nature of real estate and the difficulties for standardization of transactions, cooperation models which are easing these qualities can provide benefits to the real estate market. In this respect, establishing a multilateral exchange platform can be assessed twofold. The first approach could be based on building an electronic trading platform for physical real estate while the second model can be developed on a multilateral exchange model trading real estate based securities. Each option in their own way has the potential to support workings of real estate finance and market in a more effective mode. This report discusses the possible real estate instruments (physical real estate or real estate securities) trading venues, their advantages and alternative methods for establishing a trading platform in legal and technical aspects.

EXCHANGE MODEL TRADING PHYSICAL REAL ESTATE

For the Shariah sensitive investors, one of the most attractive investment domain is the real estate. In fact, there is a material demand for real estate among these investors. However, their investment need is not met by an organized real estate exchange due to some standardization problems peculiar to the real estate itself therefore, making the buyers and sellers share a common trading platform will be likely welcome by all real estate related parties. This kind of approach will serve for the economic interest of all sides by bringing together the supply and demand sides on an accessible electronic trading platform. Setting such an international platform would integrate national real estate markets and hence would ease the tradability of real estate internationally which would vitalize the sector and the related economies eventually.

For this purpose, COMCEC member states may consider establishing a website or an electronic platform for real estate trading. In this web site, the sale notices would include some standardized information related to the trading of the real estate such as its price, its main characteristics (legal owner, location, legal status etc.), the restrictions on it (if any), specific appraisal report (if any), the national regulation on sale of properties to foreigners, the taxes and extra fees to be charged and other related information.

In this model, the administration of this web site or platform should be held by a joint committee the members of which would be the representatives of each member state. This committee may set the general rules and procedures to be followed by the web site or platform. For instance, the transaction fee to be charged from traders can be determined by this committee. Within this general framework, each country woould establish or appoint its relevant institution to be responsible for each sale notice of property to this platform. Additionally, services including appraisal of the real estates, legal and financial consultancy and professional brokerage services would be offered by this prospective trading platform's member intermediaries and service providers. These service providers would be registered by the member states representatives which would bring standardization and transparency to the services.

This kind of international platform can be a convenient place to be used when buying and selling a property, since it would minimize the agency cost and the information asymmetry among the investors and maximize the benefit of economies of scale, the international accessibility to any property to be sold, the liquidity of properties and the determination of fair value of properties. Consequently, improving the investment environment by providing a trading platform for real estate would create an alternative opportunity for Shariah sensitive investors as well as contributing the financing of the real estate sector.

EXCHANGE MODEL TRADING REAL ESTATE SECURITIES

REAL ESTATE SECURITIES

With respect to capital markets and house finance relation, in many economies, real estate investors can choose between private real estate (direct property investment) and public real estate (listed/securitized property investment). **Indirect property investment** is when an investor invests in a product that invests in property - meaning not investing directly in the property yourself. This can include investing in a product whose performance is based (to a greater or lesser extent) on some measure of property performance. Examples include buying units in a property fund, contributing to a pension plan with property in its portfolio, and buying shares in a publicly quoted property company.[5]

On the real estate developers' side, as financing through issuing stocks in the exchanges and corporate bonds is a common way to finance for many enterprises, it also can be a good choice for real estate companies. Financing through issuing stocks in the exchanges means that enterprises collect money from investors. Companies usually use this method when they need to increase capital and stocks. Financing through issuing stocks has many advantages for real estate companies. Firstly, as real estate industry is a capital-intensive industry and has large demand for money, financing through issuing stocks can collect large amount of money and may have relatively lower cost. Moreover, financing in the exchanges is highly helpful for the long-run development of real estate companies. As it has many high requirements for the real estate companies to go on listing, it is a good chance for real estate companies to improve themselves. And also real estate companies can pay more attention to the long-run development of the companies, not pursuing short-run benefit, if they have sufficient fund.[6]

Taking into account the abovementioned advantages of equity finance for real estate funding and investment, the Report investigates real estate investment trusts, real estate mutual funds, sukuk, sukuk participation funds, real estate certificates and waqf assets in terms of their regulatory structure and market facts and figures in COMCEC member state capital markets.

1. REAL ESTATE INVESTMENT TRUSTS (REIT)

Real Estate Investment Trust (REIT) is a type of investment trust or investment company, which mainly invests in income-producing real estates, such as offices, flats, car parks, warehouses,

[5] http://www.property-guide.reita.org/subsection.php?ss_id=5

[6] Financing alternatives for small real estate developers in China: A case study of Guangzhouhttp://www.diva-portal.org/smash/get/diva2:491656/FULLTEXT01.pdf

hospital buildings, lands, shopping malls, plantation estates and hotel buildings. Rent revenues collected from the tenants of these properties, leasing revenues, the revenues from sales of these properties and the increase in the values of the properties held are the main earnings for REITs.

1.1 REITs Support - Economy

REITs support the economy by effectively and efficiently channeling capital into real estate, bringing greater transparency to real estate investment and creating liquidity in the real estate sector of the economy. Moreover, REITs contribute to the economic development by financing real estate investments via public offerings and/or sales to qualified investors.

1.2. Advantages for Investors

Since REIT shares can be listed on the exchanges, this offers investors the benefits of commercial real estate investment along with the advantages of investing in a publicly traded stock. The special investment characteristics of income-producing real estate provides REIT investors with competitive long-term rates of return that complement the returns from other stocks and from bonds.

The main rationale behind the investors to invest in REIT stocks/units is to realize real estate investments via a company/trust which is specialized on real estate investments. By investing in REIT stocks/units, investors not only invest in a real estate portfolio that is diversified, but also they benefit from dividends that REIT distributes and the increases in REIT’s share/unit price.

When investors invest directly in properties, generally they may face a liquidation problem. Moreover, it would require large capital outlay. However, by investing in REITs, retail investors have an access to huge property investments by buying a fraction of pool of property and they can easily liquidate their investments by selling their shares in the stock exchange, in which stock prices are come up with transperancy and at their fair values.

Investors may also benefit from their REIT investments as a hedge mechanism against inflation, since property prices generally increase during high inflation periods.

Moreover, REITs are generally exempted from corporate tax, which makes REITs more preferable for investors.

1.3. General Structure

Although REIT is expressed as a “trust”, the vehicle is generally structured in the form of company. However, in some jurisdictions like Malaysia and Dubai, REIT refers to unit trusts that invest mainly in real estates. At a typical REIT structure there are some parties that REIT gets into contact. These parties generally are the "portfolio management company" that manages the pool of assets; the "custodian or trustee" that oversees the pool of assets, and the "property manager" that is responsible for property maintenance and management services and the tenants that pays rent to REIT.

1.4. Islamic REITs

REITs may be formed as conventional REITs or as Islamic REITs. Islamic REITs differ from conventional REITs mainly due to the requirement to operate in line with the Shariah rules. Islamic REIT is generally defined as the REIT of which tenants operate permissible activities according to Islamic rules and hence of which rentals are in line with Shariah rules. Conventional banking services (banking services that is based on interest), conventional insurance, manufacture or sale of alcoholic drinks, manufacture or sale of tobacco products, manufacture or sale of non-halal foods and gambling activities are some examples to non-permissible activities. In the structure of Islamic REIT, there is a Shariah Committee that assesses that whether the REIT's operations (its property investments and financing decisions) are Shariah compliant or not. In some countries, such as in Malaysia, if the proportions of the rentals from non-permissible activities to the total revenues do not exceed a specific ratio, then, the REIT is still accepted as an Islamic REIT. However, this type of approach to Islamic REIT may change from one Islamic country to another one.

The first Islamic REIT was established in Malaysia in 2006. Following Malaysia, Kuwait established its first Islamic REIT in 2007, Bahrain in 2009, Singapore in 2010 and United Arab Emirates in 2010.[7]

1.5. REITs Globally

REITs are regulated in many countries. The first regulation was made in the United States of America in 1960, which was followed by the Netherlands in 1969 and Australia in 1971. Over the years, many countries have made their own regulations on REITs, and REITs have become globally widespread. The table below lists the countries with REITs.

[7] International Shari'ah Research Academy for Islamic Finance (ISRA) and Securities Commission Malaysia (2015). *Islamic Capital Markets: Principles & Practices*, Pearson.

Countries with Listed REITs	
United States (1960)	Dubai (2006)
Netherlands (1969)	Germany (2007)
Australia (1971)	United Kingdom (2007)
Canada (1994)	Italy (2007)
Ghana (1994)	New Zealand (2007)
Belgium (1995)	Kuwait (2007)
Brazil (1995)	Bahrain (2009)
Greece (1999)	Nigeria (2010)
Turkey (1999)	Mexico (2011)
Japan (2000)	Thailand (2012)
South Korea (2001)	Finland (2013)
Singapore (2002)	Ireland (2013)
France (2003)	Pakistan (2013)
Hong Kong (2003)	South Africa (2013
Taiwan (2003)	Spain (2014)
Bulgaria (2005)	Indonesia (2014)
Malaysia (2005)	China (2015)
Israel (2006)	

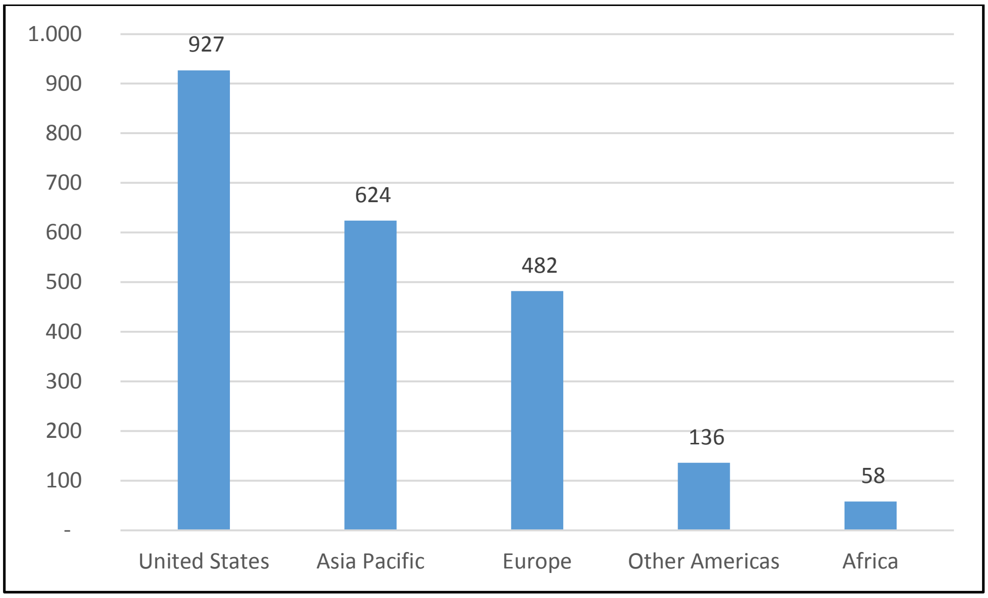
Source: UBS and Cohen & Steers [8]*About REITs.* [Online]. Available from: http://www.cohenandsteers.com/insights/education/about-reits [Accessed 08 October 2015].

As of August, 2015, the REITs globally has a total market capitalization of approximately USD 2.23 trillion. The biggest share of the market capitalization belongs to the United States with USD 927 billion market capitalization. United States is followed by Asia Pacific and Europe, which have USD 624 billion and USD 482 billion, consequently. The chart given below indicates the market capitalization of REITs, by regions.[9]

[8]*About REITs.* [Online]. Available from: http://www.cohenandsteers.com/insights/education/about-reits [Accessed 08 October 2015].

[9] Calculations based on the data by Global REIT Survey 2015, EPRA Reporting

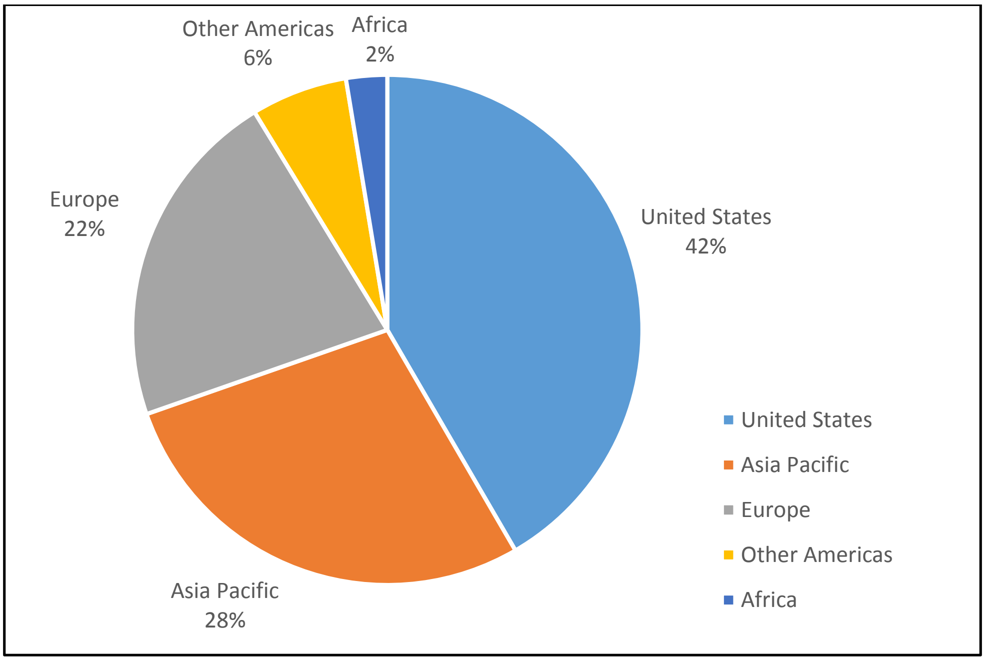
Chart: Market capitalisation of the REITs, by regions (USD billion)



Source: Calculated based on the data given at Global REIT Survey 2015, EPRA Reporting.

Chart: Market capitalisation of the REITs, market share by regions (%)

The shares of regions on the total market capitalization of real estate securities market is shown in the chart below. The United States constitutes 36% of the global real estate securities market, Asia Pacific accounts for 28% and Emerging Markets comprises 14%.



Source: Calculated based on the data given at Global REIT Survey 2015, EPRA Reporting.

1.5.1. COMCEC Member States with REITs

1.5.1.1 Iran[10]

The establishment of Real Estate Investment Trusts (REITs) has been stressed in the executive by law of the Article 14 of Organizing and Supporting Construction and Supply of Housing Law which is enacted by the parliament and its Bylaw is ratified by the Ministry of Finance and Economic Affairs. Therefore, the Securities and Exchange Organization (SEO) of Iran is planning to run these kinds of funds in capital market. Thus, so far there is no REIT in Iran's capital market.

1.5.1.2. Malaysia[11]

REITs in Malaysia fall under the regulatory purview of the Secuties Commision Malaysia (SC Malaysia) and also under the purview of Bursa Malaysia if the REIT is listed on the country's stock exchange. Malaysia started the property trust market, known as Property Trust Funds (PTFs), the predecessor of REITs in 1986. The Central Bank of Malaysia, also known as Bank Negara Malaysia, approved the regulatory framework for Malaysia listed property trust in 1986. Since then, it has progressed to become a well-established REIT market in Malaysia with sixteen listed REITs (including three Islamic REITS) as at June 2015.

REITs are collective investment vehicles (typically in the form of trust funds) which pool money from investors to buy, manage and sell real estate. The objective is to obtain reasonable returns on investment. Returns are generated from rental income plus any capital appreciation that comes from holding the real estate assets over an investment period. Unit holders receive their returns in the form of dividends or distribution and capital gains for the holding period.

REITs, in general, combine the best features of real estate and trust funds, and sit between bonds and equities. There are listed and non-listed REITs. While the former may be bought and sold through a stockbroker, like listed stocks, non-listed REITs may be bought from and sold to the management company or through other authorised agents. REITs, particularly the listed ones, are liquid assets and can be sold fairly quickly to raise cash and take advantage of other investment opportunities. Like any products listed on the exchange, investors should be aware that REITs may trade at a premium or discount to their respective net asset values.

---

[10] This title's content is kindly drafted by the Securities & Exchanges Organisation Iran.
[11] This title's content and Islamic REITs are kindly drafted by the Securities Commission Malaysia.

By buying a unit of REIT, the holder actually owns a fraction of a pool of real estate that generates income via renting, leasing and selling the said property. As an added bonus, REITs provide a platform for international investors to invest in a particular country's real property without the hassle and responsibilities associated with direct ownership of such assets.

Islamic REITs in Malaysia

The SC Malaysia released the *Guidelines for Islamic Real Estate Trusts* (Islamic REITs Guidelines) in November 2005, making it the first jurisdiction to introduce such guidelines in the global Islamic finance sector and set a global benchmark for the development of Islamic REITs. According to the Islamic REITs Guidelines, "In general, an Islamic REIT is a collective investment scheme in real estate, in which the tenant(s) operates permissible activities according to the Shariah". This would involve acquisition and leasing of real estate (including tenancies and sub-tenancies), where the activities and operations are Shariah-compliant. Examples of impermissible activities/operations include conventional banking services, gambling and casino operations, sale of liquor and non-halal food items among others.

In case of mixed tenants operating mixed activities (Shariah-compliant and non-compliant activities), the proportion of rentals from the operation of non-permissible activities to total turnover of the Islamic REITs in any current financial year must not exceed 20%. A property where all tenants operate only non-permissible activities cannot be included in the REIT.

The thrust of the Islamic REITs Guidelines is to provide a new investment opportunity for those who wish to invest in real estate through Shariah-compliant capital market instruments. The guidelines facilitate the creation of a new asset class for investors and allow fund managers to further diversify their investment sources and portfolios.

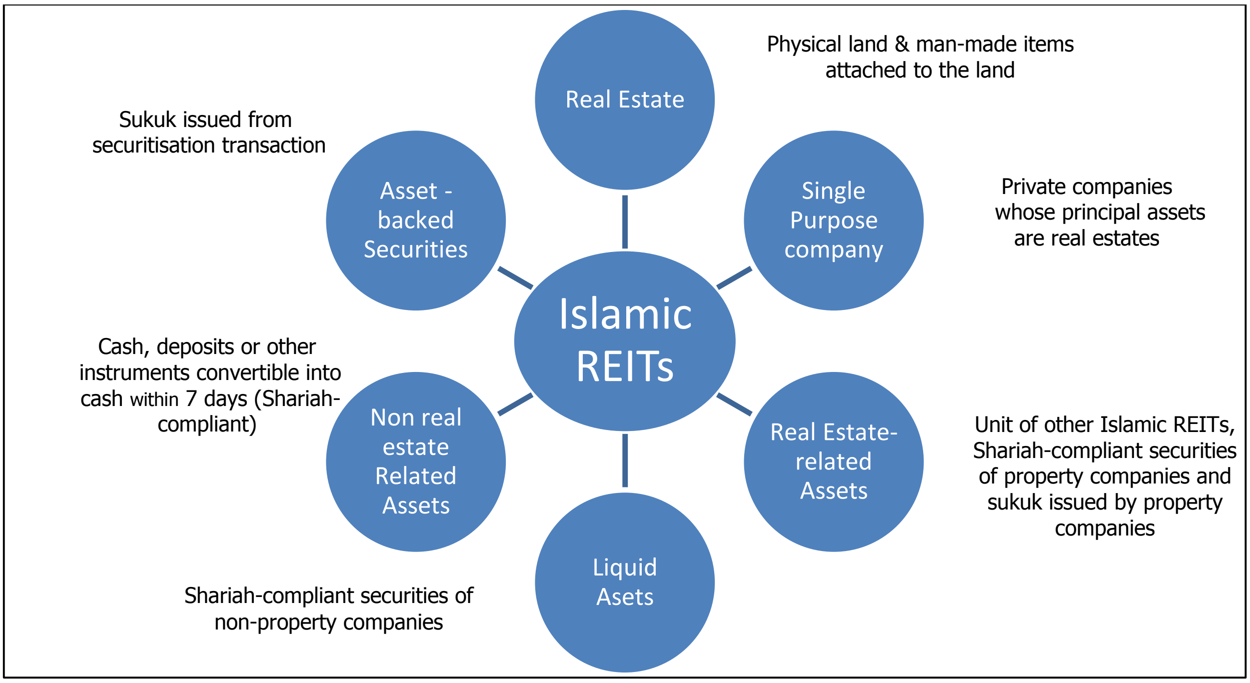
The Islamic REITs Guidelines complement existing guidelines on REITs, with the latter providing general rules on all aspects of investments in REITs and the former acting as a guide on Shariah compliance in structuring and managing investments of Islamic REITs. As required under the Islamic REITs Guidelines, market players must appoint a Shariah committee/adviser to review, monitor and approve investments by Islamic REITs. The main criteria covered include rental of real estate for business purposes, investment, deposit and financing, Takaful schemes and forward sales or purchases of currency for risk management.

Ensuring Shariah-compliance of Islamic REITs

To ensure that Islamic REITs are Shariah compliant, their investments are reviewed, monitored and approved by an appointed Shariah committee or adviser, who must observe the following criteria:

- Rental of real estate by Islamic REITs for business purposes;
- Investment, deposit and financing for Islamic REITs;
- Takaful schemes to insure real estate. A conventional insurance scheme is only allowed if Takaful schemes are unable to provide insurance coverage;
- Forward sales or purchases of currency for risk management with Islamic financial institution under the concept of *wa'd* (only one party is obligated to fulfil his promise/responsibility). Participation in conventional forward sales or purchases of currency is permitted if the Islamic REITs deal with conventional financial institutions.

Shariah Permissible Investment for Islamic REITs



Source: SC Malaysia

Rental of real estate is permissible, except when the property is used for non-permissible activities such as–

- financial services based on riba (interest);
- gambling/gaming;
- conventional insurance;

- entertainment activities that are not permissible according to Shariah laws;
- manufacturing or sale of tobacco-based products or related products;
- stockbroking or share trading in Shariah non-compliant securities; and
- hotels and resorts.

