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***Workshop on***

**ISLAMIC INFRASTRUCTURE FINANCE AND SUSTAINABLE DEVELOPMENT GOALS**

**Friday, February 12, 2016**

**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/mapsAndDirections/campusMap.pdf>

**OVERVIEW**

In the last London School of Economics and Hamad Bin Khalifa University (LSE-HBKU) workshop in 2015, participants discussed the theme “Revisiting Islamic Securitization and Structured Products - An Economic, Shari*‘*ah and Legal Analysis.”

Post-workshop, some participants suggested that in order to better understand the relevant issues in which infrastructure financing plays in Islamic finance, through these ongoing workshop discussions between Islamic economists, practitioners, lawyers and shari‘ah scholars, it was important to organize the next 2016 LSE-HBKU workshop on the topic of “Islamic Infrastructure Finance and Sustainable Development Goals”. This topic was well-received by a 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, as participants are expected to have read the detailed program of events and all the submitted papers/comments prior to the workshop. These documents become the basis of most of the day long discussions on the Workshop theme.

This Workshop is a unique event without any parallel to in the Islamic finance industry. It allows a select mix of shari‘ah scholars, academics, economists, legal experts, bankers and top industry professionals to gather for a day long close door discussion on an important theme within the field of Islamic finance, as selected by these top decision makers in the industry.

**INTRODUCTION**

The purpose of this particular Workshop is to look into both the wider and specific merits of the use of Islamic financing in infrastructure projects. Islamic infrastructure and project financing is not often studied, especially within the remit of Islamic finance. Moreover, Islamic finance, with its underlying emphasis on the *maqāṣid al-shari‘ah*, has been recognized as having a key role to play in achieving the Sustainable Development Goals (SDGs), particularly in the financing of sustainable infrastructure.

Historical under-investment in infrastructure services, rapidly growing urbanized populations, technological booms, and catastrophic geo-political conflicts have created an excessive demand for infrastructure investment. Mass migration, large internally displaced populations, and the ongoing refugee crisis in the Middle East and Europe, makes this increasing demand for investment in infrastructure all the more urgent. In the MENA region, the downturn in the oil markets requires governments to seek private financing for public infrastructure. Consequently, Islamic infrastructure finance is being viewed as an important area of finance and public policy.

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 infrastructure financing all in order to retain market appetite and the desired credit ratings. Given the above hurdles, the industry needs to take a decision on how 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.

As such, this Workshop aims to foster a much needed dialogue among the relevant participants on these challenges.

In order to maximize the benefit of this workshop for all participants, workshop attendees are kindly requested to the extent possible, to avoid issues tackled in previous workshops, 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 ways to move the forward.

**OBJECTIVES**

This Workshop intends to examine the theme from the following angles:

* To define the actual parameters of the use and application of Islamic finance within infrastructure finance, and the role and extent that shari‘ah-compliance plays in these project & infrastructure financings, and what the common constraints, inhibitors and challenges it continues to face.
* To debate what unique role Islamic finance brings to financing infrastructure projects, if any.
* To discuss if Islamic finance is playing any actual role in promoting more environmental, socially responsible, and eco-friendly projects, and if not, why not. To discuss if current Islamic finance practice in infrastructure financing actually strikes the right balance between economic advancement, social equity, and environmental sustainability, or not.
* To discuss how Islamic infrastructure finance can be used to achieve the Sustainable Development Goals (SDGs) of the United Nations and whether it should do so, in order to advance society, fuel a vibrant economy, empower work and life through financing public infrastructure systems, and other notable goals. To discuss if Islamic Infrastructure finance will ever be able to deliver equitable services such as affordable housing, overcome poverty, meet basic human needs and protect human welfare, especially in times of disasters, e.g., the on-going refugee crisis.
* To discuss the key shari*‘*ah, legal and contractual issues faced in Islamic infrastructure financings, including a discussion on the use and application, among others, of the following issues: Project *sukuk* with conventional financing, concessions, forward leases, harmonizing differences of juristic opinions across *madhabs* in cross-border transactions, dealing with pari passu in co-financing projects with conventional financiers, dealing with conflicts of law, dealing with fluctuating benchmarks in rentals, managing the risks of long-term tenor debts, the use of *wa’ad* in voluntary and mandatory prepayments, dealing with total loss, and other common *shari‘ah*  issues in infrastructure.
* To discuss alternative and innovative structures for Islamic infrastructure financing, such as revenue-sharing bonds, airtime and timesharing securitizations.
* To discuss how we can improve Islamic infrastructure financing, including ways forward to ensure that the use of Islamic finance can achieve its intended *maqāṣid al-shari‘ah* and whether they can be aligned with the UN's Sustainable Development Goals and objectives of achieving social justice.

