

Prospects and challenges of issuance of *Sukuk* in Bangladesh: Lessons from Malaysia for developing a comprehensive legal framework for Bangladesh

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Abstract: *The introduction of Islamic Bond Sukuk in Bangladesh has created a new source of funding for the government and private sector. Favourable legal framework is necessary for the growth of Sukuk in Bangladesh. The core objective of this paper is to examine the domestic legal framework of Sukuk and to find out its compatibility with international standards, more particularly with the Malaysian regime. This paper offers a brief discussion on the prospects of Sukuk in Bangladesh and then outlines the challenges and limitations of Sukuk market. Part five of this article investigates the loopholes in the existing regulations in Bangladesh. Finally, this paper argues that while Bangladesh has established a regulatory guideline for prudential management of Sukuk, there is still room for improvement for efficient operation and effective management of Sukuk. Notably, this paper explores the Malaysian legal regime to find out the critical areas of reform in Sukuk regulations in Bangladesh.*

Keywords: Islamic Bond, *Sukuk*, Islamic financial regulation, Interest-free financial system.

1. Introduction

The Islamic finance industry is designed to assure revenues, develop innovative products and operate efficiently through a promise to “real-life, real-goods” financing, maintaining the guiding principles of *Shariah* law.¹ With the expansion of the interest-free banking system in the Muslim community as well as in the non-Muslim world, alternative investment tools also started to emerge in order to

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¹ Abdullah Abdullatef A Al Elsheikh and Joseph Tanega, ‘Sukuk Structure and Its Regulatory Environment in the Kingdom of Saudi Arabia Analysis’ (2011) 5 Law and Financial Markets Review 183, 183.

call the demand for interest-free financing.² For the past few decades, Islamic bond *Sukuk* has emerged as an alternative investment tool, also known as “interest-free bond application”.³

Islamic bond *Sukuk*, was first introduced by Malaysia in 1990. Since then, it is increasingly on its direction to turn into a significant source of funding in terms of an interest-free financing model. *Sukuk* can be a new investment opportunity in Bangladesh. With a ninety per cent Muslim population, people here want to earn through *halal* instruments like *Sukuk* (Islamic Bond) based on Islamic *Shariah* and principles rather than a fixed interest rate (*Riba*).

Despite the phenomenal growth and increasing popularity of the Islamic finance industry in Bangladesh, *Sukuk* has no formal footprint here till 2020. Bangladesh has recently adopted a guideline titled ‘Bangladesh Government Investment *Sukuk* Guidelines, 2020’ (BGISG) on October 8, 2020, through a gazette notification.⁴ With this new guideline, Bangladesh has introduced a regulatory framework of financial product *Sukuk* based on *Shariah* principles within the existing financial legal structure. The primary aim of introducing *Sukuk* is to raise funds and represent it as a possible cure for the ailing market.⁵ It is to be noted that Bangladesh has already formulated a guideline for the operational model of *Sukuk*, however it is also undeniable that Bangladesh has so far very limited experience of *Sukuk* market system. This research paper will argue that the gaps and loopholes in the existing regulation might frustrate the core objective of *Sukuk* instrument in Bangladesh. This paper will seek to identify the existing challenges of regulatory framework, the problematic patterns and concerns related to *Shariah* compatibility of *Sukuk* and will also review the constraints and challenges of monitoring, dispute resolution, credit rating and appointment of advisors associated with *Sukuk*.

This research begins with the core features and utilization of *Sukuk* in the context of Bangladesh, then analyses the main features of regulatory framework of *Sukuk* in Bangladesh along with the challenges and limitations of the *Sukuk*, after that investigates the loopholes of the existing regulation and lastly, identifies key legal and institutional reform priorities for Bangladesh in order to formulate a comprehensive regulatory framework for *Sukuk* in Bangladesh. Malaysia is a pioneer in Islamic Banking and finance while Bangladesh is relatively a newcomer.

² Elvan Z. Bilal, Gul Dogan Ocak and Ugur Alp Yalcinkaya, ‘The Rise of Interest-Free Banking System: Sukuk’ (2017) 16 *GSI Articletter* 21, 22.

³ *ibid*.

⁴ ‘Bangladesh Government Investment Sukuk Guidelines, 2020’ <https://mof.gov.bd/sites/default/files/files/mof.portal.gov.bd/publications/c7d1ed02_1f5c_4a42_947f_36adace8c33a/Shariah%20SUKUK%20Guidline.pdf> accessed 19 May 2022.

⁵ Raj J. Thomas, ‘Islamic Banking and Finance - Regulatory Regimes in Malaysia and Singapore’ (2011) 29 *Singapore Law Review* 165, 165.

A comparative assessment with Malaysian regulations would reflect priority areas of reformation for a conducive legislative and regulatory framework on *Sukuk* in Bangladesh. This research paper will facilitate to generate and develop a vibrant legislative and regulatory framework governing *Sukuk* or Islamic bonds in Bangladesh.

2. Context of Interest-Free Financial System and the Fundamental Features of Islamic Bond (*Sukuk*)

Due to the prohibition of interest in Islamic Law and principles, the continuous expansion of interest-free banking system has also expanded the emergence of alternative investment tool, which is known as “interest-free bond application”.⁶ At present, *Sukuk* are considered as the most visible Islamic finance product for raising external financing in Islamic banking and finance industry.