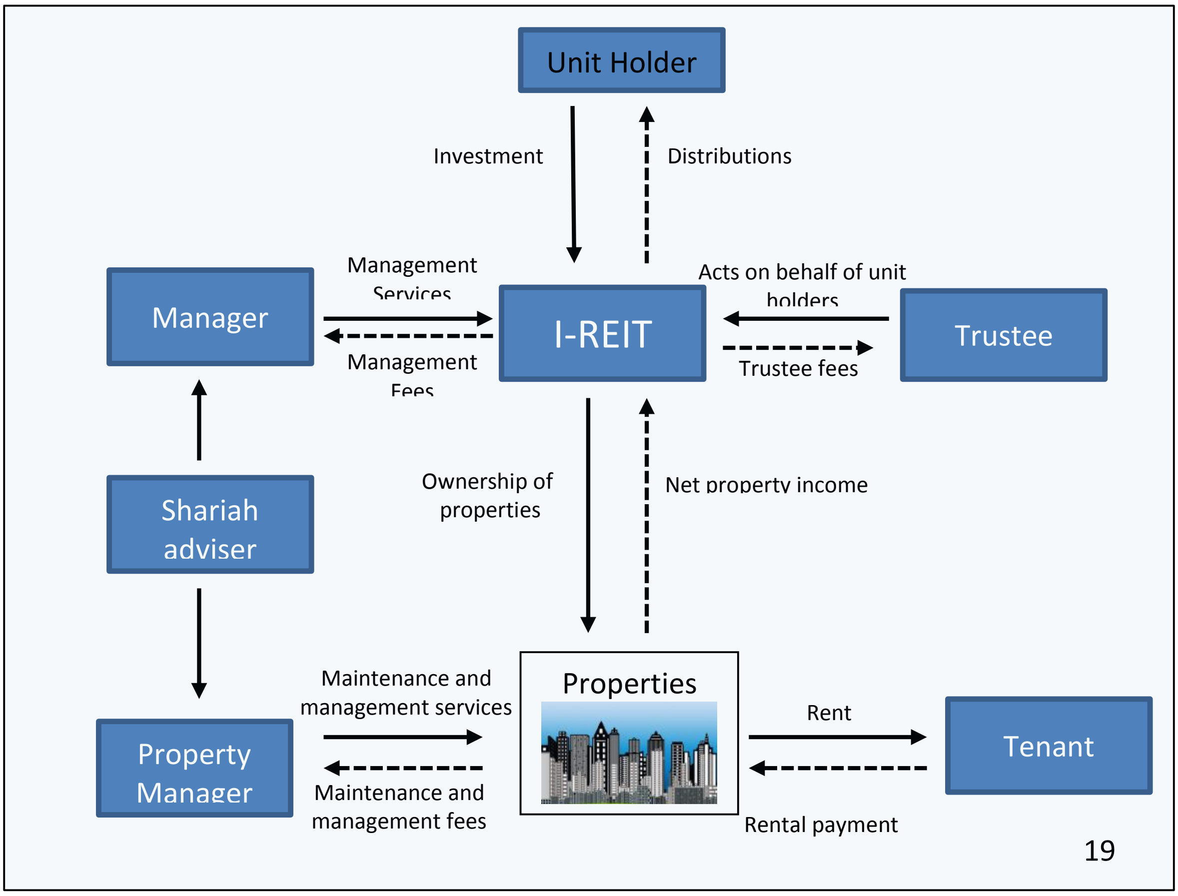
Apart from the activities listed above, the Shariah committee/Shariah adviser can apply *ijtihad* (the process of making a legal decision by independent interpretation of the sources of the law, the Quran and the Sunna) for other non-permissible activities to be included as a criterion in assessing the rental income for Islamic REITs.

Structure of an Islamic REIT

A typical Islamic REIT in Malaysia includes the following stakeholders:

- Investors/Unit Holders;
- REIT Manager;
- Shariah Advisory Committee;
- Trustee;
- Regulatory Authorities; and
- SC and also Bursa Malaysia, if listed.

How Islamic REITs work



Malaysia's experience in pioneering the Islamic REITs

The issuance of Islamic REITs Guidelines in November 2005, paved way for the establishment of the first Islamic REIT in the world in June 2006 called the Al-Aqar KPJ REIT. The Al-Aqar REIT invested in 6 hospitals with the market value of the properties estimated at USD138 million.

Malaysia introduced a second Islamic REIT in the subsequent year when in 2007, Al-Hadaharah Boustead REIT, listed on the main board of Bursa Malaysia. The Al-Hadarahah Boustead REIT underlying assets were plantation estates and the initial investments were valued at USD136 million.

In December 2008, Malaysia introduced a third Islamic REIT called the AXIS REIT, which is the world's first Islamic industrial/office REIT. AXIS REIT was originally established in August 2005 as a conventional REIT. Subsequently, it was restructured according to the SC Malaysia's Islamic REIT guidelines to be classified as a Shariah-compliant REIT in December 2008.

Malaysian Islamic REITs Industry

No. of REIT	June 2015
Islamic REIT*	3
Total Industry	16
Market Capitalisation (RM Billion)	
Islamic REIT	15.35
Total Industry	36.46
% to Total Industry	42.1%

** including 1 stapled securities (equity + REIT)*

As at June 2015, there are a total of 3 Islamic REITs in Malaysia bearing a market capitalisation of RM15.35 billion (approx. US$3.56 billion), representing 42.1% of the total REITs industry in Malaysia.

Latest Innovation in Islamic REITs

In May 2013, Malaysia witnessed the listing of the first-ever Islamic stapled securities, KLCC Property Holdings Bhd Stapled Group (KLCCP Stapled). These stapled securities were endorsed as Shariah-compliant by the Shariah Advisory Council (SAC) of the SC Malaysia.

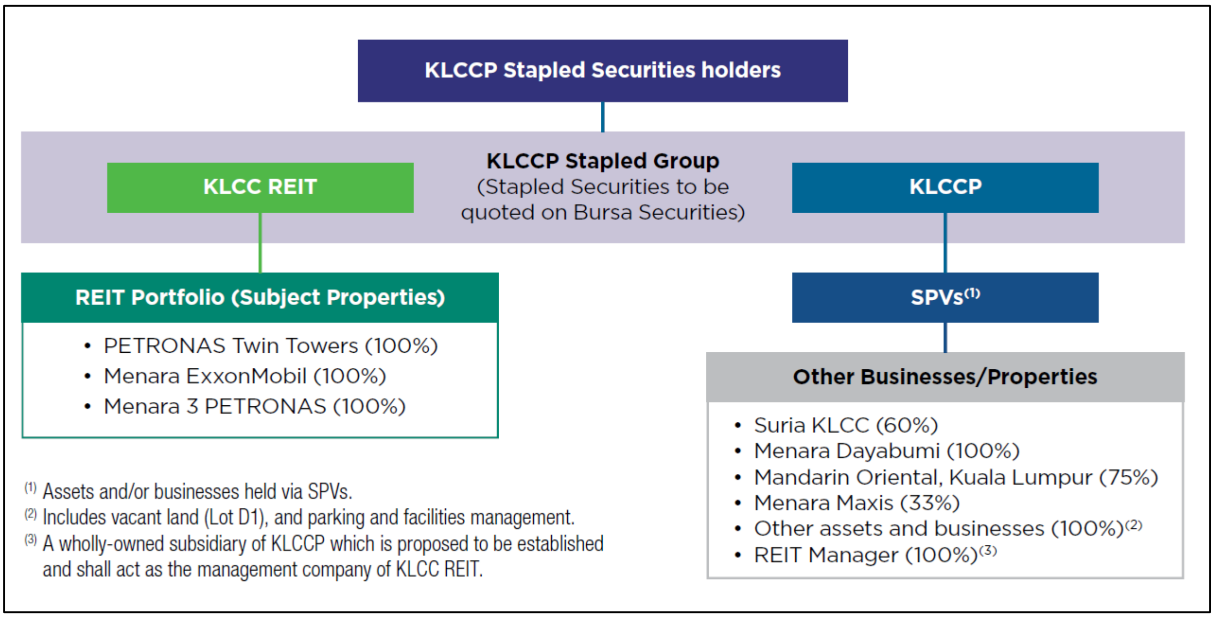
A stapled security is where investors own two or more securities which are generally related and contractually bound together, usually via a deed, through a single vehicle that cannot be traded separately. For example, shares of a company can be bound to units of an investment trust and they must be purchased and sold together. The concept of stapled securities is not new and has been in existence in many developed markets such as Australia, Hong Kong, the US and Canada.

Given the contractual nature of the stapling exercise, stapled securities can be implemented and governed within existing regulatory framework governing the individual securities such as listed shares and real estate investment trusts (REIT) without a need to develop a new regulatory framework specifically to govern stapled securities.

In the KLCCP Stapled case, it involves stapling units in a newly established Islamic REIT with shares in KLCC Property Holdings Bhd. An investor holding the stapled securities will effectively hold both shares in the company and units in the REIT, and will reap the combined economic interest and benefits from both the company and the REIT. In this stapling exercise, an independent trustee is appointed to act on behalf of unit holders and to hold custody of the REIT or trust assets. A REIT manager is also established to manage the REIT/trust's investment and financing strategies, asset acquisition and disposition policies as well as the overall management of the assets.

The SAC of the SC Malaysia has ruled that for any stapled securities to be recognised as Islamic stapled securities, each individual security must be Shariah compliant. KLCCP shares have been designated as Shariah compliant since 2004. Pursuant to Islamic REIT Guidelines, an Islamic REIT must ensure that all forms of investment, deposit and financing instruments comply with the Shariah principles.

Structure of Stapled KLCC REIT (Shariah-compliant)



Source: Bursa Malaysia

CIMB Islamic Bank Bhd was appointed as Shariah adviser to ensure activities of the above REIT which comprise assets of PETRONAS Twin Tower, Menara ExxonMobil and PETRONAS Tower 3 are Shariah compliant. As required by the Islamic REIT Guidelines, the Shariah adviser will certify on annual basis that the REIT is managed in accordance with Shariah principles.

The SAC has also decided that once the above stapled securities are listed, the Shariah status of the stapled securities would depend on the Shariah status of the securities of KLCCP, based on the review of the audited financial statements by the SAC.

The KLCC Stapled is the first Islamic stapled securities globally, the largest REIT in Malaysia and ranks amongst the largest in Asia with RM15.4 billion in assets and nearly RM13 billion market capitalisation. It is also the first stapled securities to be listed on Bursa Malaysia. By stapling its securities, KLCCP Stapled would enhance or maximise value to the existing shareholders through the shift towards a yield-based valuation matrix and from the relevant tax exemptions at the REIT level.

Prospects and Opportunities for Islamic REITs

Islamic REITs have tremendous potential to be developed as a thriving global wealth management product since it is structured on tangible real assets which provide stability as the investments are channelled to the real economy. Real asset and tangible assets investments are also the preferred asset class among Muslim investors and institutions given its natural fit with the Islamic finance principles which advocate link between the real economy and the financial sector.

The success of Islamic REITs in Malaysia and Singapore give weight to the assertion that Islamic REITs have strong prospects to be launched in global markets as a lucrative alternative real estate investment product.

Selected Global REITs Industry Snapshot (as at 2014)

Domicile	No. of Listed REITs	Market Cap (US$ BLN)
Asia-Pacific		
Hong Kong	12	26.812
Japan	53	78.188
Malaysia	15	7.118
New Zealand	5	3.322
Singapore	37	52.049
South Korea	8	0.847
Taiwan	6	2.615
USA	231	825.493

Source: Global REITs Survey 2014, EPRA Reporting

As tangible assets, real estate remains the preferred asset class among discerning Muslim investors and institutions. Affluent and savvy Arab investors are increasingly seeking viable investments using Islamic financing structures to satisfy their investment objectives. In this regard, Islamic real estate investment fits the bill perfectly as real estate can provide such investors with selected projects that yield good returns and a stable income.

The increasing demand for Shariah-compliant real estate investment is reflected by the global rise in the number of Islamic REITs, mainly in the Middle East, and other parts of Asia. In addition to the boom in the real estate sector in the Gulf Cooperation Council (GCC) countries, there is a growing interest to channel the petrodollars towards opportunities in the Far East. Post 9/11 GCC investors are eyeing Asian countries, such as India, China and Malaysia for infrastructure and property investments. Malaysia, for example, has reaped the benefits from its efforts in attracting Middle Eastern investments.

The development of Islamic REITs, while lucrative, is not without challenges. One of the major challenges in the global development of Islamic REITs in various countries is the lack of clear-cut regulatory framework and standards which can govern the principles and operations of Islamic REITs. Most countries do not have established REIT rules for the listing of Shariah compliant properties while there also exist differences in Shariah interpretations among the various jurisdictions.

The growth of Islamic REITs in some regions, such as the GCC, was also hampered by the global financial crisis which had a negative impact on the real estate sector, putting the plans of many managers to launch Islamic REITs on hold. As Islamic REITs have a natural alignment with the Shariah principles which emphasize real-sector investments, there is a considerable opportunity for financial institutions to introduce Islamic REIT products in the market.

Key Benefits of Investing In Islamic REITs

The main benefits of Islamic REIT investments are closely reflected in the manner in which it is structured. The following are factors which are attractive to investors:

- ***Ease of entry***
  Due to its feature and established as a unitised fund, Islamic REITs do not have any additional requirement for investors to subscribe to its units. It is as easy as investing in the stock market where a broker can always provide the assistance for any interest from the investing public. This is the obvious advantage of being an exchange-traded instrument.
- ***Diversification***
  Islamic REITs can be invested in a variety of real estate assets regardless of sectors and location. This borderless investment capability jives positively with investor’s appetite as a means of portfolio and risk diversification. As the value of property in one area may rise or fall dependent on certain factors confined to the specific area only, having multiple properties in different locations diversify the risks.

- ***Affordability***

  Being similar to trust funds, Islamic REITs offer affordability to the investing public especially retail investors as the initial investment amount is usually minimal. This means that the REIT can allow investors to participate in the real estate market with a smaller capital outlay as compared to the outright purchase of real estate, which normally costs higher.

- ***Yields & Capital Appreciation***

  As evidenced by the performance of all Islamic REITs listed on Bursa Malaysia, Islamic REITs offer high dividend distribution to unit holders. In addition to the fact that income distributed by a REIT to its unit holder will not be subject to tax at the REIT level, Islamic REITs can provide stable returns to investors due to its inherent Shariah-compliant criteria. In short, Islamic REITs can be seen as a safer and more attractive investment as it is able to generate stable and sustainable income through rental and capital appreciation, which can be used to continually pay regular dividends.

1.5.1.3. Turkey

Turkish Regulation on REITs:

The regulation of REITs in Turkey dates back to the end of 1998, when the the first Capital Markets Board of Turkey Communique on REITs was launched. This CMB communiqué was welcome with the establishment of 5 REITs in 1999. Economic amelioration and growth period positively affected the real estate investment trust, and the housing and commercial projects and investments started to expand.[12] Over the years the first communique was updated several times. After the enactment of the latest Capital Market Law No. 6362 in the end of December 2012, the outstanding regulation on REITs (the Communiqué On Principles Of Real Estate Investment Companies numbered III-48.1, -the REIT Communiqué-was issued in May 2013[13]. Lastly, the REIT Communiqué was amended to regulate the second type of REIT, which is the REIT that solely invests in infrastructural investments and services.

---

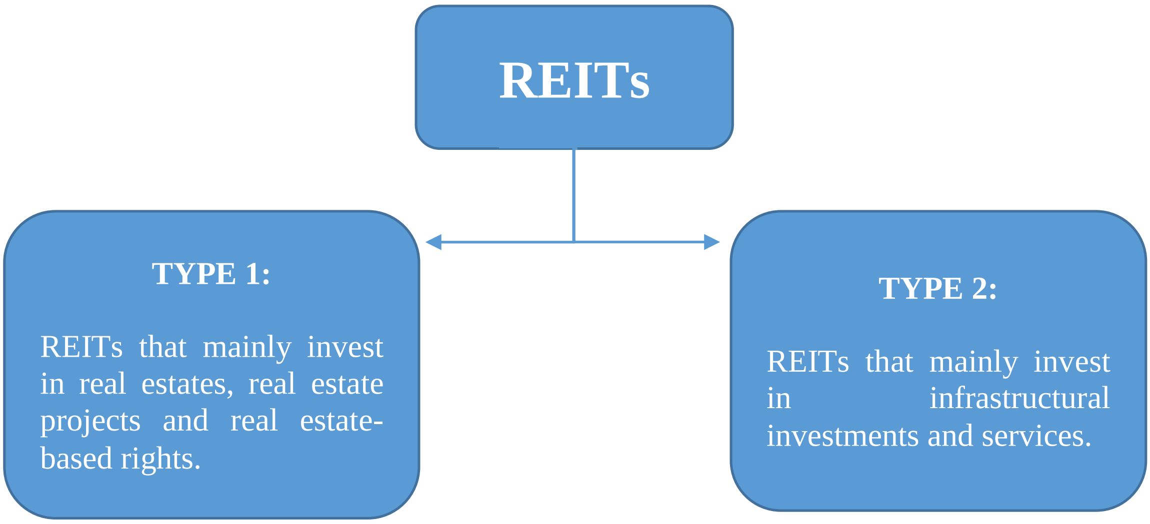
[12] Predictions For the New Economic Era and Real Estate Sector, Dr. Can Fuat Gürlesel, The Association of Real Estate Companies, Turkey, September 2009

[13] Capital Markets Board of Turkey (CMB) (2013). *Communiqué on Principles of Real Estate Investment Companies (III-48.1).* [Online]. Available from: http://www.cmb.gov.tr/apps/teblig/displayteblig.aspx?id=504&ct=f&action=displayfile [Accessed 08 October 2015].

According to the REIT Communiqué, REIT is *a type of capital market institution which is founded in order to issue its shares for the purpose of operating and managing a portfolio composed of real estates, real estate projects, real estate-based rights, infrastructural investments and services, capital market instruments, Clearing Bank money market and reverse repurchase transactions, time deposits or participation accounts in Turkish Lira, demand and time deposits or special current and participation accounts in foreign currency, subsidiaries and affiliates, and other assets, rights and instruments to be determined by the CMB.*

In the REIT Communiqué, REIT is formed in the corporate form and regulated under two different types. The first one is the REIT which invests mainly in real estates, real estate projects and real estate-based rights. The second one is the REIT which mainly invests in infrastructural investments and services. REITs investing in a portfolio consisting mainly of infrastructural investments and services cannot invest in real estates, real estate-based rights and real estate projects unrelated with the infrastructural investments and services. The first type of REITs is also not allowed to invest in infrastructural investments and services and the associated assets and rights, except for those which are incidental by nature and are performed as a part of real estates or real estate projects within the frame of their main fields of business.

Chart: Type of REITs



In Turkey, at present all the REITs outstanding are in the first type, namely, they are the REITs that mainly invest in real estates, real estate projects and real estate-based rights. There has not been established any REIT in the second type.

At least 51% of the total assets of the REITs in the first type must be composed of investments in real estates, real estate projects and real estate rights. At most 49% of the total assets may be composed of capital and money market istruments such as equity investments, stocks of traded companies, bonds, units of mutual funds, time deposits and reverse repos. The equity investments of REITs on other property corporations are accepted as an investment in capital market instrument and are put in the 49% portion of the total assets.

Conditions of Foundation and Conversion

According to the REIT Communiqué, REITs may directly be founded as a real estate investment company, or joint-stock companies may be converted into a REIT. In order for the CMB to approve an application for foundation or conversion of a REIT:

a) Its paid-in-capital should not be less than TL 30.000.000 (USD 10,5 million) and if it will operate a portfolio consisting solely of infrastructural investments and services, it should not be less than TL 100.000.000 (USD 34,5 million);

b) Its partners, members of its board of directors and its general manager must be fit and proper according to the conditions specified in the REIT Communiqué,

Public Offering

REITs must apply to the CMB with a request of approval of their prospectus relating to public offering of shares representing minimum 25% of their after-sales capital. However, REITs operating a portfolio consisting solely of infrastructural investments and services may sell their shares via public offering and may also sell their shares only to qualified investors.

Listing in Borsa Istanbul

REITs offering their shares to public are listed in Borsa Istanbul and traded on the Collective Products Market.

Issue of Privileged Shares

REITs may not issue any privileged securities other than the shares providing the privilege of nomination of members of the board of directors.

Investment Activities and Limitations on Investment Activities

REITs:

a) May, for the sake of trading profit or rental income, purchase, sell, lease, hire or promise to buy or sell lands, fields, houses, offices, shopping centers, hotels, logistic centers, warehouses, parks, hospitals and similar other real estates of every kind,

b) May develop real estate projects,

c) May invest in real estates at abroad and in foreign capital market instruments,

d) May establish real rights relating to real estates and real estate projects (only rights of usufruct, time-sharing easements and rights of construction may be established),

e) May invest in capital and money market instruments mentioned in the REIT Communiqué,

f) Can by no means and in no case assume construction works of real estates or infrastructural investments and services,

g) Can by no means and in no case operate hotels, hospitals, shopping centers, business centers, commercial parks, commercial warehouses, mass housing sites, hypermarkets and similar other real estates for commercial purposes,

h) Cannot lend credit.

Portfolio Limitations

REITs:

a) Are under obligation to invest at least 51% of their total assets in real estates, real estate projects and real estate-based rights; providing, however, that at least 75% of total assets of REITs operating a portfolio consisting solely of infrastructural investments and services are required to be composed of these assets,

b) May invest maximum 25% of their total assets – as for the REITs operating a portfolio consisting solely of infrastructural investments and services - or 49% of their total assets – as for other REITs - in capital and money market instruments

Management of Real Estate Portfolio

REITs manage their real estate portfolio themselves by employing an adequate number of personnel.

Custody

Capital market instruments included in the REIT's portfolio are required to be kept in custody in the Istanbul Custody and Settlement Bank Co. Inc.

Operational Services

Operational services for real estates and/or infrastructural investments and services included in the REIT's portfolio are outsourced from operator companies.

Subsidiaries

REITs may participate in only the companies stated in the REIT Communique, such as;

a) Other REITs,

b) Companies founded abroad in only real estate sector and solely for the purpose of inclusion of particular real estates or real estate-based rights in the portfolio,

c) Companies founded in Turkey, where total value of real estates or real estate-based rights is equal to at least 75% of total assets.

REITs operating a portfolio consisting solely of infrastructural investments and services may participate in :

a) Infrastructure companies;

b) Other REITs operating a portfolio consisting solely of infrastructural investments and services;

Limit of Indebtedness

For the purpose of meeting their fund requirements or the costs of their portfolios, the REITs may borrow and utilize credit facilities up to five times their shareholders' equity.