**WORKSHOP AGENDA**

**8:30 a.m. Reception and Coffee**

**9:00 a.m.** Opening Remarks on behalf of London School of Economics and HBKU

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

**Part 1: Islamic Infrastructure Finance - Differentiating it from**

**Conventional financing**

**9:20 a.m. Participants’ Views – Open Floor Discussion**

Opportunity for each participant to explain briefly their views on the following macro issues. Do you agree/disagree with the following statements:

* **Differentiation**: At the end of the day, other than the use of shari‘ah *-* compliant financing forms, there is no real difference in either substance or outcome between conventional and Islamic infrastructure financing. Do you agree?
* **Scale of Market**: The Islamic banking industry is just not large enough to absorb all the risks of infrastructure projects within the countries in which the Islamic banking industry operates. Since IIF face heavy capital infusion, upfront investments, only achieves returns by securitizing future cash flows, and the returns are back ended which means that for several years after commissioning the project will be making losses, can Islamic Finance really ever achieve the capital and market scale to do such projects alone?
* **Use of Islamic Infrastructure Financing (IIF)**: Islamic financial structures will always be limited to small tranches of a large financing. Do you agree? What are the key inhibitors to their use: limited appetite? Limited sources of funding? Costs? Structuring considerations? Tax? Other factors?
* **Determining and measuring "success" in IIF**:How do you determine the "*maslahah*"?Would you agree that it is met when the project mobilizes long term resources under consideration of the public good, while observing best in class ESG standards?
* ***Maslahah***: Who determines whether a specific project has *maṣlaḥah* to society as inspired by the *maqāṣid al-shari‘ah* ? Are there any thresholds? Does the presence of any form of *maṣlaḥah* , regardless of how miniscule, make a project viable, or is there a minimum threshold level to be adhered? What if there are *mafasadah* (harms) in the same project that has some *maṣlaḥah*—who should say it should or should not proceed? Scholars and/or practitioners and/or regulators? What if there is a disagreement on what is or is not a sufficient *maṣlaḥah*?
* ***Maqāṣid***. Are there any real differences between the Sustainable Development Goals and ideal *maqāṣid al-shari‘ah*?

**11:00 a.m. Tea/Coffee Break**

**11:15 a.m. Summary** – Moderator to provide a summary of all the points of view and frame questions.

**Part 2: Islamic Finance Idealism, Sustainable Development Goals**

**and Islamic Infrastructure Financings**

**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:

* **Islamic Finance Idealism:** "Socioeconomic idealism will only prevail over pure legalism in Islamic finance when we establish meaningful regulation and taxation. Else legalism continues to dominate." Is this statement correct?
* **Mimicking of Conventional Infrastructure Finance**: Overall, IIF will mimic the conventional industry with its adverse wealth distribution and environmental harm. Therefore, other than being contractually shari‘ah compliant, Islamic infrastructure financing has no additional benefits of any kind to conventional infrastructure financing. Is that true?
* **Sustainable Development Goals and Infrastructure Finance**: What is the link between the SDGs and the financing of infrastructure projects? How, if at all, can Islamic finance be used to meet the infrastructure-related SDGs?
* **Social and Environmental Impact**. Islamic structures cannot for the foreseeable future balance between economic advancement, social equity, and environmental sustainability. They add no additional benefit to fighting corruption and promoting good governance, implementing environmental laws, fostering public education and changing regulation and taxation to promote equity and limit debt growth. Therefore, as much as we may wish for the contrary, the reality will always be that IIF will not play a major role in infrastructure finance. Would you agree? If not, what benefits are there?
* **Aligning with the UN's Sustainable Development Goals (SDG) and social justice objectives**: Can the SDG or can IIF be aligned with each other in their objectives? Is it correct that SDG only suits large or global projects with multiple institutional creditors, not SME projects?
* **IF Structures and Market Appetite for Projects that meet SDGs**: Do you agree with the following: “There are many tools which were developed by IFIs that can be used for IIF such as the concept of *musharakah* and *mudharabah*. What is lacking at the moment is the will of the market to use these instruments in order to develop infrastructure.”

**1:00 p.m. Lunch**

**1:45 p.m. Summary** – Moderator to provide a summary of all the points of view and frame questions.

**Part 3: Exploring the Legal and Contractual Issues in Islamic**

**Infrastructure Financing**

**Participants' Views - Open floor Discussion**

Opportunity for each participant to explain briefly their views on the following contractual issues with Islamic Infrastructure Financings (IIFs). Do you agree/disagree with the following statements:

