



LONDON SCHOOL OF ECONOMICS  
AND POLITICAL SCIENCE

and

HAMAD BIN KHALIFA UNIVERSITY  
QATAR FACULTY OF ISLAMIC STUDIES

جامعة حمد بن خليفة  
HAMAD BIN KHALIFA UNIVERSITY



كلية الدراسات الإسلامية في قطر  
QATAR FACULTY OF ISLAMIC STUDIES

**Workshop on**

**REVISITING ISLAMIC  
SECURITIZATION  
AND STRUCTURED PRODUCTS**

**An economic and legal analysis**

FRIDAY FEBRUARY 13, 2015

LONDON SCHOOL OF ECONOMICS  
TOWER #3, 5TH FLOOR (BOX)  
LONDON, UNITED KINGDOM



**London School of Economics  
and  
Hamad Bin Khalifa University  
Qatar Faculty of Islamic Studies**

*Workshop on*

**REVISITING ISLAMIC  
SECURITIZATION AND  
STRUCTURED PRODUCTS -**

*AN ECONOMIC, SHARI'AH AND LEGAL ANALYSIS*

**Friday, February 13, 2015  
8:30a.m--5:30p.m.**

**London School of Economics  
Box Room, 5th Floor, Tower #3  
London, United Kingdom WC2A 2AE**

Directions: <http://www.lse.ac.uk/resources/mapsAndDirections/findingYourWayAroundLSE.htm>



# OVERVIEW

In the last HLS-LSE workshop in 2014, the 9th in the series of these workshops, participants discussed the Use and Abuse of Limited Liability in Islamic Finance.

During the final session, participants discussed how the use of limited liability companies have both helped propel Islamic finance structures and products, but at the same time how it has provided unintended sharia consequences, such as hiding behind a corporate veil. Participants looked into the following issues:

- Juridical person and limited liability separate concepts or interdependent. What is the extent of justification under Islamic law?
- Similarities, differences and implications of a 'juridical person' in *shari'ah*. Does the concept violate Islamic principle of *al-kharaj bi al-daman*?
- Can examples of 'juridical person' be emulated and extended to other areas?
- Islamic view on one juridical person creating another juridical person.
- Benefits and costs of a Limited Liability Company to investors, shareholders, managers and the society at large.
- Various possible alternative models under Islamic thinking

Some participants suggested that in order to better enhance the ongoing discussions between Islamic economists, practitioners, lawyers and sharia experts and scholars, it was critical to organize the next HLS-LSE workshop (i.e. 2015) around the topic of "Revisiting Islamic Securitization and Structured Products - An Economic, *Shari'ah* And Legal Analysis".

Following this workshop, five suggested workshop topics were put forth to participants to choose from. "Revisiting Islamic Securitization and Structured Products" was voted as the first preference by a clear majority of our participants.

As with prior similar events, participants come to the Workshop having sent their comments on the topic in advance. This allows participants to start the Workshop at a fairly advanced stage. Its structure along with detailed program of event and most importantly having read in advance all the papers and comments that are going to become the basis of the day long intense discussion on the Workshop theme. This is a unique event without any parallel to in Islamic finance industry so far where *shari'ah* scholars, economist, legal luminaries, bankers and top industry professionals gather for a day long close door discussion on one of the most relevant theme selected by top decision makers of the industry.

# INTRODUCTION

The purpose of this workshop is to look into both the wider and specific merits of the continued use of securitization, and to an extent structured products in general, for the Islamic finance industry. The intent is to examine on a more granular and honest level the reasons behind the need for its continued use, whether it warrants the resources and time to tackle the many outstanding challenges its structuring, application, use and unraveling have all uncovered. At the same time, no one will forget the dangers, risks and devastation the use of securitization had created during the last financial crisis.

From a *shari'ah* perspective, its structuring has unearthed a number of unsettled specific legal conundrums and challenges, all in order to overcome either regulatory, compliance, credit risks, investor appetite, and/or market challenges. Moreover, many of the drivers to these challenges were in order to replicate to the extent possible, structures similar to those used in conventional securitizations all in order to retain market appetite and the desired credit ratings.

The result has led to an endless debate on standardization of rules, asset backed vs. asset based, true sale of assets, actual title vs. beneficial title, lack of transparency vs. sufficient documentary disclosure, securitizing cashflows vs. the actual physical assets (which are not always available or originator reticence to transfer their assets), difficulties in transferring assets, restrictions against foreign ownership of assets, tax hurdles, lack of clear and robust bankruptcy and insolvency laws, managing and meeting investor varied expectation, difficulties of achieving tranching, and difficulties with the types of asset available for securitization.