Transactions Requiring Appraisal

Purchase, sales, leasing and similar other transactions relating to real estates, real estate projects, real estate-based rights and infrastructural investments and services included or planned to be included in portfolio of the REIT are realized by considering their values mentioned at appraisal reports.

Principles on Dividend Distribution

Although there is no requirement for REITs to distribute dividends, the CMB may hold REITs obliged to distribute cash dividends.

Size of REITs in Turkey

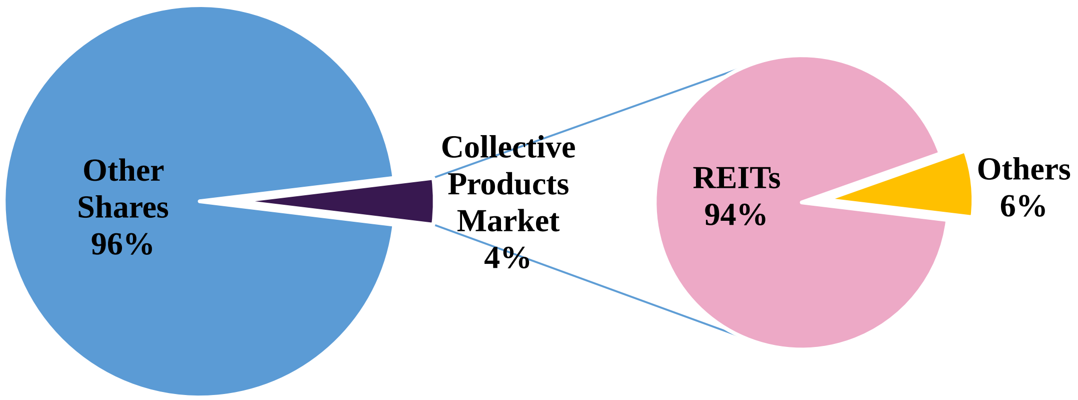
As of 30 October 2015, the market value of the stocks traded on Borsa Istanbul is approximately USD 200.6 billion; the market value of the stocks traded on the Collective Products Market is USD 8 billion; and the market value of the REITs is USD 7.5 billion. These values are listed in the table given below.

The Market Value of The Stocks Traded at Borsa Istanbul (USD billion)	The Market Value Of The Stocks Traded On The Collective Products Market (USD billion)	The Market Value Of The REIT Stocks (USD billion)
200.6	8	7.5

Source: Borsa Istanbul

According to these values, the market value of the stocks traded on the Collective Products Market constitutes only 4% of the total market value of all the stocks traded on Istanbul Stock Exchange. However, the proportion of the market value of the REIT stocks to the market value of all stocks traded on the Collective Products Market is 94%.

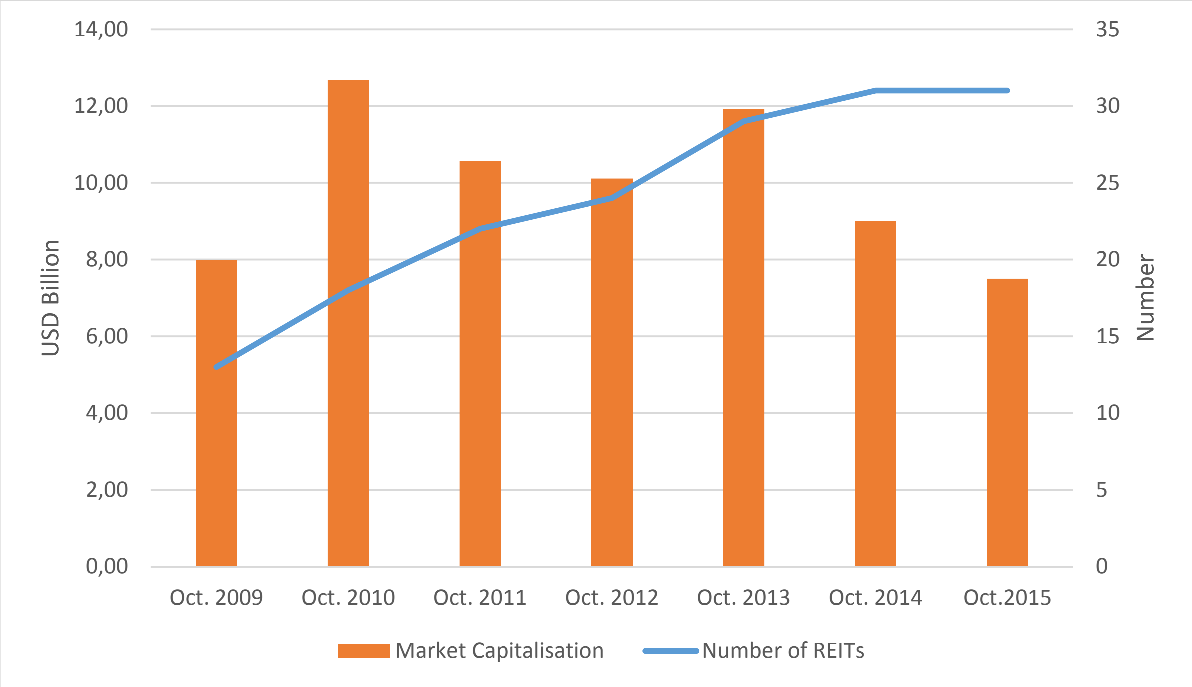
Chart: The Market Value of REIT Shares



Source: Borsa Istanbul.

In the graph given below the number and market capitalization of REITs over the years are shown.

Chart: The Number and Market Capitalisation of REITs



Source: Borsa Istanbul and Atay (2014)[14].

According to the graph, the number of REITs in Turkey has been increasing gradually. This trend indicates that REITs in Turkey have a good interest among investors. On the other hand, there is an instability in the total market capitalization of REITs over the years. The USD/TL exchange rate has been an influential factor in this instability. In fact, the market capitalization in local currency indicates a stable increase in market capitalization as well.

Common Characteristics of Turkish REITs

The Turkish REITs generally finance their investments by equity financing rather than by conventional banking credits. In fact, this characteristic is a general profile for Turkish REITs. According to the balance sheet of REITs at the third quarter of 2014, the total liabilities of 23 REITs (among 31 REITs) are less than 50% of their total assets. Moreover, the percent of the credits to the total assets ratio for 12 of these 23 REITs are less than 20% (Atay, 2014). This means that equity financing is more common for Turkish REITs and conventional credit financing is not so widespread among Turkish REITs. Furthermore, in fact Turkish REITs have

[14] ATAY, Z. (2014), *Real Estate Investment Trusts at Islamic Capital Markets – Case of Malaysia (In Turkish: İslami Sermaye Piyasalarında Gayrimenkul Yatırım Ortaklığı - Malezya Örneği)*. Proficiency Essay, Capital Markets Board of Turkey.

an option to issue some interest free capital market instruments such as sukuk and real estate certificates to meet their financing need.

Moreover, in addition to the real estate investments, Turkish REITs may prefer to invest in money and capital market instruments that are interest free such as shares, sukuk, units of participation funds, foreign exchanges and participation accounts of participation banks, which are known as Islamic banks.

Although according to Turkish REIT regulation there is no classification of REITs on being whether conventional or Islamic, REITs are free to declare at their IPO prospectuses that they operate in line with the Islamic rules, hence, they do not invest in interest bearing instruments and in properties in which tenants operate impermissible activities according to the Shariah rules. In fact, there are examples of such REITs in Turkey that declared at their IPO prospectuses and at their articles of association that they operate in line with the Islamic rules.

One more distinguished characteristic of Turkish REITs is that they prefer to develop commercial real estate projects to sell the properties once completed rather than to generate rental based income. There are REITs in Turkey whose earnings are mostly rental based rather than project based. However, the common type is the REIT that adopts build and sell approach via real estate projects.

2. REAL ESTATE MUTUAL FUNDS (REMF)

A real estate mutual fund is a type of mutual fund that primarily focuses on investing in securities offered by public real estate companies. The majority of real estate funds invest in commercial, and corporate properties, although they also may include investments in raw land, apartment complexes and agricultural space. This type of fund can invest in properties directly or indirectly through REITs.

2.1 General Structure

Real estate investment funds are structured in the form of fund. Fund has a portfolio manager that decides which investment instruments fund will invest. Investors are not involved in the management of the fund. Fund unit values are calculated by dividing total net asset value to total number of fund units outstanding. Investors’ profit or loss is the difference between the fund unit values at the purchase date and selling date.

2.2. Advantages for Investors:

Similarly with REIT, REMFs is an important tool of indirect property investment. In other words, a REMF allows investor to invest in large projects with a limited amount of money via fund structure. It is an alternative to purchasing investment property, especially if investor wants to limit investment's level of risk and involvement in management.

REMFs are generally sold to qualified investors, they are not to be marketed to the general public. Qualified investors that real estate mutual funds can be sold are institutional investors, professional investors and sophisticated investors. Sophisticated investor means that someone who has sufficient knowledge to understand risk of the fund and has sufficent economic power and investment experience to cope with risks of the fund.

REMFs is also an alternative to REITs, if investor's investment is long term; in some countries regulations require REITs to give all profits back to investors annually, which means that the profits are subject to tax annually. Profit on mutual funds remains in the fund unless investor sell fund shares. Real estate mutual funds, like all mutual funds and unlike real estate itself, are relatively liquid.[15]

2.3. Contribution to Real Estate Sector

Investment in real estate is a key component of a diversified portfolio. However, direct investment in real estate can be expensive and illiquid, especially for retail investors. A more liquid way to invest in this sector is through REMFs, which consist primarily of equity REIT stocks. That's why, REMF is a key investment instrument that facilitates securitization of real estates and liquidate large-scale real estates. Across the World, it can be seen that most of the investors are short-term oriented rather than being long term, so investment's liquidity is quite important for the investors in order to exit at the right time. REMF attracting short-term oriented investors to real estate sector by liquiditing real estates, which will result as the increase in the sector.

2.4. REMFs Globally

REMF is a relatively new but, unexpectedly widespread investment tool around the World, especially in Europe and U.S. As of July 2015, number of real estate funds in Luxemburg is 304, and total worth of net assets under management in real estate funds is €38.771 million[16] As of 31 March 2014, German open-end real estate funds hold €122.600 million of real estate assets all

[15] (http://homeguides.sfgate.com/real-estate-mutual-fund-6697.html)

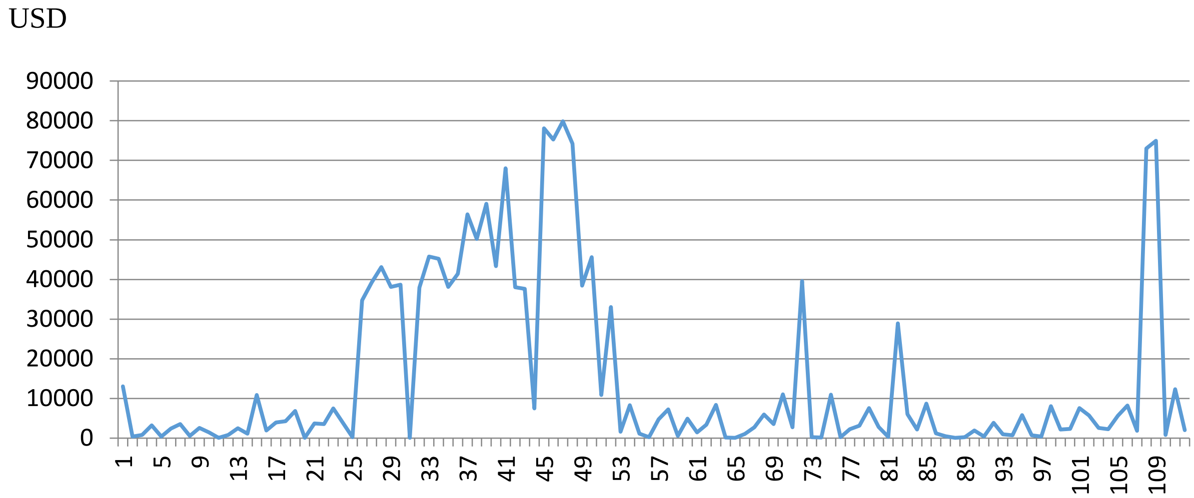
[16] http://www.alfi.lu//sites/alfi.lu/files/files/Statistics/Luxembourg/L2%20Investment%20class%20distribution%20EN%20FIG%2002%20&%2003.pdf).

over the World. (BVI d, 2014). In United Kingdom, number of real estate funds is 56 and total worth of net assets under management in real estate funds is £38.680 million.[17]

2.4.1. COMCEC Member States with REITs

2.4.1.1 Iran[18]

The first Real Estate Mutual Fund (Construction Fund) launched in 2014. Daily trading of the fund in January to September of 2015 is shown in the below graph. Aggregately, its units trading value is around 2 million USD in 2015. Its trading venue is Iran Farabourse where is the host for modern financial instruments. The market capitalization of the fund is around 11 million USD.



2.4.1.3 Turkey

In Turkey, real estate investment funds are regulated by the Communique on Real Estate Investment Funds, III-52.3[19]. Real estate investment fund (real estate mutual fund, REMF) is a pool of assets, which does not have a legal entity and permanently or temporarily established within the fund rules by portfolio management companies and real estate portfolio management companies which holds an operating license duly received from the CMB in order to manage the portfolio comprised of assets and transactions, with the money collected from qualified investor in return for fund units.

Real estate investment shall account for at least 80% of the fund net asset value. In calculation of this ratio, the capital market instruments issued by real estate investment companies, shares of joint stock corporations of whose real estate investments continuously comprised of at least

[17] (http://www.aref.org.uk/statistical-analysis-page)
[18] This title's content is kindly drafted by the Securities & Exchanges Organisation Iran.
[19] http://www.cmb.gov.tr/apps/teblig/displayteblig.aspx?id=491&ct=f&action=displayfile

75% of their total assets based on the financial statements prepared under the provisions of the legislation they are subject to, real estate certificates and fund units of other real estate investment funds shall also be taken into consideration. Provided that it is specified in the issue document, the Fund can be established to invest in a specific property or operate in a specific sector as well as the fund can be founded without any limitation on its purpose.

The Fund can be established by portfolio management companies and real estate portfolio management companies. For the establishment of the Fund, the founder shall apply to the CMB Turkey together with a draft of fund rules and standard form as described by the Board.

Fund units may be sold only to qualified investors[20].

Fund units do not have a nominal value. Fund unit value is calculated by dividing the value of fund net assets by the number of fund units. In principle, fund unit value shall be calculated and notified to qualified investors at least once a year. Within one year as of the starting date of sales of fund units to qualified investors, fund portfolio value shall reach a minimum size of 10.000.000 TL, and the cash collected from fund holders shall be invested within the portfolio restrictions set forth in the Comminique.

To make profit from sale and purchase or receive a rental income, Fund may purchase, sell, lease, rent out, and agree to purchase or sell lands, registered lands, houses, offices, shopping centers, hotels, logistic centers, warehouses, parking lots, hospitals and all other kinds of similar real estates. On the other hand, by no means REMF can not invest in real estate projects, or can not themselves involve in the construction of real estates, or can not recruit personnel and equipment for those purposes.

Founder, and if any, portfolio managers, shall manage the fund portfolio in accordance with management principles specified in the Law, this Communique, fund rules and issue document so as to observe benefits and interests of investor. The founder may delegate portfolio management to another portfolio management company or real estate portfolio management company by a contract. For portfolio management, contractual relations may be established with multiple portfolio managers.

Fund may distribute profit to fund unit holders under the principles determined in the issue document.

[20] See footnote 6 above.

In the execution of all its activities, the Fund shall be represented by the board of directors of the founder. Board of directors may delegate this power to one or more managing directors.

As of November 2015, two REMFs are founded but sale of participation units to qualified investors have not been performed yet. After the Communique came into force, 7 real estate portfolio management companies founded and four of them hold an operating license duly received from the Board.

3. SUKUK

3.1. Introduction to Sukuk

Historically, due to its tangible nature, real estate sector is one of the most popular asset class for Islamic finance investors. As a result, this area has provided some of the most diverse and innovative action in sukuk markets. Sukuk presents an opportunity to restructure the leverage into a Shariah-compliant form, thereby allowing a much greater investor universe to develop and in turn strengthening capital markets.[21]

The capital market facilitates the raising of medium to long term funds for business and governments. The traditional capital market enjoys a blend of debt and equity instruments. The debt, quasi-debt and quasi-equity instruments are traditionally based on interest (fixed payments which violate Islamic rules against payment of "riba"). On the other hand, modern shares are generally accepted as fitting within the broad Islamic financial framework. But the Islamic sector has long lacked a proper alternative for Shariah-compliant firms to raise debt or debt-like capital. Therefore emergence of sukuk market has provided comparable long-term funding for the Islamic sector.

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) in its Shariah Standard 17(2) (2010) defined investment sukuk (sukuk istithmar) as certificates are of equal value, representing undivided shares in ownership of tangible assets, usurfructs and services, or (in the ownership of) the assets of particular projects or special investment activity. In the Sukuk structure, the sukukholders each hold an undivided beneficial ownership in the underlying assets (the sukuk asset). Consequently sukukholders are entitled to share in the revenues generated by the sukuk assets and may be entitled to share in the proceeds of the realization of the sukuk assets.

Sukuk are often referred to as Islamic bonds, a distinctive feature of sukuk are that they either asset-backed, where the credit risk of a bond is linked to asset or asset-based where credit

[21] Islamic Bonds, Nathif J. Adam and Abdulkader Thomas, Euromoney Books, 2004

risk is linked to issuer. For an asset based sukuk, the sukukholders rely on the obligor for repayment of the principal and return in the same way as they would under corporate bond issue. Thus, if an obligor defaults the asset-based sukuk, sukukholders might join the list of unsecured creditors as they have no legal recourse to the underlying asset. The presence of the asset does not necessarily enhance the credit profile of the sukuk. On the contrary, in an asset backed sukuk, sukukholders rely on the assets of the sukuk issuer for security, i.e. the sukukholders claims are secured by the ownership of the underlying asset. The table below compares the asset-based and asset-backed sukuk structures.

Sukuk category	Analytical characteristics
Unsecured asset-based sukuk	The issuance principal is effectively "guaranteed" in most cases by originator via a purchase undertaking agreement, i.e. a commitment to buy back the underlying assets at the sukuk maturity. The coupons (periodic distribution amounts) are protected by a liquidity provision i.e. the commitment of the originator/guarantor to provide sufficient liquidity to make up for any shortfall between asset returns and periodic distribution amounts.
Secured asset-backed sukuk(Islamic securitization)	Neither the principal nor the coupons are subject to formal guarantees. Sukuk performance is asset driven and effective legal transfer of assets to investors (true sale) is critical.

Source: Suruhanjaya Sekuriti (Securities Commission Malaysia), Sukuk, Sweet&Maxwell Asia, 2009

Sukuk certificates represent obligations of the issuer. Unlike bonds sukuk may comprise either debt obligations or equity characteristic depending on the underlying Islamic contract. Types of sukuk are determined by the contract into which both the issuer and sukuk-holder entered into at the first place. Underlying contract between the issuer and sukukholders could be based either on a sale transaction (Murabahah, Salam or Istisna), a lease transaction (Ijarah) or equity and agency relationships (Musharakah, Mudarabah and Wakalah). Sale and lease back transactions are naturally certain in their payment characteristics whereas the equity and agency structures are naturally uncertain. Many sukuk transactions have been executed combining two forms of contracts in order to craft sukuk which have fixed income characteristics similar to traditional bonds. The AAOIFI has defined 14 sukuk structures nevertheless whose infrastructure defined below are the most common sukuk types in the global markets.

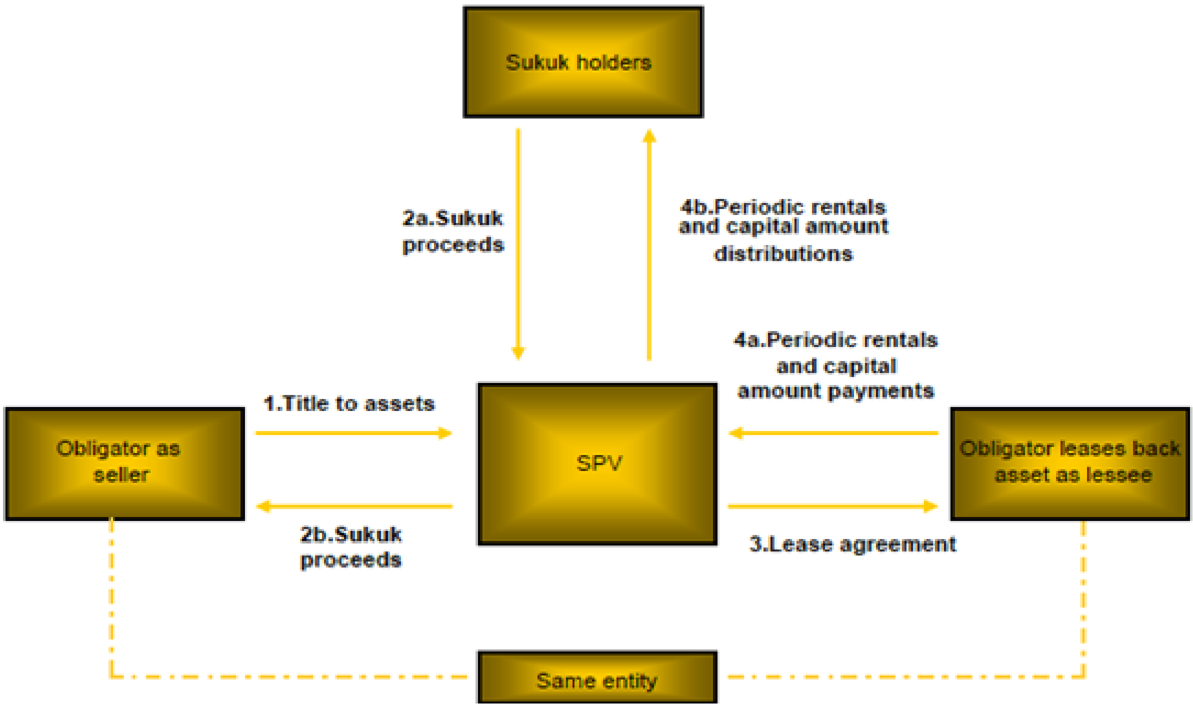
3.2. Types of Sukuk

3.2.1. Sukuk al-Ijarah

Ijarah (lease) is the contract in which one party purchases and leases the equipment to a client for the rental fee. The duration and fee for the rental are agreed in advance and the ownership stays with the lessor.