* **Contractual objectives**: The use of contracts embeds the objectives of the Islamic injunctions; *wa’ad* contracts however may deviate from the very intention of the restrictions imposed on contracts.
* **Risks**. Are there really any unique risks to Islamic infrastructure transactions separate from or in addition to conventional projects? Can these be contractually minimized?
* **Hiyal**: There has been too much reliance on *hiyal* (legal artifice) to create *daman* (contractual liability) on the Islamic financier. The effects of additional agreements and obligations on the customer often seem to end up effectively negating the *daman*.
* **Waad and Pari-Passu**: Use of *wa'ad* and pari-passu with conventional financing - Do these contractual mechanisms not negate the essence and of risk sharing under shari‘ah?
* **Conflict of Law**: Conflicts between shari‘ahand other contractual laws, such as English and New York law: Can they be eased by way of *Iqrar* (Confession or acknowledgment)?
* **Risk - reward paradigm**: Total loss and service agency indemnities clauses, cause the risk balance against Islamic finance. Do you agree?
* **Fluctuating benchmarks in rentals**: Are there any unaddressed issues with respect to fluctuating benchmarks?
* **Asset Backed Financing:** Due to pricing and volume reasons, as much as we all would like to wish to see more Asset-backed financing, the market will always remain asset-based financing for the foreseeable future. Do you agree?
* **High Leverage Ratios:** Because of the current tax, regulatory and market incentives, debt not equity structures will continue to be predominantly used in Islamic infrastructure financing. Do you agree?
* **Risk Shifting:** Without a unified regulatory and tax system, we will have to continue to use complex Special Purpose Vehicles for projects in a host-country jurisdiction. This will always shift most of the risks to the public. Do you agree?
* **Harmonization of shari‘ah** **standards on** **cross border IIFs**: For IIFs, is Harmonization of juristic of opinion, especially in cross-border transactions, essential to further develop the Islamic finance industry (in order to reduce disputes, conflicts and confusion on the practices of cross border Islamic infrastructure finance)? Are any of these really needed: Cross jurisdiction regulator cooperation b) standardization, i.e., developing shari‘ah standards in an international body, and C) Harmonization of shari‘ah *fatwa*.
* **Standards:** Do you agree that these issues have been sufficiently resolved by the AAOIFI standards as well as in various *fatawa* on Islamic finance?

**3:30 p.m. Tea/Coffee Break**

**3:40 p.m. Summary** - Moderator to provide a summary of all the points of view

**Part 4: Exploring Alternative Options to Islamic Infrastructure Finance**

**Open Floor Discussion**

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

Suggested discussion examples to analyze the merits and deficiencies of:

* A “Harmonisation of Law Committee” like that established in Malaysia in 2010, which consists of law makers, shari‘ah scholars, academicians, Islamic finance practitioners, to identify the conflicting laws and suggest how harmonisation can be attempted.
* Should a "*maqasidic* index" be developed for project financing?
* Islamic credit and ethical rating index?
* Malaysia introduced the concept of "sustainable and responsible investment *sukuk*", does this work for others?
* Social good benchmark - If the provider reached a social good benchmark it would be paid an agreed amount. If it failed to do so, then it would receive a lesser amount or possibly nothing at all. Can we have an Islamic social impact bond?

Some participants suggested examples of alternative structured transactions:

* Hajj Terminal expansion in Jeddah 8, 9 years ago, whereby the finance department itself wanted to avoid *tawarruq* and ultimately used an Imtiaz the right to run the airport as the underlying assets rather than facilitation of e.g. Platinum.
* Infrastructure *sukuk* to build Kuala Lumpur International Airport (KLIA) by Malaysia Airport Holding Berhad (MAHB) is one of the most innovative structures in Islamic infrastructure finance. This is because the *sukuk* is the world first rated hybrid perpetual *sukuk*.
* Infrastructure *sukuk* to build Highway by Plus berhad (Projek Leburaya Utara-Selatan berhad) Malaysia is interesting to be studied. PLUS *Sukuk* is issued to finance Highway project that would connect peninsular Malaysia.

**Part 5: Future Workshop**

**4:40 p.m. Action Plan** – Participants to assist the Moderator in drafting the workshop summary including suggested solutions.

**5:30 p.m. End of Workshop**

**PREVIOUS ISLAMIC FINANCE WORKSHOPS AT LSE**

Since 2007, day long workshops on Islamic finance have been organized on a variety of focused themes at the London School of Economics. The first eight workshops were organized in conjunction with the Islamic Finance Project at Harvard Law School, Harvard University (IFP-HLS). Since ninth workshop HBKU has replaced IFP-HLS in jointly organizing the workshop along with the LSE. These unique workshops aim to develop a higher understanding of the key issues, challenges and thinking behind a specific chosen topic pertinent to the Islamic finance field, through advanced level discussions among a group of seasoned practitioners, scholars, economists and academics.

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| Year | Theme |
| 2015 | Re-visiting Islamic Securitization and Structured Products |
| 2014 | Use and Abuse of Limited Liability |
| 2013 | Insolvency and Debt Restructuring in Islamic Finance |
| 2012 | Islamic Financial Intermediation: Revisiting the Value Proposition |
| 2011 | Reappraising the Islamic Financial Sector |
| 2010 | Islamic Financial Ethics and Ethical Governance |
| 2009 | Risk Management: Islamic Economic and Ethico-legal perspective on Risk Management |
| 2008 | *Sukuk*: Economic and Jurisprudential Perspective |
| 2007 | *Tawarruq*: A Methodological Issue in Sharia-Compliant Finance |