Given the above hurdles, the industry needs to take a decision as to continue to find ways to resolve the above hurdles and challenges, or rather, consider developing alternative products and structures which either address, avoid or tackle the above.

In order to maximize the benefit of this workshop for all participants, workshop attendees are kindly requested to avoid some of the old, repetitive discussions tackled in previous workshops, including refraining from making any 'platitudes', but rather to focus more on specifics to either enhance the level of discussions above, and to hopefully bring out new or non-discussed sub-issues, and/or to agree on a realistic way forward.

# OBJECTIVES

In this workshop, we would like to examine the workshop theme from following angles:

- Understanding the benefits and merits of continued use of Securitization under Islamic law
- Should we focus the energies on developing alternative products rather than trying to revive this product?
- Addressing the continued concerns of Securitisation products, from each participant's professional view
- Benefits and costs of a Securitization to investors, shareholders, managers and the society at large.
- Various possible alternative models to its use.

We intend to achieve following objectives during this workshop for each of the aforesaid five levels:

1. In a post-financial crisis world, will bringing back the use of securitization and structured products advance Islamic finance or simply repeat past mistakes?
2. Will a concerted focus on the growth of Islamic securitization deepen the market, or rather, distract Islamic banks from engaging in more traditional bank financings, especially to small and medium sized firms?
3. Is there sufficient transparency and standardization in the Islamic securitization market: is this the need of the hour?
4. If we are able to overcome legal barriers (e.g. title transfer to non-residents, true sale restrictions, actual asset backed transfers, etc.), will genuine asset-backed securities bring any additional benefits?
5. How to improve retail/non-institutional investors participation in Islamic securitization activities?
6. What are the outstanding *shari'ah* structural and legal challenges we need to overcome in Islamic securitization?
7. How to overcome some of the more common criticisms of Islamic structured products in general?





# WORKSHOP AGENDA

<b>8:30 a.m.</b>	<b>Reception and Coffee</b>
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**9:00 a.m.** Opening Remarks on behalf of London School of Economics / QFIS

**9:10 a.m.** Introduction by Workshop Moderator, Frank E. Vogel

<b>Part 1: Is there a Real Need for Securitization?</b>
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**9:30 a.m.** **Presentation on Brief Overview and Issues under Discussion** (10 mins.)

**9:40 a.m.** **Participants' Views – Open Floor Discussion**

Opportunity for each participant to explain briefly their views on the following issues:

- Given all the complexities behind the product, the legal hurdles and challenges, and the chequered history of the product during the financial crisis, should the industry really put any effort into enhancing and reviving this financial product?
- Are there more important products the industry should be focusing on enhancing, why/why not?
- Is not the issue really about *sukuk* not actual Islamic securitization?
- Are not products like securitization crowding out equity finance?
- Though everyone would like to see more asset backed securitizations, is there real investors' appetite and preference for such, or rather, they prefer (given the majority users are IFIs), asset based ?
- As commenters seem to be unanimous that Securitization has little or no benefit to the SME and retail markets, if the users of these products are largely sophisticated users and they understand the risks, so what is the concern of its use?
- Do you agree/disagree with the following statement:  
Standardisation of securitization can add depth to Islamic financial markets, increase transaction volumes and aid liquidity? It reduces arrangement costs, lowering the price paid for capital by originators. Standardisation can however reduce choices for investors, and deter arrangers from being innovative given the risks involved.



<b>11:00 a.m.</b>	<b>Tea/Coffee Break</b>
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**11:10 a.m.**     **Summary** – Moderator to provide a summary of all the points of view and frame questions.

<b>Part 2: Analyzing the Hurdles to Securitization</b>
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**11:25 a.m.**     **Participants' Views – Open Floor Discussion**

Opportunity for each participant to explain briefly their views to the following suggested (but not limited to) identified hurdles, and to explain what can be done to resolve them:

**Regulatory / Legal / *Shari'ah* Challenges:**

- Beneficial transfer of ownership versus true sale
- The process of due diligence concerning assets
- Legal process for title transfer
- Purchaser's (SPV) rights
- Source of Profit payment
- Recourse to asset in case of default
- Purchase undertakings by the issuer
- Difficulties in transferring assets; and foreign ownership restrictions
- Tax hurdles
- Lack of clear and robust bankruptcy and insolvency laws; SPV & Trustee Rights
- Difficulties of achieving tranching

**Investor / Financial Challenges**

- Types of asset available for securitisation
- Investor expectations & preferences (asset or issuer credit based)
- Originator reticence to transfer their assets
- Balance sheet strength of the issuer vs strength of the underlying assets
- Perceptions vs Reality: Investors have no recourse to asset in case of asset based *sukuk* and majority of *sukuk* holders were not aware that they do not have recourse to assets due to purchase undertaking hence cannot put claim on assets
- Balancing Minority interest rights in the event of defaults versus the impact on business continuity of the issuing entity

<b>1:00 p.m.</b>	<b>Lunch</b>
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**1:45 p.m.**      **Summary** - Moderator to provide a summary of all the main points of view.