Sukuk al-Ijarah are securities where the underlying transaction involves a lease contract. Ijarah sukuk may comprise either fixed coupon or floating rate notes characteristics because of the underlying lease contract. Therefore Sukuk al-Ijarah trading price can be determined by the market forces and it also can be traded in the secondary markets.

Chart: Sukuk al-Ijarah Transaction Structure



Source: Dr.Humayon Dar, Sukuk, Dar Al Istithmar, 2006[22]

Nonetheless the lessee's ability and desirability to pay the rental instalments, potential deviations in the asset pricing, maintenance and insurance costs are the coupled risks to the Sukuk al-Ijarah. The expected net return on some forms of Sukuk al-Ijarah might not be determined ahead of time since the perfect determination of maintenance and insurance costs

[22] https://www.sukuk.com/wp-content/uploads/2014/03/Sukuk-Structures.pdf

in advance is not possible. Issuance process and marketability of Sukuk al-Ijarah offer a high degree of flexibility.

3.2.2. Sukuk al-Murabahah

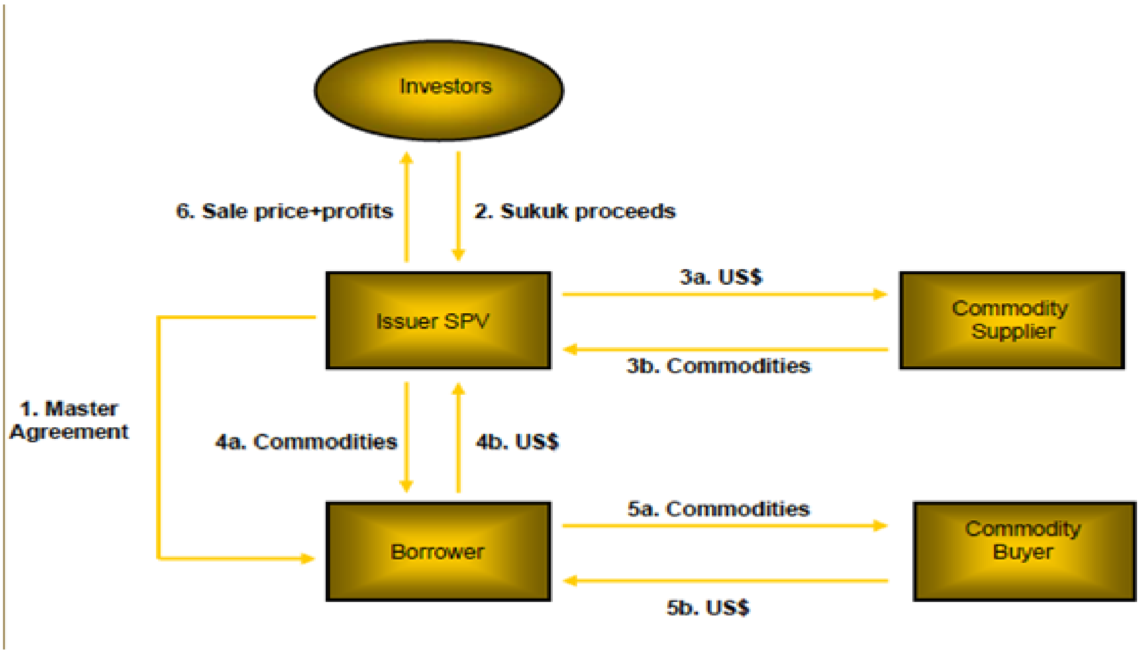
Murabahah is basically the sale of goods at a price comprising the purchase price plus a margin of profit agreed upon by both parties in the contract. Sukuk al-Murabahah are certificates of equal value issued to finance the purchase of goods through murabahah which enables the certificate holders become owners of the murabahah commodity or other goods at the end.[23]

The seller of the murabahah commodity or other goods is the issuer of the certificate while the buyers of the commodity are the subscribers. The realized funds are the purchasing cost of the commodity. The certificate holders are entitled to its final sale price upon the re-sale of the commodity and they are the owner of the murabahah commodity.

In many cases, the possibility of having Shariah acceptable murabahah-based Sukuk may be feasible in the primary market. It represents a receivable arising from a permissible sales transaction on a deferred basis which, consequently results in Riba. Thus, murabahah sukuk are generally not tradable in the secondary market in some jurisdictions as it would trigger the sale of debt.

[23]Suruhanjaya Sekuriti (Securities Commission Malaysia),Sukuk, Sweet&Maxwell Asia,2009

Chart: Sukuk al-Murabahah Transaction Structure



Source: Dr.Humayon Dar, Sukuk, Dar Al Istithmar, 2006[24]

3.2.3. Sukuk al-Musharakah

Musharakah is a form of partnership established by the mutual consent of the parties to the contract for sharing of profits and losses. All providers of capital are entitled to participate in management, but not necessarily required to do so. Pre-agreed ratios determine profit distribution among the partners, while the loss is distributed with respect to proportion of the capital contributions.

Sukuk al-Musharakah are certificates of equal value issued with the aim of using the mobilized funds for establishing a new project or developing an existing one or financing a business activity on the basis of one of partnership contracts.[25]

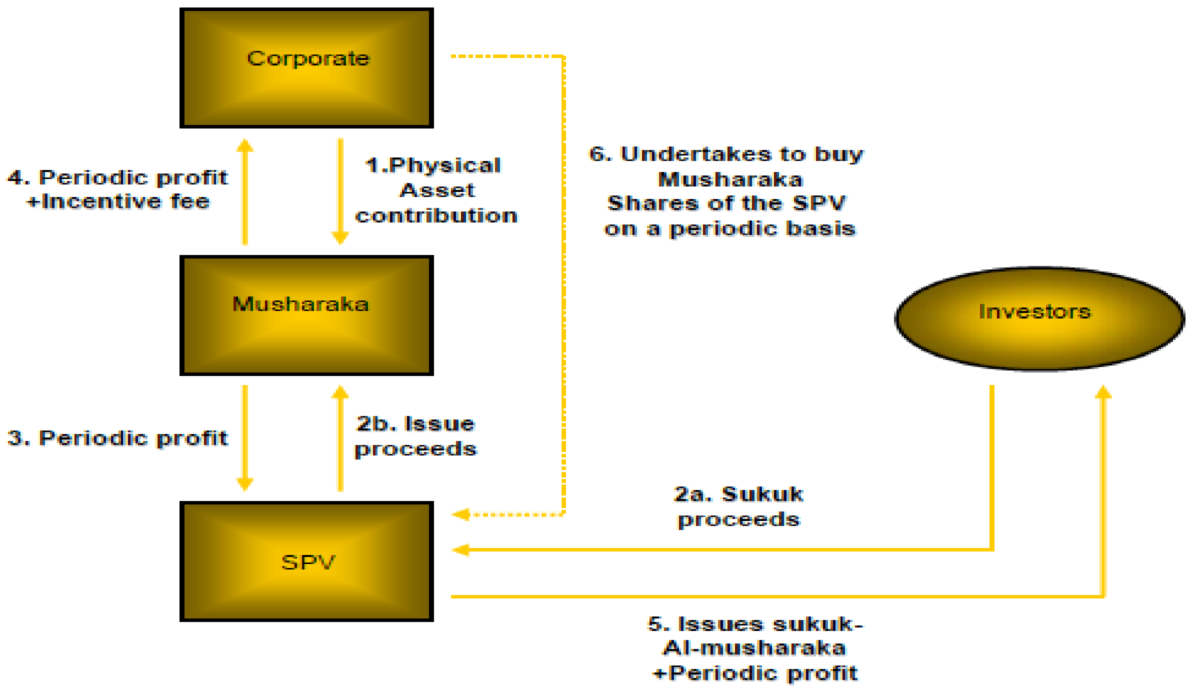
Shares of the certificate holders entitle them to become the owners of the project or the assets of the business activity proportionately. Popularity of issuance of sukuk al-Musharakah increases since participating in profit generating activities without existence of an underlying tangible asset becomes possible with it. These sukuk al- Musharakah can be treated as negotiable instruments and can be bought and sold in the secondary market.

---

[24] https://www.sukuk.com/wp-content/uploads/2014/03/Sukuk-Structures.pdf

[25] Suruhanjaya Sekuriti (Securities Commission Malaysia),Sukuk,Sweet&Maxwell Asia,2009

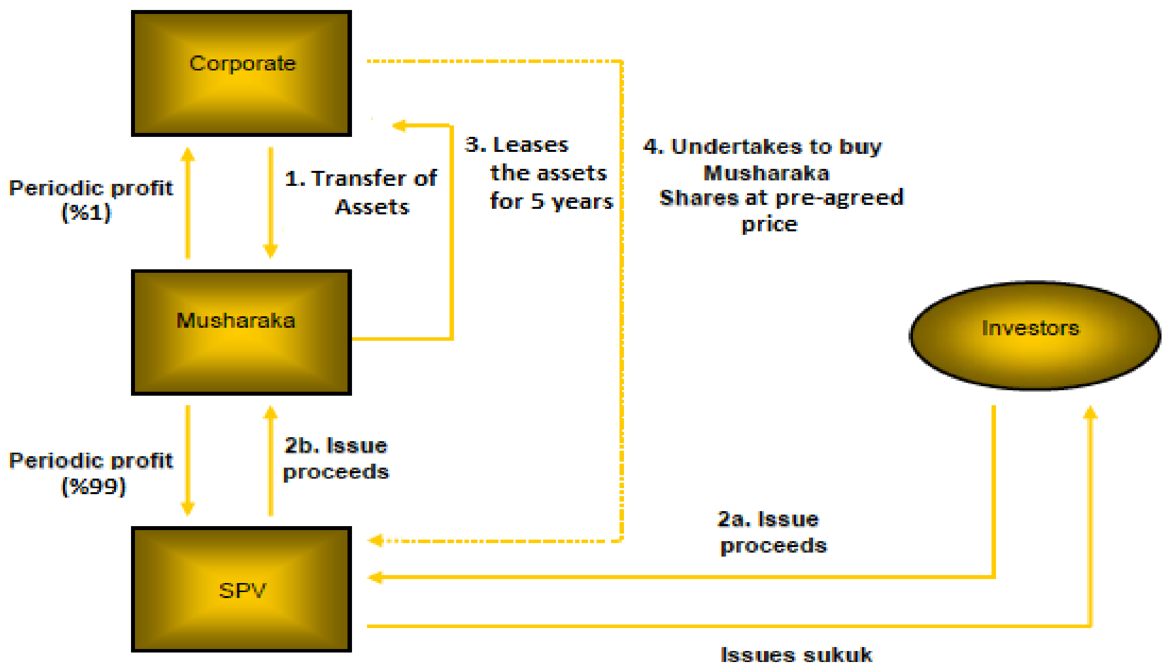
Chart: Sukuk al-Musharakah Transaction Structure



Source: Dr.Humayon Dar, Sukuk, Dar Al Istithmar, 2006, (https://www.sukuk.com/wp content/uploads/2014/03/Sukuk-Structures.pdf)

Despite of sukuk al-Musharakah issuances which are structured above, based on the 2008 AAOIFI ruling, sukuk al-Musharakah that has a purchase undertaking at par will be Shariah-compliant if it is structured as in chart below.

Chart: Sukuk al-Musharakah Transaction Structure Regarding AAOIFI



Source: ISRA, Suruhanjaya Sekuriti S.C.M., Khazanah Nasional, Islamic Capital Markets Principles & Practices

3.2.4. Sukuk al-Mudarabah

Mudarabah means an agreement between two parties which one of the two parties provides the capital (capital provider) for the other (Mudarib) to work with on the condition that the profit is to be shared between them according to a pre-agreed ratio.

Mudarib is the issuers of the Mudarabah certificate while the capital providers are the subscribers, and the realized funds are the Mudarabah capital. The certificate holders own the assets of Mudarabah and they agreed upon share of the profits and losses, if any, are borne by capital providers only.

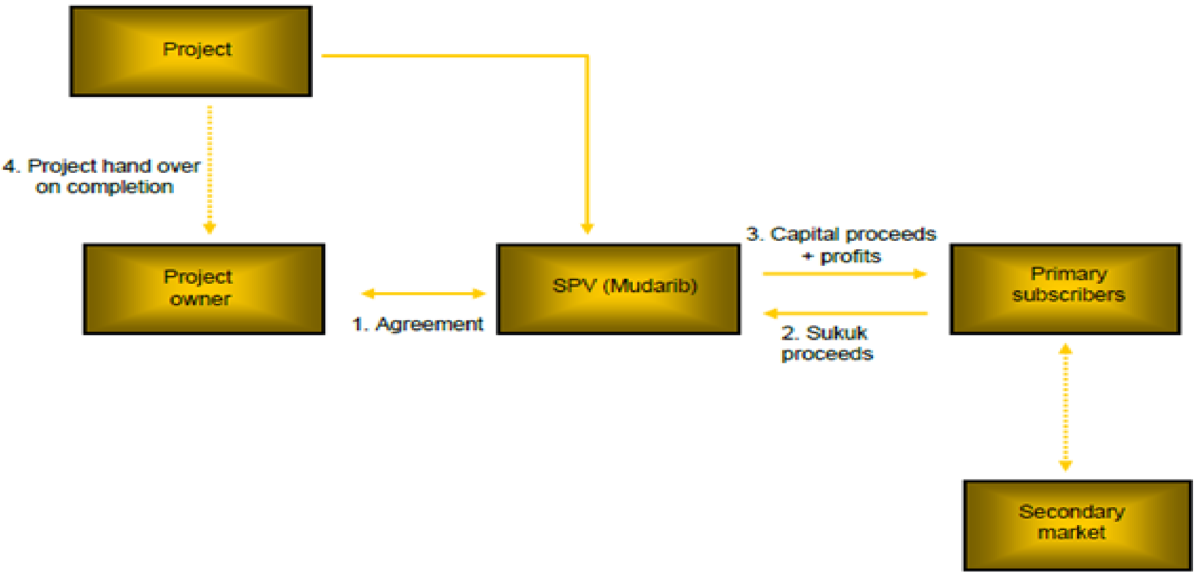
The owner has the right to receive his capital at the time the sukuk is surrendered, and the annual proportion of the realized profits as agreed. These instruments play a crucial role for the development financing since it is related to the profitability of the projects.

No interest yield is associated with the Sukuk al-Mudarabah and the owners are not entitled to claim pre-determined annual interest. This instrument resemble to shares with regard to variable returns, associated with the profits gained by the project.

Sukuk al-Mudarabah must represent a common ownership and entitle their holder to shares in a specific project for which the Sukuk have been issued to fund. The sukuk holder is authorized with all rights, which have been determined by Shariah, upon his ownership of the Mudarabah bond in matters of sale, gift, mortgage, succession and the like.

The instrument holder is entitled to transfer the ownership by sale or trade in the securities market at his own decision on the expiry of the specified time period of the subscription.

Chart: Sukuk al- Mudarabah Transaction Structure



Source: Dr.Humayon Dar, Sukuk, Dar Al Istithmar, 2006[26]

3.2.5. Sukuk al-Istisna

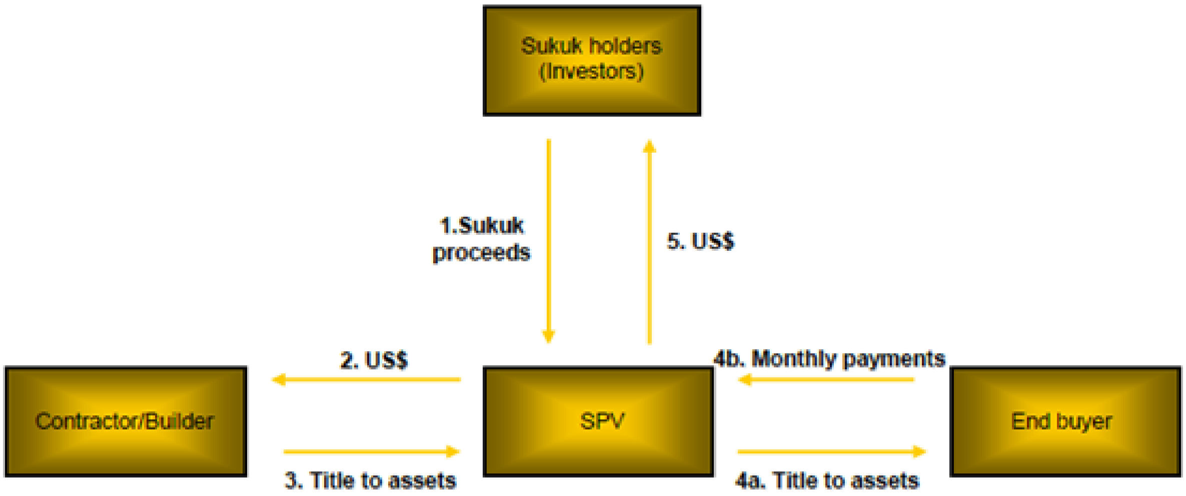
The goods and commodities are manufactured under the Istisna contracts, which allow cash payment in advance-future delivery or future payment-future delivery. A well described good or building is agreed to be manufactured or built by the manufacturer or by the builder for a defined price on a given date in the future. Price can be paid in instalments, step by step as agreed between the parties. Financement of the manufacture or the construction of the houses, plants, projects, and building of bridges, roads and highways can be provided by the Istisna. Sukuk al-Istisna are certificates that carry equal value and are issued with the aim of mobilizing the funds required for producing products that are owned by the certificate holders.[27]

The manufacturer (supplier/seller) is the issuer of the certificates, the participants of the intended product are the buyers, and the funds collected from participation refer to the product cost. The certificate holder who owns the product is entitled to the sale price of the certificates or the sale price of the product on the basis of a parallel Istisna, if exists. The large infrastructure projects provide a good example for which the Sukuk al-Istisna would be used as means of financing.

[26] https://www.sukuk.com/wp-content/uploads/2014/03/Sukuk-Structures.pdf
[27] Suruhanjaya Sekuriti (Securities Commission Malaysia), Sukuk, Sweet&Maxwell Asia, 2009

Shariah prohibition of riba precludes the sale of these debt certificates to a third party at any price other than their face value and they may be cashed only on maturity which obstruct its secondary market in some jurisdictions.

Chart: Sukuk al- Istisna Transaction Structure



Source: Dr.Humayon Dar, Sukuk, Dar Al Istithmar, 2006[28]

3.3. Contribution to the Real Estate Sector

Unlike conventional bond offerings, sukuk offerings allow issuers to tap into both the growing Islamic investor community as well as the Western institutional investor community. In general, a larger and deeper investor base reduce market volatility and improves the opportunity for favorable pricing.

The strength of sukuk lies in its distinct structure. Sukuk can be structured in various forms - asset-based and/or asset-backed instruments, bringing unique value propositions to both investors and issuers. For investors, sukuk offers added portfolio diversification benefits and investment opportunities in the form of new asset classes, while issuers can benefit from increased liquidity by tapping into the growing demand among an increasing number of high net-worth individuals for Shariah-compliant investment products.

3.4. Tradability, Trading Venues of Sukuk

When structuring a sukuk, it is important to understand the nature of the asset underlying the structure. Trading in debt above or below par would breach riba principles (interest) and be

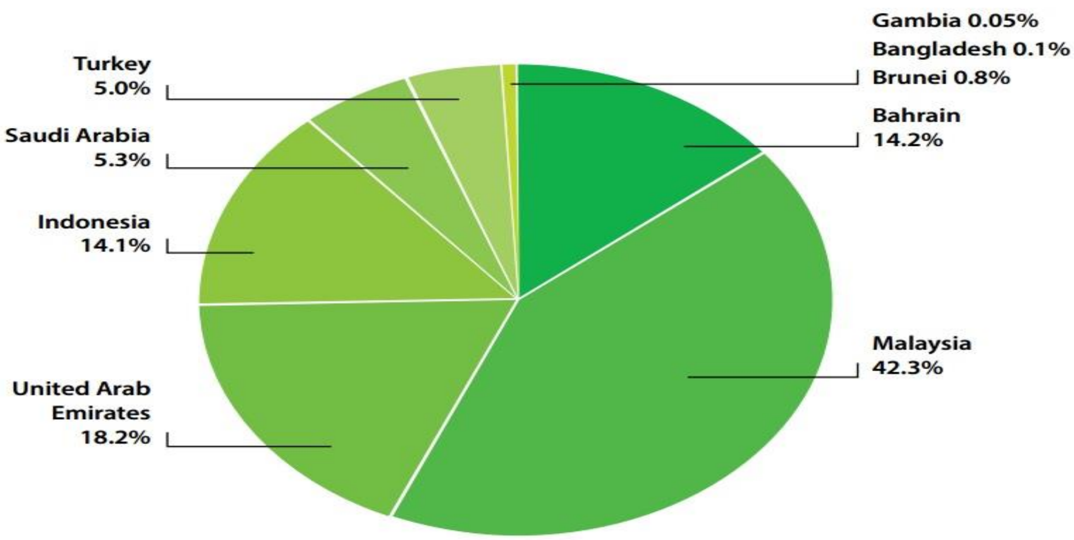
[28] https://www.sukuk.com/wp-content/uploads/2014/03/Sukuk-Structures.pdf)

impermissible in certain jurisdictions. As such, where the assets underlying the sukuk are receivables, either the instruments could only be traded at par, or their transfer must be prohibited in many jurisdictions. These limitations are generally problematic in capital markets transactions, where the ability to trade freely is critical for the creation of liquidity. Many capital markets instruments are held through central clearing systems which require the instruments to be negotiable and tradable. The resolution of the apparent riba issue lies in the sukuk structures such as ijarah sukuk, musharakah and mudharabah. These structures mean that these sukuk can be traded above or below par as the price will simply reflect that of the underlying asset or contracts. This also means, the sukuk can be held in central clearing systems if required by investors.

3.5. Sukuk, Globally

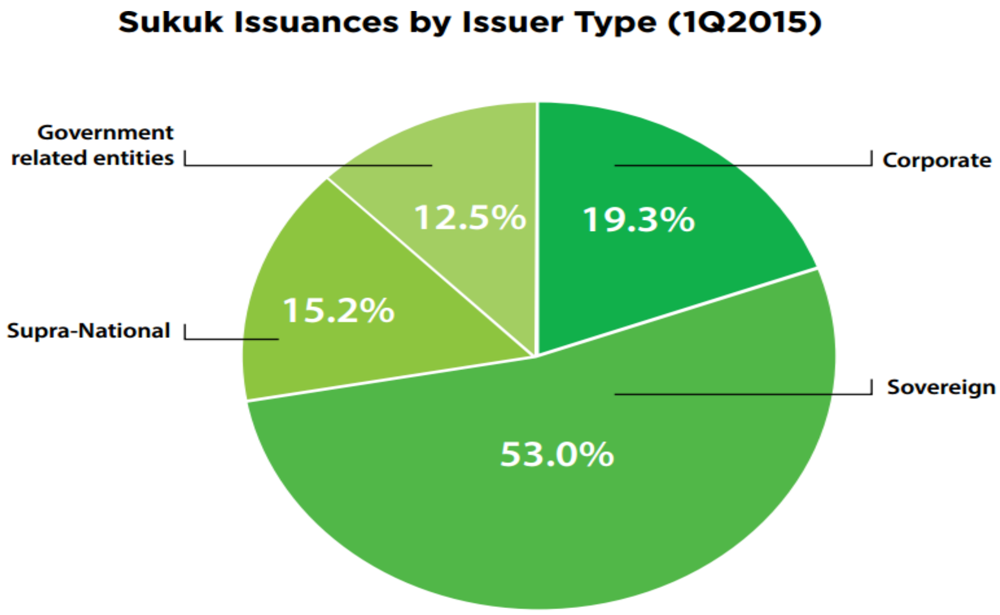
Malaysia, the United Arab Emirates, UAE and Indonesia leaded the global sukuk issues in 2015, which provided continuity to the historical trends. Malaysia, the UAE and Indonesia shared the global issuances with percentages of 42.3%, 18.2% and 14.1% respectively. Bahrain issued USD2.6 billion of sukuk for the 2015, achieving an increase of USD0.1bln with respect to full-year 2014 value with the support of several large, long-term sukuk issued by Central Bank of Bahrain (CBB). Central Bank of Bangladesh has started issuing short-term liquidity management as a new player in the Islamic sukuk market.

Sukuk Issuances by Country (1Q2015)



Source: ISRA, IFIS, Zawya, Bloomberg

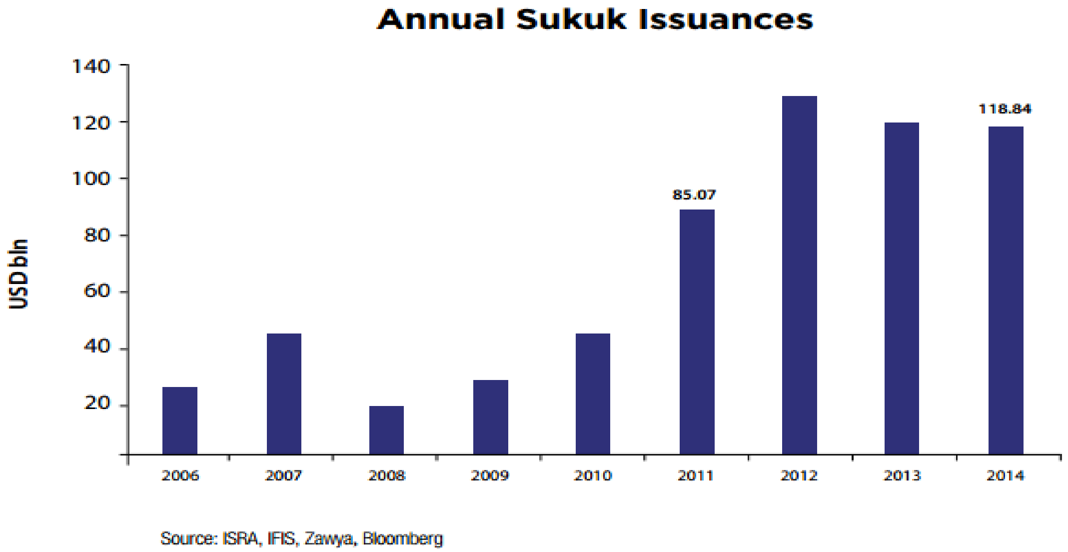
When the distribution of Sukuk Issuances with respect to the Issuer type is analyzed it is seen that the sovereign issuers occupied more than half of the global shares while they are followed by supra-national bodies such as the Islamic Development Bank (IDB) and the Islamic Liquidity Management Corporation (IILM). Also there are corporate issuers from financial sector of Turkey and Malaysia.



Source: ISRA database, IFIS, Zawya, Bloomberg

Standing out as a growing financial instrument, Sukuk is disseminated to different markets since landmark issuances recorded from UK, Hong Kong, Senegal, South Africa and Luxembourg. The yearly issuances tripled from USD 45 billion in 2011 to USD 118.8 billion in 2014. Malaysia, Saudi Arabia and the United Arab Emirates were the origins of the expansion while Turkey, Iran and Indonesia supported the growth as emerging countries.

The factors such as wider issuer base, more cross-border activity and more innovative issuances paved the way for the expansion of Sukuk market.



The first sovereign country without Muslim majority to issue sukuk – a £200 million ($300 million) five-year deal- was UK. This was followed by the first dollar issuance by a triple-A-rated government (Hong Kong) and the first international sukuk in sub-Saharan Africa, by the Republic of South Africa. First euro-denominated sovereign sukuk issuance came from the Grand Duchy of Luxembourg. In addition to these, Goldman Sachs, a western financial institution, issued a $500 million five-year deal. The first-ever sukuk was issued by the Japanese commercial bank, Bank of Tokyo-Mitsubishi UFJ.

The sukuk market acquired wide acceptance with the issuers' appearance in the cross-border investors' base across global markets. The sukuk sector reached over USD 300 million volume in 4Q2014 claiming to be one of the prominent trends in the Islamic finance industry.

Lack of active and liquid secondary sukuk markets, which limits investors' ability to trade these instruments, exists to be an obstacle for the instrument to be a mainstream fundraising component of the global capital markets. This also prevents the generation of benchmarks to measure the correct levels of yields on outstanding instruments. Different Shariah opinions on sukuk trade and limited sukuk instrument supplies cause the investors to keep the instruments until maturity. Also, lack of understanding of the instrument leads to a limited number of investors' base. Sukuk papers are benchmarked against the conventional instruments resulting with increased premium between 5 bps and 50 bps that is higher than the conventional instrument premium. A fully functional secondary market is present in Malaysia, the only domicile with a volume higher than USD 100 billion. Sukuk market stakeholders have begun exhibiting efforts to address this limitation since the integrated sukuk structures would pave the way for the liquid and active domestic and cross-border secondary sukuk markets. A number of multilaterals and regulatory bodies have issued legislations to define sukuk structures in cross-border markets. These provide guidelines for structuring instruments that are tradable while meeting Shariah requirements.

3.5.1. COMCEC Member States with Sukuk

3.5.1.1. Iran[29]

Different kinds of sukuk has been ratified by the Shariah Board of the Securities and Exchange Organization (SEO) of Iran in which Ijarah, Musharaka, Murabaha, and Salam Sukuk are issued in capital market. Meanwhile, Ijarah, Musharaka, Ististan, and manfaat or usufruct sukuk can be applied mainly in housing finance. However, only Musharaka and Ijarah Sukuk have been used in the housing sector. Moreover, the Central Bank of Iran has issued different Musharaka Sukuk in order to finance the sector. Since 2010, around 189 million USD Ijarah Sukuk and 156 million USD Musharaka Sukuk are issued in capital market to finance the sector.

3.5.1.2. Malaysia[30]

Role of Sukuk in Developing Real Estate Sector

Real estate has been increasingly important asset class as it provides attractive returns to the investors due to its continuous growth and demand. It has been a primary focus of the Islamic finance industry since the 1990s through Islamic property investments in residential housing sector followed by commercial real estate and commercial property investment. The popularity of sukuk since 2003 onwards has made sukuk as one of the preferred mediums to raise fund for real estate sector and its related activities has brought a significant change as can be seen through the increased opportunities in projects development from time to time.

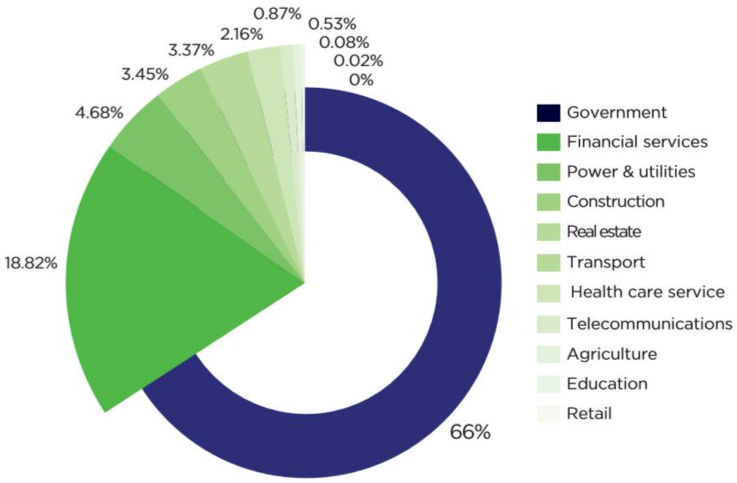
Due to its broad definition and application, sukuk has progressively become the preferred choice for fundraising by public entities and corporations in Malaysia and has also been issued by global institutions seeking a wider market for their funding needs. This is due to the fact that sukuk naturally appeals to a broader investor base due to the additional ethical considerations, societal benefits and Islamic principles it incorporates.

[29] This title's content is kindly drafted by the Securities & Exchanges Organisation Iran.
[30] This title's content is kindly drafted by the Securities Commission Malaysia.

Growth and development of Sukuk[31]

In terms of sukuk issuances, Malaysia is still dominating the market in which the proceeds are used to fuel economic activity across several sectors. Diagram below shows the percentage of sukuk issuances by sector in Malaysia as at 2014.

Malaysia: Sukuk Issuances by Sector (January-November 2014)



Source: IFIS, Zawya, Bloomberg, KFHR

Based on the above pie chart, Government was the main sector to issue sukuk in 2014 followed by financial services, power & utilities, construction and real estate. Real estate contributed 3.37% of the total sukuk issuance in Malaysia in 2014.

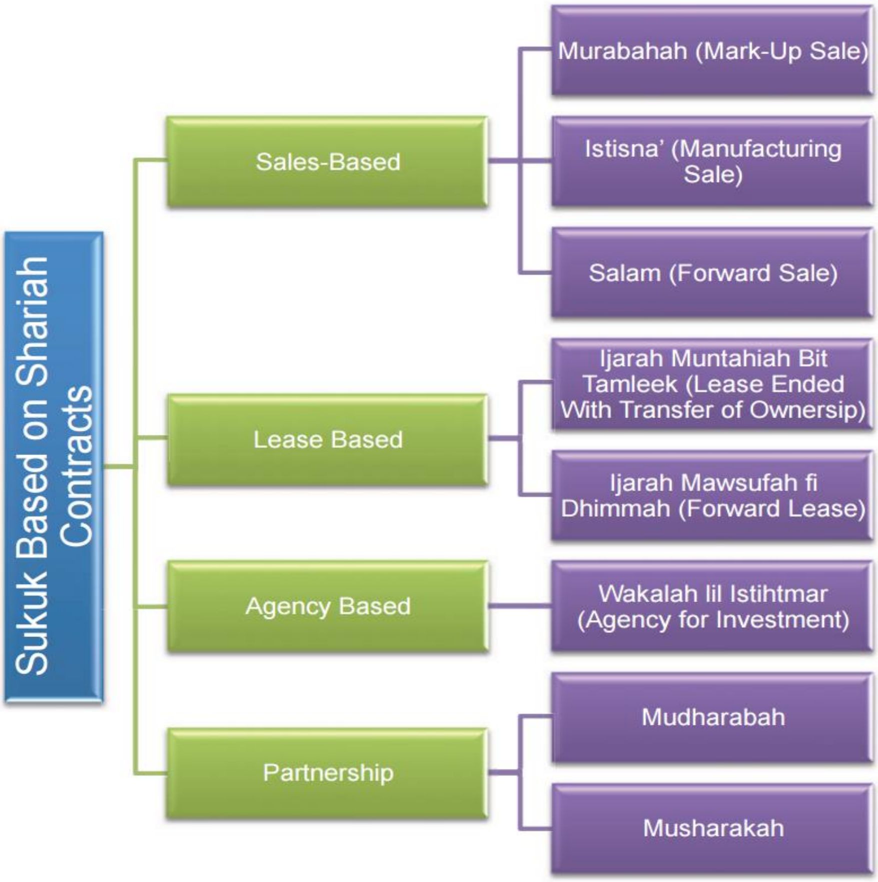
Among the notable developments of sukuk that has taken place in Malaysia was the three perpetual sukuk towards the end of 2014 in the real estate and transportation sectors.[32] This development reflects confidence in the sukuk market as a long-term source of funds for key economic projects especially in real estate sector despite of economic downturn that Malaysia and other Asian countries are currently facing.

Sukuk Structures in Malaysia

Sukuk acts as one of the ways to finance a real estate project along with other instruments that are available in the market. Structurally, sukuk can be broken into two types of transactions

[31] www.mifc.com
[32] www.mifc.com

which are asset-based or asset-backed. Asset-based in general can be classified as a sukuk transaction with no asset being securitised for the protection of investors whereas asset-backed offers the opposite. In Malaysia, the issuance of sukuk is supported by various structures or transactions which are permissible under Shariah. It could be based either on a sale transaction (Murabahah, Salam or Istina'), a lease transaction (Ijarah) or equity and agency transactions (Musharakah, Mudharabah and Wakalah). Diagram below shows the sukuk structures that are available in the Malaysian market:



Source: http://www.bankislam.com.my/ Sukuk_ShariahGuidelines.pdf

Application of Sukuk in Real Estate Development and Acquisition

Based on the available sukuk structures, sukuk Ijarah is the most commonly used and popular one due to its feasibility, flexibility and straightforwardness as compared to other sukuk structures. It can either be used to finance the acquisition or to develop a new asset, or to monetize an existing asset (e.g. sale and leaseback or asset-back securitisation) or to forward lease the asset.

Sukuk Istisna' on the other hand, is commonly used for project financing e.g. to develop real estate like hospital, houses, office building, etc. Sukuk Istisna' is a purchase order contract where a buyer requires a seller or a contractor to deliver or construct the asset to be completed in the future according to the specifications given in the sale and purchase contract. The payment term can be as agreed by both parties in the contract.

In the real estate projects, essentially there are two stages involved i.e at development and completion of the project. Sukuk may be adapted in any or both stages depending on the exercise of each stage. The following chart illustrates the stages in real estate development where sukuk can be applied.

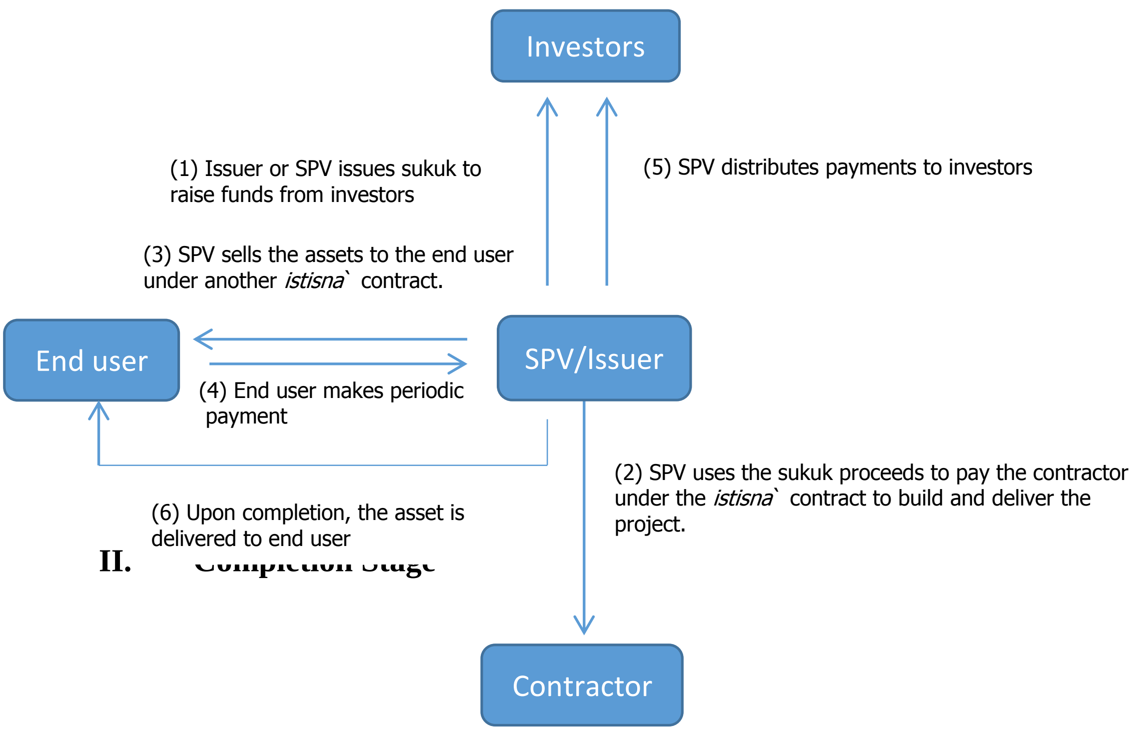
In real estate sector, sukuk can be used under the following purposes:

I. Development Stage i.e to develop new real estate project

In developing new real estate project, sukuk can be applied as one of the options for project fund raising. The owner of the project may opt to issue sukuk to the investors under available sukuk structures depending on the needs of the project owner and investors. Sukuk Istisna' is among the example of that can be used to finance new real estate project to be completed in the future.

Istisna' is a purchase order contract whereby the issuer will place an order to purchase an asset (based on specifications) that will be delivered in the future. Both parties of the contract will decide on the sale and purchase prices as they wish and the settlement can be delayed or arranged based on the schedule of the work completed. The diagram below illustrates the basic transaction structure of sukuk Istisna'

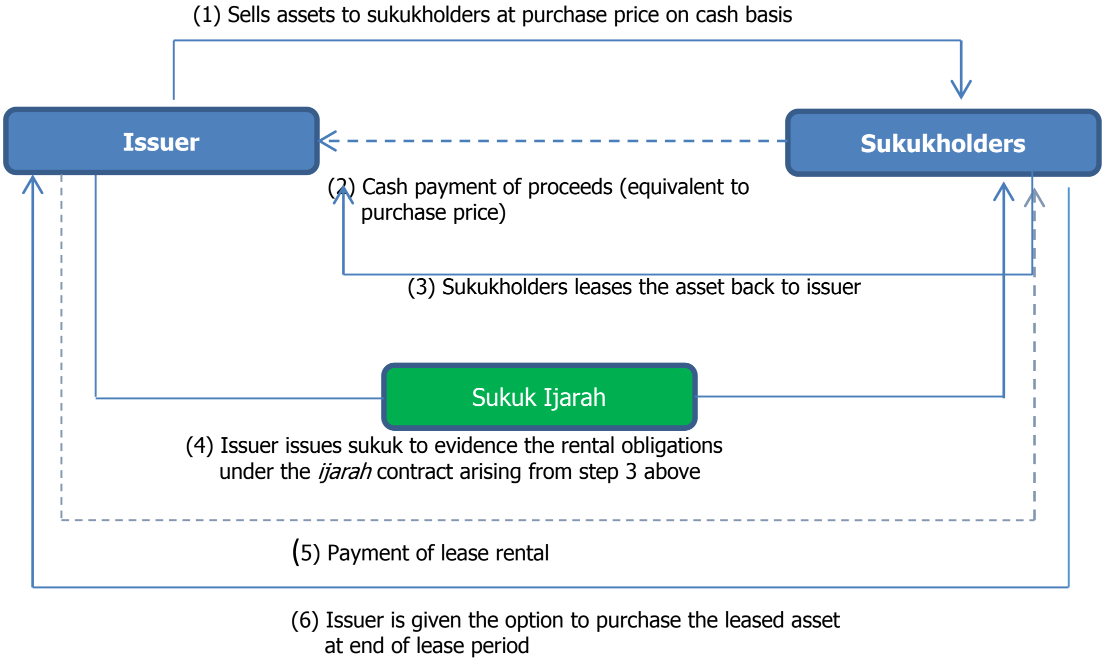
Basic transaction structure of sukuk Istisna'



II. Completion Stage

For a completed real estate asset, sukuk may be used through sale and leaseback mechanism via Sukuk Ijarah. Sukuk Ijarah refers to certificates of equal value evidencing the certificate holders' undivided proportionate ownership of the leased asset and/or usufruct and/or services and rights to the rental receivables from the said leased asset and/or usufruct and/or services. The diagram below illustrates the basic transaction structure of sukuk Ijarah.

Basic transaction structure of sukuk ijarah



In a sukuk Ijarah transaction, the issuer who is in need of financing will first sell its asset to the sukukholders for the financing amount. The sukukholder disburses payment to the issuer. The same asset is then leased back to the issuer for a lease rental. The periodic lease rental will constitute the periodic distribution to the sukukholder. The issuer will then issue the sukuk Ijarah to the sukukholder who is also the lessor. At end of lease period, issuer has an option to purchase the leased asset.

Securitisation of the Real Estate Asset

"Securitisation transaction" in the Asset-Backed Securitisation Guidelines (introduced by the SC Malaysia in 2001 and later revised in 2004) is defined as "*an arrangement which involves the transfer of assets or risks to a third party where such transfer is funded by the issuance of debt securities or sukuk to investors. Payments to investors are principally derived, directly or indirectly, from the cash flows of the assets*".

If the underlying real estate asset is income generating, it may be securitized (i.e. sold to an SPV to obtain liquidity). When the income generating asset is sold to the SPV, the Sukuk holders effectively become the new owners of the asset. The underlying income generated could be used to pay the expected return from the investment.