### **Part 3: Exploring the Identified Issues With Greater Granularity**

**2:00 p.m.**      **Participants' Views - Open floor Discussion**

<b>3:45 p.m.</b>	<b>Tea/Coffee Break</b>
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**4:00 p.m.**      **Summary** - Moderator to provide a summary of all the points of view

### **Part 4: Exploring Alternative Options to Securitization**

**4:15 p.m.**      **Open Floor Discussion**

Participants to discuss—and, where possible, reach consensus on—points or issues within areas to be raised by the Moderator.

Suggested discussion examples to analyze the merits and deficiencies of:

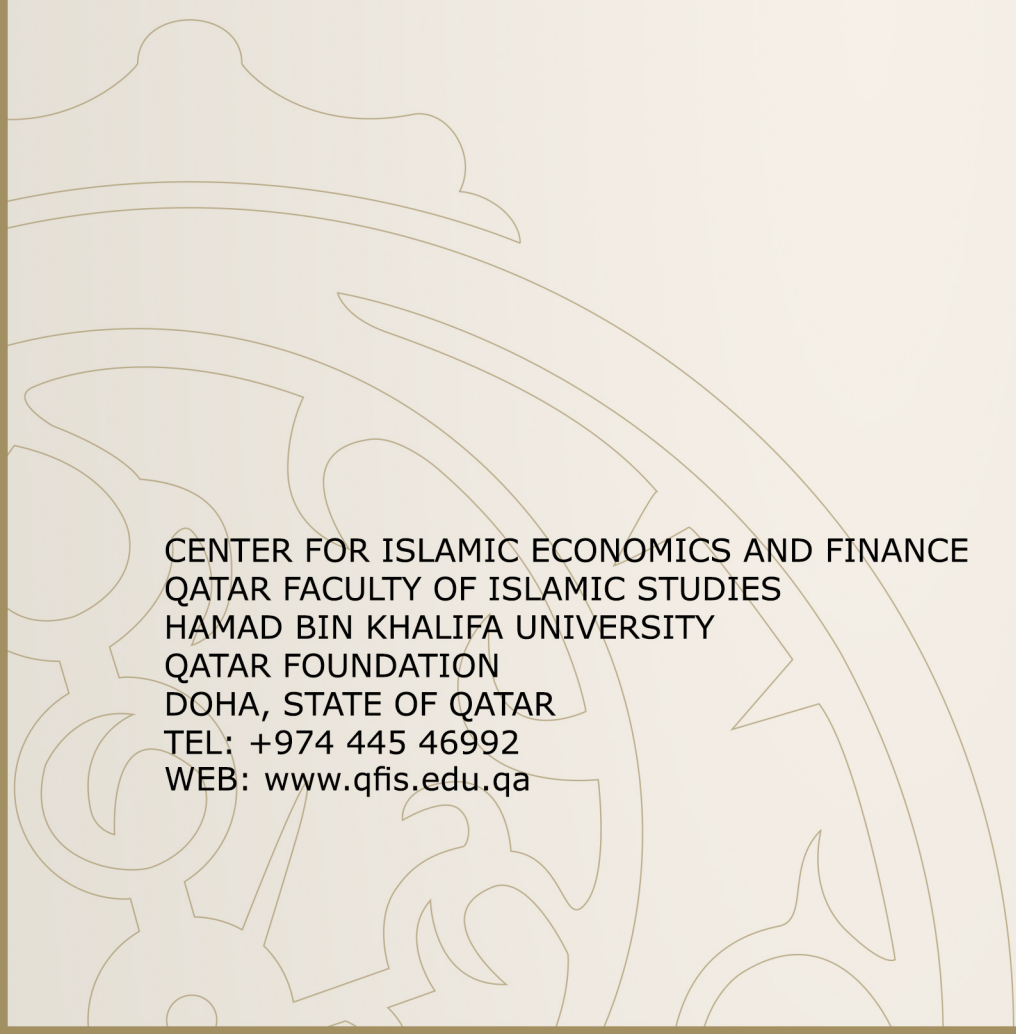
- GDP linked bonds to equitize sovereign debt
- Secured *sukuk*
- Covered *sukuk*

### **Part 5: Future Workshop**

**5:00 p.m.**      **Action Plan** – Participants to assist the Moderator in drafting the workshop summary including suggested solutions.

<b>5:30 p.m.</b>	<b>END of Workshop</b>
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