In order to qualify as an ABS, the sale of the real estate asset (from the originator to the SPV) must be a true sale. The SPV is a must in a securitisation model to achieve the bankruptcy remoteness of the deal.

In Malaysia, one example of the securitisation of real estate assets is executed by Cagamas, the state housing securitisation company that plays a pivotal role in the development of ABS market – both conventional and Islamic ABS. The first issuance of ABS by Cagamas involved the securitisation of government servant housing loan in 2005. The said issuance represented a landmark for the Malaysian ABS market as it was the first residential mortgage-backed securities (MBS) transaction backed by the Government assets. Subsequently, two Islamic ABS were issued in 2005 and 2007 under the principle of Musharakah involving investment in a specifically identified pool of mortgage asset by the originator.

Conclusion

Sukuk has helped real estate to progress positively as it provides solutions or way out to all of the stages. Sukuk has been exercised through many structures using various Shariah principles such as Ijarah, Wakalah, Istisna', Murabaha, Musharakah and Mudharabah. Through these various structures, more options are available for the real estate developer to develop the project according to their needs.

The wide range of sukuk structures and its applicability into various sectors especially in real estate offers a great deal of options to investors and issuers that would result in further development. In Malaysia, with the successful implementation of a well-structured regulatory framework provided by the regulators along with other benefits like tax-exemptions, there is no doubt that sukuk is the most preferred instruments to raise funds for real estate sector be it in project development, acquisition, lease and buy back, asset-backed securitisation, and many others.

To-date, sukuk Ijarah has been the most preferred choice of structure for the issuer due to its simplicity and straightforwardness. However, it is believed that the leading countries in Islamic finance are also working on to utilize other structures in order to embrace more innovations and financing options for example hybrid sukuk that could cater to complex projects and acquisitions. By having more options under sukuk to be used as one of financing instruments, it will lead to further growth for any sectors. Investors who are keen to invest will also gain benefits from these sukuk issuances.

3.6.1.3. Turkey

In 2010 sukuk has gained legal base by the regulation of first communique where also Asset Lease Company (ALC) introduced as an SPV. Subsequently in 2011 tax inequalities compared to conventional products solved. With the new Capital Market Law put into effect in 2012, lease certificates and ALC's are regulated, and new CMB Sukuk Communique No: III-61.1 is introduced[33].

In the Lease Certificates (Sukuk) Communique, lease certificates are defined as a security which is issued by an asset lease company for the purpose of financing all kinds of assets and rights, and which enables its holders to get a proportionate share from the revenues derived out of such assets and rights. ALC's principles of foundation, kinds and characteristics of assets and rights of which they may acquire, activities, management, documentation and recording systems, and liquidation thereof are also regulated in the Communique.

The five contract types that Sukuk shall be issued based on are listed in the Communique as ownership, management agreement, trading, partnership and EPC (engineering, procurement and construction) contracts. Nonetheless, these contracts are not restrictive and depending on CMB approval, issuance of Sukuk's underlied by different contracts is granted.

General Principles

Until redemption of lease certificates, the assets and rights included in the portfolio of an ALC cannot be disposed of for any purpose other than collateralization, even in the case of transfer of management or supervision of ALC to public authorities, and cannot be pledged, or shown as a collateral, or attached for any purpose including the collection of public receivables, or included in bankrupt's estate, or be subject to an interlocutory injunction.

Holders of lease certificates are proportionately entitled to have the revenues obtained from base assets and rights for the issuance of the certificates. If required so in the issuance process, at the end of maturity the assets and rights are sold by ALC to originator or to third parties and the proceeds of sale are distributed to lease certificate holders in proportion to their shares therein.

[33] http://www.cmb.gov.tr/apps/teblig/displayteblig.aspx?id=473&ct=f&action=displayfile

Lease certificates are redeemed within the frame of the principles set forth in the prospectus or in the case of sales without public offering, in the agreement relating thereto.

Ownership-Based Lease Certificates (Ijarah)

Ownership-based lease certificates are lease certificates issued to finance the assets and rights to be acquired by ALC from originator in order to be leased to originator or third parties or to be managed in the name of ALC.

Management Agreement-Based Lease Certificates (Ijarah/Wakalah)

Regarding the Communique, management agreement-based lease certificates are lease certificates issued for the purpose of transfer of revenues obtained as a result of management of assets or rights owned by the originator in favor of ALC, also including the lease of them until the end of maturity, to ALC within the frame of provisions of the management agreement.

Trading-Based Lease Certificates (Murabahah)

Trading-based lease certificates are lease certificates issued to finance the purchase of certain assets or rights by ALC in order to be soldon deferred payment basis to companies.

ALC is under obligation to purchase the base assets or rights from the spot market and to resell them on deferred payment basis at a price above their cost immediately. Additionally, the assets or rights on the basis of which lease certificates are issued are required to be traded in Borsa Istanbul Anonim Şirketi (Istanbul Exchange) or in other liquid markets.

Partnership-Based Lease Certificates (Mudharabah/Musharakah)

Partnership-based lease certificates are lease certificates issued by ALC for the purpose of partnership in a joint venture. Two types of joint ventures are permitted with the Communique; either the capital is provided exclusively and solely by ALC or, cash capital is put by ALC, and capital other than personal labor or goodwill is put by other partners.

90% of fair value of assets and rights is determined as an amount of issue limit additionally to the requirement of establishing a pledge in favor of ALC on properties of the joint venture for the interests of lease certificate holders by the issue amount are set as measures of protection of cerifiate holders in case of a default.

EPC (Engineering, Procurement and Construction) Contract -Based Lease Certificates (Istisna)

EPC contract-based lease certificates are lease certificates issued for the purpose of creation of works pursuant to an EPC contract to which ALC is a party as work owner. ALC enters as the owner into the EPC contract in its own name and in the account of lease certificate holders. As part of EPC contract-based lease certificates issues, in addition to EPC contract, other agreements fit for the intended purposes, such as service contract, contracts of construction in return for flats or lands, or partnership agreement may also be signed.

ALC may make the resulting works the subject matter of a sale contract either by leasing first or directly without leasing. As of the end of maturity of lease certificates, the sale price should be fully collected by ALC, and the proceeds of sale should be paid to lease certificate holders.

The amount of issue of EPC contract-based lease certificates cannot exceed 90% of fair value and where the price of work is paid in advance by ALC, the contractor is required to establish a pledge on movables or real properties or give similar other guarantees in favor of ALC in order to ensure precise and timely completion of the work.

Issue of Lease Certificates

Lease certificates may be issued by sales through or without public offering. Sales without public offering may be in the form of private placement or sales to qualified investors and lease certificates to be offered to public must be listed and traded in the exchange, and an application must be filed to the exchange for this purpose.

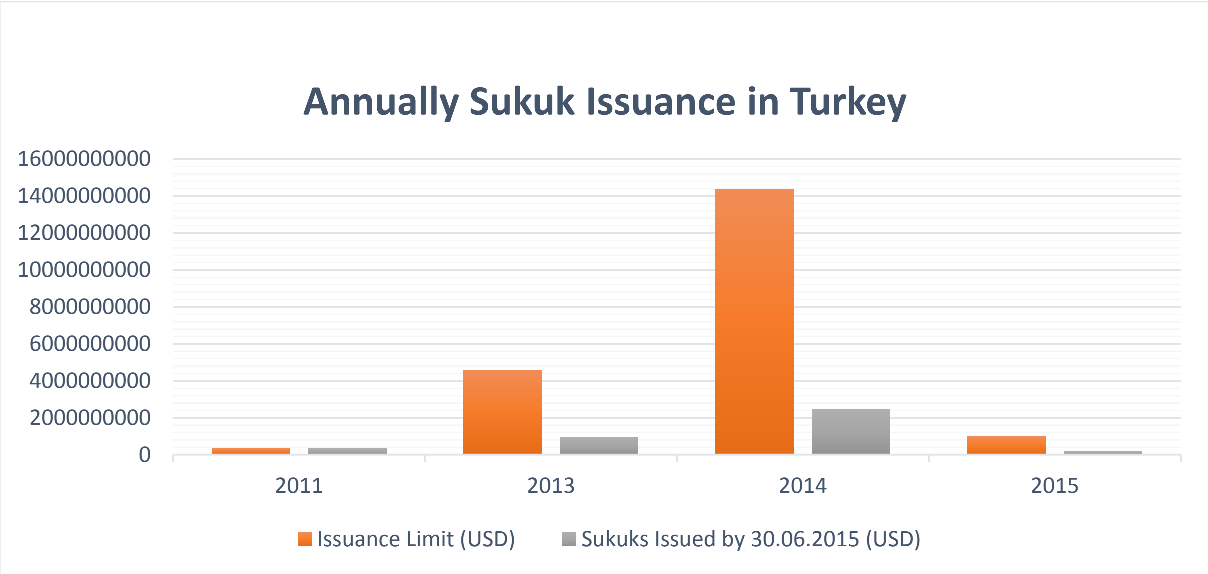
Sukuk Market in Turkey

Private sukuk issuance trend as in numbers is shown in the table below for Turkey from 2011 to 2015. Issuance limit references the limit given to the corporates and authorize sukuk issuance within one year by Capital Markets Board. In 2011 relatively small amount of issuance limit was taken and whole sold cross-border. Subsequently, 2012 was a dead year in terms of sukuk issuances.

Private Sukuk Issuances		
Period	**Issuance Limit (USD)**	**Sukuk Issued by 30.06.2015 (USD)**
2011	**350.000.000**	**350.000.000**
2013	**4.575.040.226**	**961.007.510**
2014	**14.382.742.211**	**2.469.435.274**
2Q2015	**1.004.606.290**	**205.397.427**
Total	**20.312.388.728**	**3.985.840.211**

Private Sukuk Issuances						
	PUBLIC OFFERING		**QUALIFIED INVESTORS - PRIVATE PLACEMENT**		**CROSS-BORDER**	
	Issuance Limit (USD)	**Sold (USD)**	**Issuance Limit (USD)**	**Sold (USD)**	**Issuance Limit (USD)**	**Sold (USD)**
2011	-	-	-	-	350.000.000	350.000.000
2013	111.532.456	92.943.713	3.950.107.815	362.480.482	513.399.955	505.583.315
2014	929.437.133	81.418.693	9.307.011.674	654.304.037	4.146.293.405	1.733.712.544
2Q2015	371.774.853	59.483.977	90.341.289	90.341.289	542.490.148	55.572.161
Total	**1.412.744.442**	**233.846.383**	**13.347.460.778**	**1.107.125.809**	**5.552.183.508**	**2.644.868.020**

As seen in the chart below, there is a noteworthy increase in 2014. However in 2015 both the issuance limit and issued amount decreased mostly depending on the effect of the general elections in Turkey besides, the USD/TL exchange rate factor.



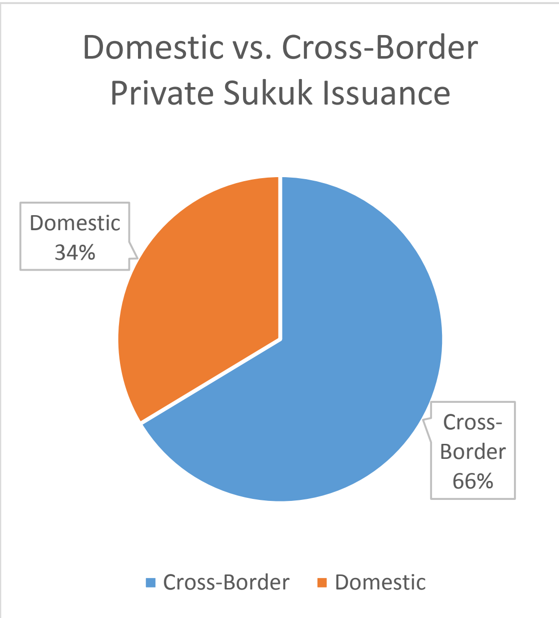
Sovereign and private sukuk issuance amounts and maturities are given below from 2011 to second quarter of 2015. Similar to the most economies, sovereign sukuk issues exceed the corporate ones and have longer maturity. Furthermore, sovereign sukuk secondary market transactions dominate the market whereas corporate sukuk have few transactions.

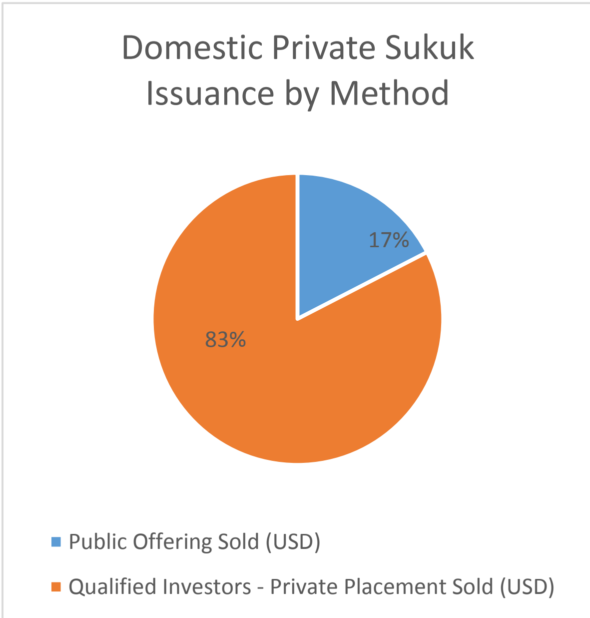
Private Sukuk Issues (2011-2Q2015)	Issue Amount (Mil. USD)	Average Maturity (year)
Cross border	2.645	4,71
Domestic	1.340	2,07
Total	3.985	

Sovereign Sukuk Issues (2011-2Q2015)	Issue Amount (Mil. USD)	Average Maturity (year)
Cross border	3.750	6,83
Domestic	4.848	2,17
Total	8.598	

Additionally, cross border issues excess domestic ones in private sukuk issues while vice versa is seen in sovereign sukuk issues. The ratio of domestic private sukuk issues is 34% of all.

Private Sukuk Issuance





As issuance method, private placement and sale to qualified investors is favoured excessively than public offering given the pie chart above.

4. SUKUK PARTICIPATION FUNDS

Sukuk Participation funds are the funds that mainly aim to invest on lease certificates and avoid from both getting interest bearing instruments and to being charged interest costs. Sukuk participation fund is a new instrument in capital markets throughout the world, and has great potential, especially in Islamic countries like Turkey, Malaysia, Saudi Arabia, Iran etc.

Main characteristic of sukuk participation fund is that it should be compatible with Sharaih rules. In Islamic markets, “Shariah funds”, funds that invest into Shariah compliant investments are an older and more widespread product. Actually, sukuk participation fund can be considered as a sub-category of “Shariah funds” and that’s why investors of shariah funds also can be considered as potential investors for sukuk participation funds.

Sukuk participation funds can be an important intermediary for transfering interest averse investors’ capital to real estate sector. Real estates are one of the assets that can be picked as base asset for the sukuk, and one of the mostly selected assets. Thus, investors who invested on sukuk participation funds that invest on sukuk based on real estate will be invested to real estates indirectly. Thanks to its low risk bearing structure, sukuk participation funds are generally sold to public, do not be traded on stock exchange.

As of October 2014, there are 36 sukuk funds in Malaysia and total worth of net assets under management in sukuk funds is 1.9 billion USD. As of August 2015, there are 8 sukuk funds in Saudi Arabia and total worth of net asset value of these funds is about 1 billion USD[34].

4.1. Sukuk Participation Funds, Globally

4.1.1 COMCEC Member States with Sukuk Participation Funds

4.1.1.2. Turkey

Sukuk Participation Fund is an important investment tool for the investors who tend to avoid interest earnings. In Turkey, pariticipation umbrella funds are regulated by the Communique on Principles of Investments Funds, numbered III-52.1[35], but there is not a specific definition for the sukuk participation funds.

In the Communique on Principles of Investments Funds, numbered III-52.1, participation umbrella funds are described as the umbrella funds composed of funds of which at least 80% of the fund net asset value is permanently invested in the portfolio of which is wholly and

[34] http://www.trustnetmiddleeast.com
[35] http://www.cmb.gov.tr/apps/teblig/displayteblig.aspx?id=498&ct=f&action=displayfile

permanently invested in lease certificates, participation accounts, corporate shares, gold and other precious metals and other non-interest-based money and capital market instruments deemed appropriate by the Board. In addition, according to the Guideline for Investment Funds, if at least 80% of the fund net asset value of a fund is permanently invested on a specific asset group, sector, or geographical region, that must be reflected to the fund name.

In this legal context, there are currently 7 sukuk participation funds that at least %80 of the fund net asset value of fund is invested on lease certificates. Total net asset value of these funds is 13.686.486[36] USD, and total number of investors of these funds is 1601, as of August 18, 2015.

Sukuk participation funds represents an important investment instrument since with its collective management and interest free quality (80 % sukuk) it may attract interest averse investors and may contribute to expansion and deepening of capital markets.

5. REAL ESTATE CERTIFICATES (RES)

Real estate certificates are securities issued for use in financing of real estate projects to be built or being built and that have a nominal value representing certain particular individual sections or a certain area unit of individual sections of a real estate Project. Issue proceeds from real estate certificates shall be used solely for completion of the real estate project or for refinancing the said project as of the date of application.

Real estate certificate is a capital market instrument peculiar to Turkey and there is not any application example in other countries so far. It is intoduced with the Capital Markets Board Communique regulated in 1995 and issued once in 1996. The new Communique issued after the enactment of the latest Capital Market Law No. 6362 and regulated by taking into consideration of the expectations of market participants. Notwithstanding, real estate certificates not practiced up to date.

As regulated in the Communique, real estate certificates are redeemed through fulfillment of primary or secondary obligations and payment of penalty, if any. Primary obligation is transfer of title and delivery of real estate to the real estate certificate holders by the issuer by the end of the primary obligation fulfillment period according to the principles set forth in the prospectus or the issue document; and secondary obligation is the sale of individual sections corresponding to real estate certificates subject to the secondary obligation, and the distribution of sale price to real estate certificate holders in proportion to their existing shares, by the end of

[36] Based on USD/TL exchange rate, dated 18.08 2015

the secondary obligation fulfillment period according to principles set forth in the prospectus or the issue document.

Amount of issue of real estate certificates cannot exceed fifty percent of sales prices of all individual sections of the real estate project. In case both residential and commercial real estate is included in the same issue, this fifty percent limit shall be calculated separately for residential and commercial real estate covered by the issue. This limitation shall not be applied in bank-guaranteed issues.

Real estate certificates may be issued domestically or internationally through public offering or through non-public offering by sale to qualified investors. In the issues through public offering, in addition to the provisions of upper paragraph: Total shareholders' equity of the issuer should be higher than its paid or issued capital; and in the case of failure in fulfillment of obligations by the issuer according to principles set forth in the prospectus and the issue document, the payment of the redemption price and the penalty to investors should have been assured by a bank.

Real estate certificates to be issued are required to be quoted and traded in the exchange, and in addition to the application to be filed to the Board for approval purposes, the issuers must apply to the exchange for this purpose.

If specified so by the issuer, real estate certificates may be redeemed also through repurchase of real estate certificates over an amount to be determined by the issuer or over the exchange market price before the project completion date.

In the case of failure in fulfillment of obligations by the end of the relevant fulfillment period and according to principles set forth in the prospectus and the issue document, the penalty determined at the issue stage is required to be paid to investors. Besides, in the bank-guaranteed issues, upon occurrence failure, real estate certificates may be redeemed through payment of the redemption price and the penalty, if any, to the investor:

There are strict requirements for issuers wishing to issue real estate certificates: They must have completed a project with a sales price equal to at least half of sales price of the real estate project, in accordance with the relevant contract and technical specifications, within 5 years prior to the date of application to the Board, or in case the issuer is a real estate investment partnership, must have had a project of the same qualities completed; and must individually hold the ownership of the land where the real estate project shall be realized, and the land title deed must be converted into a construction servitude title deed, or a construction servitude must have been established on the land in favor of the issuer.

Notwithstanding, TOKI (Housing Development Administration of Turkey) or Ilbank Co. Inc. or their affiliates are excluded from these requirements in case of being issuers.

Investors requesting fulfillment of primary obligation are required to transfer to the issuer's accounts, real estate certificates required for the individual sections intended to be purchased, and if needed, to pay the goodwill within the primary obligation fulfillment period, and the issuer is required to complete the legal transactions for transfer of ownership of individual sections to the investor according to the principles set forth in the prospectus or the issue document. In case same individual section is demanded by more than one investor, the issuer shall state in the prospectus or the issue document which investor shall be given priority thereat. If no such designation is made, time priority shall be applied.

For the investors willing to use the primary obligation but lacking the necessary number of real estate certificates, the issuer may provide loan facilities or cash payment means, providing that it is so declared in the prospectus or the issue document.

The investors who do not file a primary obligation fulfillment request within the primary obligation request period or who files such a request, but fails to satisfy the conditions envisaged for fulfillment of primary obligation in the prospectus or the issue document shall be considered and treated to have requested the secondary obligation as of the project completion date. The issuer is liable to perform the secondary obligation by selling the individual sections corresponding to the real state certificates subject to secondary obligation and by distributing the proceeds of sale to investors in proportion to their shares in certificates.

In case the proceeds of sale are lower than the nominal value of real estate certificates corresponding to the individual sections offered for sale, or in case no proceeds of sale are obtained therein, the difference (between nominal value and sale proceeds) shall be paid by the issuer.

If and when it is understood that the obligations shall not be fulfilled during the fulfillment periods and according to principles set forth in the prospectus and the issue document, the project shall be deemed to have been delayed. In the case of delay of project: Within 15 business days after this delay is detected, a feasibility report shall be prepared, and an application shall be filed with the Board for an additional period equal to the necessary period of time stated in the feasibility report for the completion of the project. The additional period to be granted by the Board shall in no case exceed 180 days following the project completion date, except for general force majeure events and throughout that period of time a pre-determined penalty according to the prospectus to be payable to investors.

6. WAQF ASSETS[37]

Development of Waqf Assets through Sukuk for Real Estate Development

A. Potential of Waqf Assets

Waqf is an endowment initiative that is managed in accordance with the Shariah and plays a prominent role in the Islamic economic system. With new funds and wealth created among Muslims, more activities can now be undertaken to enhance waqf in a manner which will further boost the country's economic activities. Traditionally Waqf has taken the form of real estate, which is said to be worth over US$105 billion according to Ernst & Young estimate in 2010. Although much of these assets are donated and managed privately, making it almost impossible to obtain an accurate total figure, it is suggested however that the real value of the industry could be considerably larger.

Generally, waqf assets can be classified into fixed assets, movable assets or funds which are pooled into. They all have the potential to generate benefits for the public and contribute towards wealth and prosperity. However, waqf shares scheme for developing quality assets at strategic locations requires a large amount of capital. The pre-requisites of having quality assets at strategic locations are to fulfil the perpetuity requirement and ensure that the returns generated can be continuously channelled to the beneficiaries.

The growing focus on waqf is in line with overall efforts to identify new growth drivers to broaden and strengthen the development of the Islamic finance industry. With Islamic finance gaining traction in many parts of the world, the development of waqf can play a significant role in attracting greater interest and participation.

A vibrant Islamic capital market (ICM) is one of the avenues and would be able to support development of waqf assets, fundamentally through the issuance of sukuk or any viable Shariah-compliant fund structures. It also offers a regime of well-regulated intermediary institutions capable of managing various asset classes in the marketplace, including waqf assets.

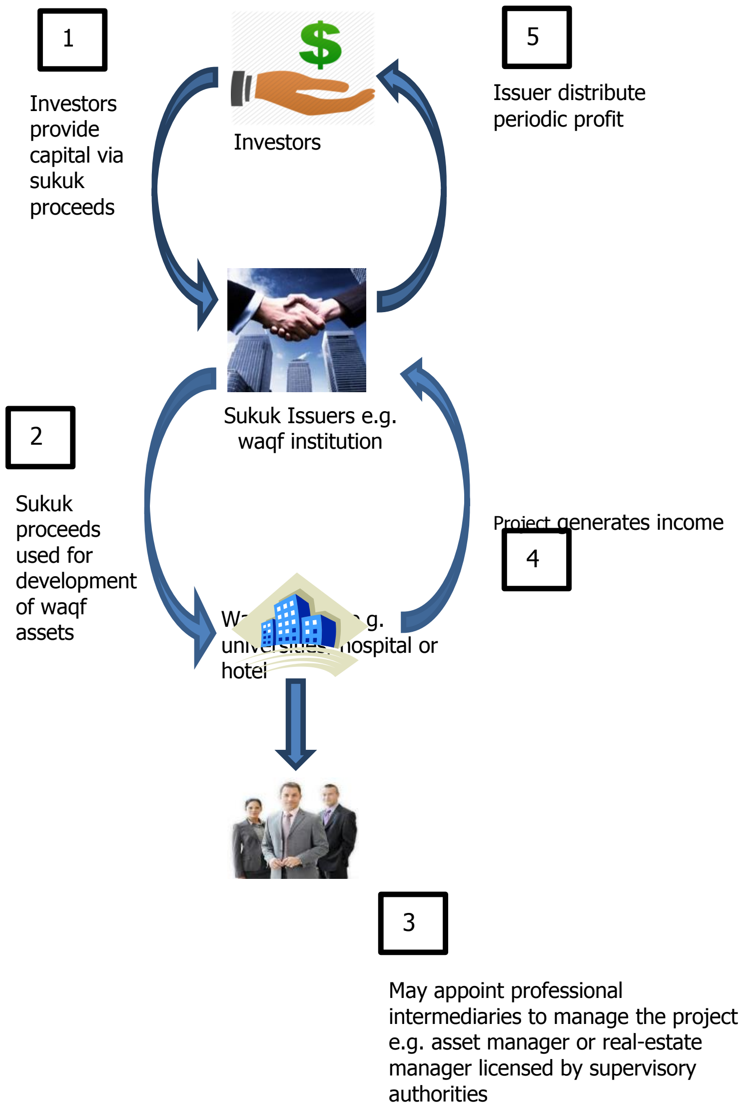
Waqf assets, through the issuance of sukuk, offer an alternative investment by the private sector. Sukuk are widely used instrument in the Islamic capital market to finance specific economic

[37] Waqf Assets title is kindly drafted by the Securities Commission, Malaysia.

activities in accordance with Shariah principles. For example, the construction of a shopping complex, an office building, a hospital and health centre or service apartment with a commercial centre. In the case of waqf assets, the issuer acts as a trustee or agent and uses a waqf fund to buy land located at a prime area. To develop the land, the trustee raises funds by issuing sukuk, based on the build and transfer technique.

Waqf institutions could opt to explore raising capital for the development of its waqf projects through issuance of sukuk. Sukuk has flexible characteristics in which it can be structured to meet the medium-term to long-term financing requirements. Thus, sukuk may be issued for various purposes to satisfy the issuer's commercial needs, such as for the purpose of financing working capital and capital expenditure requirements, vis-à-vis the investors' (sukukholders) investment appetite. The diagram below provides an overall picture of how capital raising from sukuk issuance could be used for the development of waqf assets.

Raising capital through sukuk issuance for the development of waqf assets



B. Demonstration Effect of *Waqf* Development Involving the Issuance of Sukuk

Waqf development involving the issuance of sukuk is not entirely new to the market. There have been successful sukuk issuances for the development of *waqf* assets in several jurisdictions e.g. Singapore and Saudi Arabia. These issuances demonstrate how sukuk, being a Shariah-compliant capital market instrument, can be innovatively structured to support the financing for the development and redevelopment of *waqf* assets into viable income-generating properties. Today, these *waqf* assets have proven to be highly successful in supporting the objective of providing the needs of society.

1) Sukuk musharakah for the development of an old mosque in Bencoolen Street, Singapore

In Singapore, sukuk *musharakah* was introduced for developing commercial building on waqf land. This initiative was spearheaded by Warees Pte Ltd (Warees), a subsidiary of the Islamic Religious Council of Singapore.

Between 2001 and 2002, Warees successfully developed two pieces of *waqf* lands in Singapore through the issuances of sukuk Musharakah in which US$60 million was raised. One of these was the redevelopment of an old mosque into a multi-storey complex comprising a modern mosque, a 3-storey commercial building, and a full-service 12-storey apartment block with 84 units in Bencoolen Street in 2002. The financing of the project was done through the issuance of S$35 million sukuk Musharakah. The Musharakah was a joint venture among three parties i.e. MUIS (baitulmal), Warees and MUIS (*waqf*). The sukuk were fully subscribed by institutional investors.

2) Sukuk al-Intifa`a for the development of Zamzam Tower, Makkah

In Saudi Arabia, the issuance of sukuk al-Intifa`a (timeshare) has been successfully implemented to develop one of the apartment towers near the Grand Mosque in Makkah. In this transaction, a construction and real estate company, Munshaat Real Estate Projects Co. (Munshaat) was awarded with a 24-year lease to construct one of the seven towers (Zamzam Tower) on the land adjacent to the Grand Mosque, which is owned by the King Abdul Aziz Waqf for the Two Holy Mosques (The Waqf).

In this transaction, the developer, Munshaat was granted the lease over the waqf land. The sukuk issuance was for the purpose of financing the construction cost of the said tower. This was achieved via a forward lease contract (Ijarah Mawsufah fi Dhimmah). Under the forward lease, Munshaat leased the asset under construction to the sukukholders (for 22 years) who paid the lease rental in advance in one lump sum.

Due to restriction on ownership of non-Saudis of real property right in Makkah, the sukukholders would enjoy the usufruct of the assets after its construction based on time-sharing slots. The time-sharing rights under the forward lease were evidenced by the issuance of sukuk al-Intifa`a. The advance lease rental (sukuk proceeds) was used by Munshaat to pay for the 24-year lease rental on the *waqf*, and the construction costs of Zamzam Tower.

The interesting part of sukuk al-Intifa`a is the recognition of a new asset class upon which the sukuk are based. This new asset class is in the category of usufruct (*manfa`ah*). More specifically, it involves the right to benefit or enjoyment (*haq al-intifa`a*) in the form time-sharing in the use of a common property. These sukuk are fully negotiable. They can be sold, leased, lent, given, bequeathed, exchanged and delayed (subject to certain conditions). The investor participates by purchasing the sukuk and paying their value in advance, plus payment of annual charges for maintenance and managerial service.

III. POSSIBLE TRADING VENUES FOR REAL ESTATE RELATED CAPITAL MARKET INSTRUMENTS

The growth and sustainability of real estate capital market instruments is linked with the availability of secondary markets since stock exchanges by definition provide transparency, liquidity, a sound financial indicator for the industry. In this context, for providing a trading venue for COMCEC member state real estate securities, establishing a market in a regulated exchange or an electronic trading platform or establishing an exchange options are examined below.

1. OPTIONS FOR A REAL ESTATE SECURITIES TRADING PLATFORM

1.1. Opening a Real Estate Securities Market in a Regulated Exchange

Opening a new market dedicated to real estate based capital market instruments of COMCEC members, under a currently operating exchange, also constitutes another option for establishing a trading venue. Rather than establishment of a new real estate securities exchange, seemingly this alternative is technically and legally more feasible due to less procedure.

Generally, regulated exchanges open different markets or platforms, depending on different qualifications of instruments and traders, rules of listing and trading, liquidation etc. Thus, opening a market and having the similar financial instruments traded under the same market rules enhance comparability and ease investing.

1.1.1. Legal Perspective – Turkey Case

Inaugurated at the end of 1985 under the name İstanbul Menkul Kıymetler Borsası (İMKB), Borsa İstanbul has been established to provide trading in a wide variety of instruments, namely, stocks, exchange traded funds, government bonds, treasury bills, money market instruments (repo / reverse repo), corporate bonds, lease certicifates (sukuk), derivative instruments, foreign securities (Eurobonds issued by Turkish Treasury) and precious metals. Borsa İstanbul has recently been transformed into a joint stock company. Also, Borsa İstanbul and NASDAQ OMX signed a strategic partnership agreement in 2013. According to the agreement, NASDAQ OMX became a minority shareholder of Borsa İstanbul, with 5% stake. The majority shareholder is Turkish Treasury, with its 49% of shareholding.

According to the Turkish Law, Stock market, bonds market and other securities markets can be established for the securities listed on the Exchange upon the decision of the Executive Council.

Borsa İstanbul Equity Market consists of four markets namely; National, Second National, Collective Products, Watchlist Companies Markets and a Free Trade Platform.

By-Law Regulating the Exchange Operations of Borsa İstanbul A.Ş. Article 37 allows the opening of a new market with the executive board decision. Also, it is possible to enact different listing and trading rules for every market opened in Borsa İstanbul; so this possibility gives COMCEC member states to collaborate and determine specific rules for real estate based market operating under Borsa İstanbul.

As it is mentioned above, order transfer rules is an important aspect of real estate market investors. In this context, Turkish capital market regulations allow giving direct access to investors and using the local investment institutions, which signed contracts with abroad investment institutions, as broker-dealers for transmitting the foreign investor orders to the real estate dedicated market.

Also, to strengthen the international aspect of such a market, it is possible under CML Article 65 for exchanges to make an agreement with one or more market operators for the operation and/or management of markets. Market operators, within the framework of the agreement made with the exchange, shall use the rights that the exchange holds and shall ensure in the framework of the agreement made with the exchange, the fulfillment of the obligations provided for the exchange in this Law and related legislation. So under these provisions, it is possible for COMCEC member states to work in cooperation to choose a market operator for the prospective real estate market within Borsa İstanbul.

1.1.1.1.Operational Issues - Securities Settlement Infrastructure

In order to realize this market model, operational activities such as securities settlement infrastructure CMB Communique on Foreign Capital Market Instruments and Depositary Receipts and Foreign Investment should be considered. According to the provisions of this legislation, if the the issuer firms make an initial public offering in the relevant market to be established, they are required to be a member of the Central Registry Agency and the relevant capital market instruments should be issued in central dematerialization system and will be traced on the basis of the holders. The settlement procedure is likely to be handled according to the regulation of other markets of Borsa Istanbul.

Providing that the real estate securities are issued and traded in the issuer's exchange for example in any of the COMCEC members states other than Turkey, the Central Registry Agency of Turkey should open an account at the relavant country's central registry agency.

Furthermore, workflow precedures should be determined for transactions concerning the accounts and operational matters.

For a smooth cooperation, it is critical if taxation provisions, reporting requirements and exercising investors' rights arising out of relevant real estate securities are compatible with each other.

With respect to COMCEC member states investors who will be trading in this dedicated real estate securities market, these investors should be keeping their assets at the global (omnibus) accounts, their country's central custody agency had opened at the Turkish Central Registry Agency and/or Settlement and Custody Bank and /or at the accounts of Turkish investment firms.

1.2. Establishing an Alternative Trading System

Trading real estate related capital market instruments via alternative trading systems (ATS) which have international access presents another option. In todays financial markets landscape, advanced technology has increasingly blurred the classifications for "exchange" and "broker-dealers" and alternative trading systems and alternative trading systems are used by market participants as functional equivalents of exchanges.

ATSs are mainly defined as, electronic trading systems that automatically match buy and sell orders at specified price. Many alternative trading systems are specifically designed to match buyers and sellers who trade in very large quantities (primarily professional traders and investors). Also, institutions will often use an ATS to find counterparties for transactions, instead of trading large blocks of shares on the normal exchange, a practice that can skew the market price in a particular direction, depending on a particular share's market capitalization and trading volume.

The framework that Securities Exchange Commission of the United States of America (SEC) uses is to allow most alternative trading systems to choose to be regulated either as exchanges or as broker-dealers. Under SEC rules rules, any system exercising self- regulatory powers, such as regulating its members' or subscribers' conduct when engaged in activities outside of that trading system, must register as an exchange or be operated by a national securities association. This is because self-regulatory activities in the securities markets must be subject to the relevant regulatory authority's oversight. Thus any system exercising self-regulatory powers will not be permitted the option of registering as a broker-dealer.

Also according to SEC regulations, an ATS system would have to use established, non-discretionary methods, under which such orders interact with each other and the buyers and sellers entering orders agree to the terms of the trade. A system uses established non-discretionary methods either by providing a trading facility or by setting rules governing trading among subscribers. For example, traditional exchanges' rules of priority, parity, and precedence are "established non-discretionary methods," as are the trading algorithms of electronic systems. Similarly, systems that determine the trading price at some designated future date on the basis of pre-established criteria (such as the weighted average trading price for the security on the specified date in a specified market or markets) are using established, non-discretionary methods.

Adding to this, a trading system that uses established, non-discretionary methods would include a traditional exchange floor where specialists are responsible for executing orders. It would also include a computer system (whether comprised of software, hardware, protocols, or any combination thereof) through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders.

ATSs have two major types as "electronic communication network/ECN" and "dark pool". ECN systems represent a highly used type of ATS especially in USA. An ECN is basically a computerized stock exchange that offers stock traders an alternative to traditional exchanges like the New York Stock Exchange. The electronic communication networks as a whole are known as the "lit" or "light pool" markets. These are the markets that are available for all of the public to see. This is where about half of all volume transacts in the stock market, and they are open for access to any subscribers with a computer and internet access. The opposite of lit markets are "dark pool" markets. The benefits of transacting over an ECN vs. a traditional exchange market are evident for a stock trader. An ECN seeks to remove the middleman by allowing a transaction to occur directly between market participants. ATSs have been credited with the massive reduction in trading transaction costs over time. Electronic exchanges removed the need for a trader to be on an exchange floor, so besides saving transaction costs, they also opened up market access to millions of traders who now only need a computer and an internet connection to participate in trading.If a trader subscribes to an ECN, not only is he/she allowed to transact over the network, but she is also able to see the shares available to buy and sell on the ECN's order books. This allows a trader to get an idea of buy interest vs. sell interest in a stock and can give a trader a read on the likely near term price movement.

ECNs do not function primarily as dark pools, where bids and offers for blocks of stock are matched anonymously. A dark pool is the name given to a network that allow traders to buy or sell large orders without running the risk other traders will work out what is going on and put the price up, or down, to take advantage of the order. They have been criticized for their lack of transparency and because the inevitable fragmentation of trading could lead to less efficient pricing in traditional open stock exchanges[38].

As dark pools are a moot point around financial markets, primarily in terms of transparency in the context of establishing a real estate based ATS, a system working like an ECN or a "lit market" seems preferable. Investors would be able to make a direct connection via an ATS, to the COMCEC member states' real estate capital market instruments. Following the entry of the investors' order to the system, ensuring that the orders transmitted via the ATS to the relevant country market, will increase the liquidity and international demand for real estate based capital market instruments.[39]

1.2.1 Operational Issues - Securities Settlement Infrastructure

Alternative Trading System option is convenient with respect to operational workings since there is not a cross listing procedure in this model therefore settlement, custody and disclosure requirements are executed in accordance with the legislation where the real estate securities are traded.

1.2.1. ATS, Globally

1.2.1.1. Asean Trading Link

The ASEAN Trading Link is a stock trading link established among the stock exchanges of Malaysia, Singapore and Thailand. This initiative is one of the measures driven by the ASEAN Exchanges[40], a collaboration of seven stock exchanges within ASEAN[41] (the Association of Southeast Asian Nations). With the objective of promoting the growth of the ASEAN financial markets by encouraging the free flow of capital, the ASEAN Trading Link is aimed at providing brokers of participating ASEAN stock exchanges with the appropriate trading infrastructure to

[38] http://lexicon.ft.com/Term?term=dark-pools

[39] Daniel MAJOR, "Electronic Communication Network", http://www.howwetrade.com/ecn-electronic-communication-network/

[40] The ASEAN Exchanges is a collaboration to "jointly promote the development of ASEAN as an asset class, with the intention of increasing liquidity of the member exchanges." The stock exchanges that comprise the ASEAN Exchanges are the Bursa Malaysia, Hanoi Stock Exchange, HoChiMinh Stock Exchange, Indonesia Stock Exchange, Philippine Stock Exchange, Stock Exchange of Thailand, and Singapore Exchange Ltd.

[41] ASEAN is a ten-member regional group of nations that currently comprises Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam

input orders directly onto other participating ASEAN stock exchanges. The ASEAN Trading Link currently provides investors with a single point of entry into three of the largest ASEAN equity markets. The launch of the ASEAN Trading Link was regarded as a crucial stepping stone towards better market integration and supporting the establishment of the ASEAN Economic Community, which is targeted for the end of 2015[42].

Asean Trading Link allows connected brokers to execute trades directly to the ASEAN Trade Link connected exchange without having to be licensed in that market by that exchange.

ASEAN Trading Link works via 3 main components "The Intra-ASEAN Network (IAN)" which is the infrastructure connecting the participating exchanges "The ASEAN Link Gateway" (ALG) provide connecting points between the exchanges, Neutral Access Points (NAP) provide access for parties from outside of ASEAN market. Trading is based on an inter-broke model where the brokers continue play the key role as intermediaries

Originating Brokers (OB) who are not members of the Exchange where a trade is executed are required to have a bilateral agreement with at least one Sponsoring Broker (SB) and need to open trading account with them. OBs send orders to the local ALG hosted by their local Exchange .Orders are routed to and executed at the target exchange as direct client of the SBs.

The order routing process is transparent to the investor. The investor simply puts the order through his broker as usual, either via phone or self-directed online platforms.

The home exchange market rules and laws apply regardless of where the order was entered. As with the custody for the foreign security that an investor purchases on an ASEAN Trading Link connected Exchange, foreign securities are custodised with the foreign broker under a nominee account.[43]

1.2.2. Legal Perspective – Turkey Case

In CML Article 66, alternative trading systems are regulated as other organized market places;

"Principles and procedures regarding the establishment, authorization, capital, capital market instruments to be traded, competition conditions and operation principles of alternative trading systems, multilateral trading facilities and other organized markets outside exchanges, which bring together buyers and sellers of capital market instruments, provide intermediary services in purchase and sale transactions, establish and operate systems and facilities for these purposes

---

[42] http://sites.edechert.com/10/4418/landing-pages/the-asean-trading-link.asp
[43] http://www.aseanexchanges.org/downloads/AE_Trading_Link_FAQs_for_Website.pdf

shall be established with by-laws to be published by the Board. The Board is the surveillance and supervision authority of these markets." However, an ATS system does not operate in Turkey currently.

1.3. Establishing an OIC/COMCEC Level Exchange For Real Estate Related Capital Market Instruments

Exchanges are the most common, regulated and incorporated ways for trading of capital markets instruments, and in the context of real estate it is possible to establish an exchange dedicated to real estate capital market instruments of COMCEC members. Establishing a regulated exchange has its legal implications due to the venue of the exchange.

Regulated exchanges are defined by the relevant European Union Directive as a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorized and functions regularly.[44]

It is important to establish a regulated exchange dedicated to real estate related capital market instruments, as the aim is to make it possible for real estate securities of COMCEC members to trade in an international basis and provide them liquidity. Since regulated exchanges are mostly supervised by regulatory bodies, regulated exchanges have different establishment and operation rules.

Generally, direct access for investors to the regulated exchange's market is not possible and trading is only permitted via having an account in a broker-dealer which is a member of the regulated exchange. In other words, the order of the investor is transmitted to the market through stock brokers and banks. By means of an exchange that is planned to be established for COMCEC members, possibilities for transferring orders is an important aspect. In global financial markets, mainly investment institutions conclude a contract with another institution, which is located abroad and received permission to operate from that country's competent authority, for transmitting the foreign investors' orders to domestic exchange. That is to say, a foreign investor has the possibility to use a domestic broker-dealer which is located in the same country of the exchange for transferring his orders to the exchange. The main point in a possible real estate capital market for COMCEC members, should be erecting rules making it possible

[44] Article 4.1(14) of the Markets in Financial Instruments Directive (MiFID).

to access and trade in an exchange conveniently. Thus, direct access to the real estate regulated exchange would be an important step for traders. Furthermore, the establishment of such an exchange, setting the rules of trading and operating on this market the level playing field for investors from the COMCEC member states are another key point of the issue.

1.3.1. Operational Issues - Securities Settlement Infrastructure

Establishing an OIC/COMCEC level exchange for real estate related capital market instruments option requires more harmonization of capital market legislation, tackling with cross listing, determining new settlement procedures, adjustment to the existing infrastructures of the relevant country where the exchange will be located thus it is likely to suggest that this mode of cooperation would entail high operational costs.

1.3.2. Legal Perspective – Turkey Case

As a possible reference point, Capital Markets Law Nr.6362 (CML) governs stock exchanges, market operators, capital market instruments and methods for their issuance, public offering and sale of securities; those authorized persons who issue or offer securities to the public; exchanges and other organized markets, capital markets activities necessitating authorization of the CMB; capital markets institutions; and the CMB as the regulator.

Stock exchanges and market operators can be established as joint-stock companies subject to private law, upon advice of the CMB of Turkey and with the permission of Council of Ministers. In order to initiate their market activities following the completion of establishment procedures, those companies need to have final permission of the CMB as well. CML envisages stock exchanges and market operators as joint stock companies having their shares registered in the name of the shareholders, fulfilling the minimum capital requirement designated by the CMB and having their articles of incorporations drafted as per the rules set forth in the CML and other related regulations. CML further entrusts the stock exchanges the duty to issue regulations, subject to the CMB's approval, in order to ensure trading of securities, foreign exchanges, precious metals and stones and all other contracts, instruments and assets that are approved by the CMB as tradable; in a reliable, transparent, efficient, stable, fair and competitive environment.

Securities exchanges are particularly granted the authority by the CML to draft regulations covering the following issues:

• Listing, de-listing, other criteria regarding tradability and suspension of trades,

• Transmission of orders and matching of orders,

• Fulfillment of reciprocal obligations arising from the matched orders,

• Authorization of intermediaries for concluding transactions in stock exchange markets,

• Disciplinary regulations and execution of those regulations,

• Revenues of stock exchanges and collection of those revenues,

• Dispute resolution,

• Prevention of possible conflicts of interest between stock exchanges, shareholders of stock exchange and / or market operator,

• Operation, supervision and monitoring systems of stock exchanges,

• Establishment, operating and management of various stock exchange markets.

After the establishment of a real estate exchange, capital market instruments may only be listed in the exchange when conditions specified in regulations published on the basis of CML have been met. Accordingly, it is possible and lawful under CML, to determine different listing and trading rules for international real estate capital market instruments trading in different exchange markets.

In this respect, under Turkish law it is possible to let the capital market instruments that are already listed in the COMCEC member states' exchanges, to be listed and traded directly in a regulated exchange in Turkey. Also in accordance with the abovementioned powers determining new trading and listing rules for COMCEC member state real estate securities is possible. Thus such an option will increase the international validation and liquidity of the exchange for real estate securities.

As it is mentioned above, one of the key points in establishing a new exchange for COMCEC member state real estate securities, is making regulations which are allowing the COMCEC member traders to access to the market conveniently. Under Turkish regulation, banks and brokerage houses which are exchange members can trade at Borsa İstanbul. The banks and brokerage houses which will trade on the exchange are required to sign the commitment issued by the Borsa Istanbul and approved by the CMB, and shall meet other requirements set forth in the Borsa İstanbul Regulation for membership. In this system, the orders of investors are submitted to the exchange system by the member bank/brokerage house representatives.

According to the Comminique Number III-39.1 on Principals Regarding Establishment and Operation of Investment Institutions, Article 46, intermediary institutions in Turkey may sign contracts with investment institutions abroad, which received permission to operate from that country's competent authority, to transfer the orders of foreign investors to the local exchange Borsa İstanbul. Therefore, transferring the orders of foreign investors to the exchange located in Turkey, by signing contracts with local investment institutions is possible and lawful under Turkish capital market regulations.

Another option for transmitting orders is direct access. Although, as in the present case there is no direct access to the Borsa İstanbul for investors; Turkish stock exchange regulatory framework may allow it. According to the By-Law on Principals Regarding Establishment, Operation and Surveillance Rules of Exchanges in Turkey, Article 24, the executive board of an exchange may allow direct access to the market without being a member of the exchange; that is to say, under Turkish law investors may access the exchange without using brokers and give orders directly. With such an arrangement, COMCEC member state citizens, who are eligible for trading according to member state regulations may convey their orders to the real estate securities exchange. In case an exchange that is established in Turkey, it should be stressed that, according to the CML, the exchange will be a self-regulatory organization and have its own competence field. Article 67/3 says that, exchanges are tasked with and authorized to publish and enforce regulations related to the duties and authorities granted to them with CML and other legislation, to supervise the compliance of institutions and bodies subject to these regulations and the accuracy of information submitted to them.

According to the Article 65/5 of CML, Exchanges may make an agreement with one or more market operators for the operation and/or management of exchange. Upon the approval of the Board, market operators, within the framework of the agreement made with the exchange, shall use the rights that the exchange holds and shall ensure in the framework of the agreement made with the exchange, the fulfillment of the obligations provided for the exchange in this Law and related legislation. As it is seen, following the possible establishment of a stock exchange in Turkey, the new exchange may lawfully make an agreement with a market operator which may be decided by COMCEC members.

2. CLEARING and SETTLEMENT IN TRADING VENUES

Clearing and settlement are fundamental processes in financial markets. After the trade is executed, the record is submitted to the clearing agency, which matches the buyer and seller record and confirms that the counterparts agree to the terms. Clearing process of securities transaction primarily involves the calculation of mutual obligations of market participants and determines what each counterpart should expect to receive. Settlement obligations are calculated after trade is confirmed. It consists of two legs, the obligation of the buyer to pay the funds, and the obligation of the seller to transfer the securities. According to the glossary of terms issued by the Committee on Payment and Settlement Systems (CPSS) of the Bank of International Settlements (BIS), a cross-border trade is defined as the trade between counterparties (buyer and seller) located in different countries, whereas a cross-border settlement occurs when the security settlement is realized in a distinct country of one or both counterparties. Unlike local securities trade, where securities are traded and settled by participants of the same CSD (central securities depository), cross-border transaction infers complexity due to the increasing number of relationships that the international investor must have to gain access to the settlement system.

Settlement is regarded to the exchange of a security for its payment. In most developed financial markets, few participants actually hold physical certificates for the publicly traded securities they own. Rather, ownership is tracked electronically through a book-entry system maintained by a CSD. Ownership transfer occurs on the system's records of the depository, while cash side of the transaction is usually affected through a banking payment system.

The importance of an efficient clearing and settlement system lies on the safer transfer of ownership of assets against payment. Such a system must be developed in a way to minimize the risks involved on securities transactions between COMCEC member states, and must offer lower costs. Therefore, within an exchange/market/ATS system which is dedicated to COMCEC members the importance of a secure and convenient cross-border clearing and settlement system is vital. In this context, the basic elements of a cross-border clearing and settlement system is examined below.

Concisely the market participants for the infrastructure of securities trading can be divided in two groups: the users of the financial market and the providers of services for the market's functioning. Users are basically investors, which are represented by individual investors or firms that intend to invest their surplus units in order to earn returns on their investments. Usually, they operate on the securities market through the intermediation of a broker or an investment bank. Institutional investors are basically banks, insurance companies, mutual and pension funds. They represent the greatest part of the volume and value of transactions of the financial markets[45]

Broker/Dealers undertake the primary role in intermediating securities market trade, through matching at the stock exchanges surplus units willing to acquire securities to those willing to dispose. Custodians are responsible for safekeeping and administrative services related to the holding and transfer of securities on the behalf of their clients. Because individual investors are not deemed to hold an account on the central securities depositories (CSD), where securities are kept, custodians which have direct access to the CSD monitor the receipt of dividends, interest payment, corporate actions, apart from payments and delivery of securities in a transaction. Global custodians are active in different markets worldwide through establishment of sub-custodian relationships. So, if a customer is willing to invest in several markets, it would be costly and time consuming to achieve expertise in every single jurisdiction, making it very attractive to use custodian services. Because these entities may have a large pool of clients, settlement may occur internally on their books. Global custodians offer further services to their customers, such as: securities lending and foreign exchange transactions.[46]

Clearinghouse (CH) is a department of an exchange or a separate entity which provides services related to clearing and settlement of transactions and payments. In many cases, CH acts as a Central Counterparty (CCP) reducing the credit risk associated with securities transactions. A CCP interposes itself to the both legal parts of the transaction, becoming the buyer and the seller of every security. Additionally, it offers two advantages: the multilateral netting that reduces the costs of cross-border transaction and effective collateral management, which is achieved with the concentration of required collateral in a single entity.[47]

Central Securities Depository (CSD) holds and administers mobilized or immobilized securities. Under the CSD, there is no physical delivery of shares. Instead, the CSD uses a simple book entry system to keep track of the movement of shares arising from trades. Moreover, it manages the provision of dividends and interest payment services, as well as the settlement process. CSDs are normally private firms and are constituted as a self-regulatory

---

[45] Guadamillas Mario & Keppler Robert, April 2001, "Securities Clearance and Settlement Systems: A Guide to Best Practices", Western Hemisphere Payments and Securities Clearance and Settlement Initiative (WHI), World Bank, Research Working Paper Series, http://wbln0018.worldbank.org/html/FinancialSectorWeb.nsf/(attachmentweb)/1690_wps 2581/$FILE/1690_wps2581.pdf

[46] Giordano Francesco (December 2002), "Cross-Border Trading In Financial Securities In Europe: The Role Of Central Counterparty", European Capital Markets Institute, http://www.ecmi.es/files/giordano.pdf

[47] Giordano Francesco (December 2002), "Cross-Border Trading In Financial Securities In Europe: The Role Of Central Counterparty", European Capital Markets Institute, http://www.ecmi.es/files/giordano.pdf

organization under the oversight of securities market regulators. An International Central Securities Depository (ICSD) clears and settles international securities or cross-border transactions through direct access to the local CSD or through indirect access – partnership with a local agent.

Clearing houses, central securities depositories (CSD) or international central securities depositories (ICSD) are the providers of clearance. Securities and funds must be respectively provided by the custodians or, in some cases, by the brokers, before the settlement time. The securities traded are blocked (cannot be traded) at the depository until settlement date. Meanwhile, the investor authorizes his custodian to receive securities and deliver payment. CSDs clear the instructions of securities and payment transfers either on a gross or net basis. In some markets, large broker-dealers that frequently trade with each other use a central counterparty (CCP) to minimize the risks of failure. A CCP stands between inter-dealer trades, and replaces the original bilateral contractual obligation. The CCP lowers the risks to dealers by offsetting, or "netting", buy and sell trades. In addition, it reduces the number and size of movements on securities and money to be settled.

Critical is the application of proper control (delivery versus payment - DVP) to assure that the final transfer of funds only occurs if a final delivery of securities occurs. In most markets settlement ranges from T+1 to T+3, but the commitment period should be as short as possible.[48]

Local agents are an option for settlement of equities. International investors access to the local CSD using the channels of a local agent, customarily a local bank, even if they had presence in the market. Local agents have competence in the legal and taxation system of the local market, and they offer indirect access to the local settlement system without the burden of attending to requisites of funds, technology and soundness.

2.1 Clearing and Settlement – Turkey

In Article 77 of CML, Central clearing institutions are regulated as private law legal entities, established in the form of joint stock corporations carrying out the operations regarding delivery and payment with respect to capital market instruments traded on exchanges and other organized market places and fulfillment of guarantee obligations for such transactions. According to law, İstanbul Takas ve Saklama Bankası A.Ş. (Takasbank) is authorized to provide cash and securities settlement transactions as the central clearing and settlement

[48]HWWA Discussion Paper 287, Carvalho http://ec.europa.eu/internal_market/financial-markets/docs/cesame/hwwa_discussion_paper_en.pdf

institution to Borsa Istanbul A.Ş. equities, debt securities, foreign securities, derivatives and precious metals markets. Securities delivery/receipt as well as cash obligations of Borsa Istanbul members arising from the buy-sell transactions in the related markets are executed via Takasbank. Providing cross-border services to market participants, Takasbank represents Turkey in international organizations through the international clearing and settlement institution identity it possesses. In line with the vision to be a preferred institution in international markets, Takasbank continues its studies for many projects aiming to develop its technological infrastructure.

Also, in Article 78 of CML it is stated that, Capital Markets Board of Turkey may require central clearing institutions to be a central counterparty as of markets or capital market instruments whereby they undertake the duty to complete clearing by acting as seller against buyer and buyer against seller.

Takasbank concludes the settlement of the transactions performed in Stock Market of Istanbul Debt Instruments Market. The settlement of the transactions in Stock Market of Istanbul Debt Instruments Market are performed in the same day (T+0), the settlement of the foreign exchange paid securities are performed with at least a value date (T+1). Transactions performed with forward value date are included in the value date. Settlement is performed as dematerialized within the framework of the principles of payment for netting and delivery. However the settlement transactions are concluded via different methods according to the issuer of the security. The members are obliged to fulfill their responsibilities until at 16:30 of the value date. Otherwise the provisions of default shall be applied.

The exchange of transactions realized in the Borsa İstanbul Share and Developing Enterprises Markets are realized as entered within the framework of Delivery versus Payment principle by clearing the purchases and sales on the second day (T+2) following the day of the transactions conducted. Because only the registered shares and their derivatives can be transacted in the Stock Market, the tradeoff transactions can be conducted via the integrated system between Takasbank and Central Registry Agency via the savings accounts in the eye of the Central Registry Agency.

In the transactions of the financial intermediaries conducted during the two sessions, clarification is made as stock shares and cash. During the two sessions with the same date, the intermediary agency conducting both sale and purchase transaction of the same share, is charged or credited according to the net balance obtained by deducting the sum of the sales from the purchases. The financial intermediaries are obliged to pay off their securities and cash debts to the trade off on the day of T+2 by 16:30. The financial intermediaries that do not pay off their securities and cash debts until 16:30 are deemed to have become overdue without any further notice.

Takasbank is in close contact with the other clearing, settlement and custody associations both in national and international platforms. Takasbank is also working in cooperation with these institutions. In this context, Takasbank has signed various cooperation agreements with international capital market associations, such as Tunusian Depository & Clearing (2013), Misr for Clearing, Depository and Registry (2013), Abu Dhabi Securities Exchange (2010), Muscat Depository and Securities Registration Company (2009), CSD Iran (2008) and NDC Azerbaijan (2007).

In case a real estate securities exchange/market/ATS is established, alongwith a securities trading infrastructure sytem is essential for operational reasons. Depending on the choice of the abovementioned trading venue options, the provisons of clearing and settlement will differ. Direct access or remote access is also possible. In this way, investors can settle remotely on a local CSD across the COMCEC member states from a single location.

To sum up, for the establishment of a real estate related capital market, a sound clearing and settlement infrastructure carries a great importance. As clearing and settlement in a real estate related capital market is highly technical issue, and it needs to be improved by the mutual arrangements and workshops between COMCEC member states.

.

CONCLUSION

This report by the *COMCEC Capital Market Regulators Forum* Secreteriat was prepared upon the request of 13-15 May 2015 COMCEC Follow-Up Committee meeting, by referencing with the COMCEC Chairman H.E. Erdoğan's remark on the value of real estate sector for COMCEC member state economies and possible benefits of establishing a joint real estate securities exchange within the context of the COMCEC. The report aims to set out on feasibility and the ways and means of realizing a real estate securities trading platform and will be submitted to the 31st Session of the COMCEC in November 2015.

With respect to real estate sector's portion in the GDPs, generation of employment, and providing a guarantee mobility of the labour force, 'its importance for economic growth is an accepted phenomenan. In addition to its macro-economic effects the sector expands financial activities and has a key role international capital movements, increasing investment, diversifying investment portfolios and also affects innovation in finance. In this respect, particularly following the global financial crisis, alternative forms of funding methods for real estate sector which is traditionally debtfunded in being assessed by policy makers in emerging and advanced economies. Given the importance of real estate sector which is dominated by debt funding, the report also draws attention whether capital markets, equity finance can offer a complementary approach for fund raising and investment for real estate that could ease affordability, reduce volatility and add to macro-economic stability.

With the objective of enhancing the the value of real estate sector for COMCEC economies, the Report evaluates two models for a joint real estate exchange initiative. First it introduces the idea of setting up a physical real estate trading web site and explores the benefits of this initiative as providing an organised investment domain for the Shariah sensitive investors and alleviating issues such as standardization and liquidity by an organized platform integrating the national real estate markets. This kind of international platform can be a convenient place for buying and selling a property, since it would minimize the agency cost and the information asymmetry among the investors and maximize the benefit of economies of scale, the international accessibility to any property to be sold, the liquidity of properties and the determination of fair value of properties. Consequently, improving the investment environment by providing a trading platform for real estate would create an alternative opportunity for investors as well as contributing the financing of the real estate sector.

In the context of establishing a joint real estate securities exchange, the report focuses on real estate investment trusts, real estate mutual funds, sukuk, sukuk participation funds, real estate certificates and waqf assets as well-founded instruments. Since these instruments particularly when traded on an exchange ensure, ease of entry, diversification and affordability to investors at a sector such as real estate otherwise investing in is costly, burdensome and illiquid.

Taking into account the general profile of the COMCEC member states with growing housing needs, economic liberalization and relatively sounder economic contexts have converged to new developments in markets. The report underlines that at COMCEC level, as such in Malaysia, Turkey, Iran, Saudi Arabia, GCC countries, securitisation, sukuk issuances and other real estate securities like REIT/Islamic REIT shares, bonds, real estate mutual funds, waqf assets structures have substantially improved. Real estate securities can be instrumental tools for attracting interest averse investors' capital to real estate sector. However, taking into account the abovementioned capital market landscape which is in favor of flourishing REIT firms, waqf institutions to harness securitization and sukuk issuances, a trading platform initiative focussing on funding or investing on real estate asset class could add value to enhancing liquidity and expansion of financial markets. Furthermore, such an initiative advocates a more integrated approach towards capital market regulation on disclosure, clearing and settlement which in turn serves improvement of not only financial markets but also capital market regulatory authorities.

From a capital market perspective, supporting issuance of real estate securities depends on ensuring a minimum degree of liquidity as the key to the funding and liquidity management of relevant institutions and investors, thus a secondary market organization should be part of a development strategy for a sound real estate securities market.

For a real estate securities exchange approach, this option can be modelled by forming a dedicated market in one of the organized OIC member state exchanges such as Borsa Istanbul or any other OIC country exchange or alternatively an electronic trading platform or a separate exchange for real estate securities can be evaluated.

Among the market/electronic trading platform/exchange options elaborated in the report, the pros and cons of these possibilities should be evaluated by the member states. According to this study's findings, with respect to the feasibility of realizing a secondary market for real estate securities establishing an electronic trading platform represents a convenient model with its practicalities for essential requirements of securities trading on disclosure, listing, clearing and settlement rules.

Availability of such secondary markets is vital for the growth of real estate securities as an alternative mechanism of finance other than conventional sources including bank credits and as an alternative instrument for real estate investment other than direct ownership of the real estate.

In conclusion, further cooperative work by the COMCEC Capital Market Regulators Forum and its members on advancing and deepening the studies for the ultimate goal of establishing a joint real estate electronic trading platform or a real estate securities exchange has the potential and economic value for the COMCEC member states and it could be a mutually beneficial form of cooperation with its benefits of economies of scale, a bigger pool for liquidity for real estate securities that could contribute to the development of real estate finance system and ultimately to the capital markets in the Islamic world.

BIBLIOGRAPHY

Olivier Hassler, *Housing and Real Estate Finance in Middle East and North Africa Countries*, World Bank Report, June 2011

Predictions For the New Economic Era and Real Estate Sector, Dr. Can Fuat Gürlesel, The Association of Real Estate Companies, Turkey, September 2009

A role for equity finance in UK housing markets? Susan J. Smith, Christine M. E. Whitehead and Peter R. Williams **http://www.jrf.org.uk/sites/files/jrf/equity-finance-housing-markets-full.pdf**

Atay Z. (2014), *Real Estate Investment Trusts at Islamic Capital Markets – Case of Malaysia (In Turkish: İslami Sermaye Piyasalarında Gayrimenkul Yatırım Ortaklığı - Malezya Örneği)*. Proficiency Essay, Capital Markets Board of Turkey.

Islamic Bonds, Nathif J. Adam and Abdulkader Thomas, Euromoney Books, 2004

Suruhanjaya Sekuriti (Securities Commission Malaysia),Sukuk,Sweet&Maxwell Asia,2009

Islamic Investment Banking: Emerging Trends, Developments and Opportunities, Author: Jaffer, Sohail, Euromoney Institutional Investor PLC, 2010.

Financing alternatives for small real estate developers in China: A case study of Guangzhouhttp://www.diva-portal.org/smash/get/diva2:491656/FULLTEXT01.pdf

International Shari'ah Research Academy for Islamic Finance (ISRA) and Securities Commission Malaysia (2015). *Islamic Capital Markets: Principles & Practices*, Pearson.

Guadamillas Mario & Keppler Robert, April 2001, "Securities Clearance and Settlement Systems: A Guide to Best Practices", Western Hemisphere Payments and Securities Clearance and Settlement Initiative (WHI), World Bank, Research Working Paper Series, http://wbln0018.worldbank.org/html/FinancialSectorWeb.nsf/(attachmentweb)/1690_wps 2581/$FILE/1690_wps2581.pdf

Giordano Francesco (December 2002), "Cross-Border Trading In Financial Securities In Europe: The Role Of Central Counterparty", European Capital Markets Institute, http://www.ecmi.es/files/giordano.pdf

Daniel MAJOR, "Electronic Communication Network", http://www.howwetrade.com/ecn-electronic-communication-network/

HWWA Discussion Paper 287, Carvalho http://ec.europa.eu/internal_market/financial-markets/docs/cesame/hwwa_discussion_paper_en.pdf

About REITs. [Online]. Available from: http://www.cohenandsteers.com/insights/education/about-reits
[Accessed 08 October 2015].

http://www.property-guide.reita.org/subsection.php?ss_id=5

Capital Markets Board of Turkey (CMB) (2013). *Communiqué on Principles of Real Estate Investment Companies (III-48.1).* [Online]. Available from: http://www.cmb.gov.tr/apps/teblig/displayteblig.aspx?id=504&ct=f&action=displayfile [Accessed 08 October 2015].

(http://www.aref.org.uk/statistical-analysis-page)

http://www.cmb.gov.tr/apps/teblig/displayteblig.aspx?id=491&ct=f&action=displayfile

https://www.sukuk.com/wp-content/uploads/2014/03/Sukuk-Structures.pdf

www.mifc.com

http://www.trustnetmiddleeast.com

http://sites.edechert.com/10/4418/landing-pages/the-asean-trading-link.asp

http://www.aseanexchanges.org/downloads/AE_Trading_Link_FAQs_for_Website.pdf