The term *Sukuk* is plural for *sakk*, which denotes a financial instrument or a certificate demonstrating an ownership interest in *shariah* compatible assets or business activities with the right to the profits and liquidation proceeds produced from such assets or business activities.⁷ It is also argued that contemporary term “check” has its origin in the word ‘*sakk*’. Imam Malik ibn Anas, a famous Islamic jurist, described in his famous treaties “*the al –Muwatta*” that the use of *sakk* as a state obligation for the partial payment to soldiers and government servant by the Muslim societies and government.⁸

The emergence and the development of growing expansion of interest-free bond application in the context of interest-free banking system can be found its origin back in 7th century when the first *Sukuk* was issued by the Great Mosque of Damascus, known as Umayyad Mosque in Damascus.⁹ Malaysia is considered as the world’s largest originator of *Sukuk*, which first supported *Sukuk* as substantial source of financing as alternative to bonds in 1990.¹⁰ Currently, a number of Islamic countries, for example Malaysia and Bahrain have taken initiatives to build Islamic capital markets through issuance of *Sukuk* because of its operating model in *Sariah* -compliant way.¹¹

⁶ Bilal (n 2) 22.

⁷ Hossam Abdullah and Riza Ismail, ‘Sukuk under Development’ (2008) 28 *International Financial Law Review* 72, 72.

⁸ Zamir Iqbal and Abbas Mirakhor (eds), *Economic Development and Islamic Finance* (World Bank Group 2013) 258 <<https://ebookcentral.proquest.com/lib/unimelb/detail.action?docID=1463586>> accessed 2 February 2021.

⁹ Bilal (n 2) 24.

¹⁰ ‘Malaysian Sukuk: A Superior Alternative to Traditional Bonds’ (*The Malaysian Reserve*, 11 December 2018) <<https://themalaysianreserve.com/2018/12/11/malaysian-sukuk-a-superior-alternative-to-traditional-bonds/>> accessed 14 April 2022.

¹¹ Hossein G Askari, Zamir Iqbal and Abbas Mirakhor, *Challenges in Economic and Financial Policy*

Sukuk are considered as methods for raising funds. *Sukuk* are often compared with conventional bonds as they are being used as fund rising instruments.¹² *Sukuk* is considered a source of long-term financing in the construction of infrastructure and implementation of development projects. The Accounting and Auditing Organization of Islamic Financial Institute (AAOIFI) describes *Sukuk* as

Certificates of equal value representing undivided shares in ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity, however, this is true after receipt of the value of the *Sukuk*, the closing of the subscription and the employment of funds received for the purpose for which the *Sukuk* were issued¹³

2.1 Salient Aeatures of *Sukuk*

The first and foremost feature of *Sukuk* is that it has no fixed interest. As *Sukuk* is the securitized form of financial certificate system developed to guarantee that the profit will be derived from a commercial activity, partnership, or ownership.¹⁴ The returns to *Sukuk* holders are dependent on the profits or cash flow generated by the assets or investment financed utilizing *Sukuk* proceeds. The management of the *Sukuk* asset and it's proceed is entrusted with a trustee. Generally, large projects are implemented by raising money through *Sukuk*. The issuer of the *Sukuk* identifies existing assets to sell to the investors through a special-purpose vehicle (SPV).

The Islamic bond (*Sukuk*) offers unique opportunity to its investors, i.e. investors become the owner of the large scale projects along with commensurate cash flows and risk undertaken by *Sukuk*, whereas no other bond could offer a share of an asset or ownership of the assets of particular project or special investment activity. Additionally, if the *Sukuk* of undertaken project or investment activity fails, there is an opportunity to return the money to the investors by selling the assets of the project. It is to be mentioned that *Sukuk* are issued to finance the acquisition of new assets, *Sukuk* holders have a right to claim only on the revenues created by the new assets.¹⁵ Besides, *Sukuk* can be traded at par, premium, or discounted values and can be listed in the capital market which is also assessable by specialist rating agencies and financial experts. *Sukuk* is considered a source of long-term financing in the construction of infrastructure and implementation of development projects.¹⁶

Formulation: An Islamic Perspective (Palgrave Macmillan 2014) 98 <<https://go.openathens.net/redirector/unimelb.edu.au?url=http%3A%2F%2Fdx.doi.org%2F10.1057%2F9781137381996>> accessed 2 February 2021.

¹² Iqbal and Mirakhor (n 8) 258.

¹³ AAOIFI. 'Shari'ah Standard no 1: Trading in Currencies' <<http://aaoifi.com/ss-1-trading-in-currencies/?lang=en>> accessed 17 February 2021.

¹⁴ Bilal (n 2) 25.

¹⁵ Iqbal and Mirakhor (n 8) 259.

¹⁶ Elizabeth Meager, 'Unlocking Sukuk' (2017) 36 *International Financial Law Review* 22, 23.

In fact, *Sukuk* is not the name of a specific financial agreement rather, the structuring of *Sukuk* determines its nature. Its structure is built under a specific contract of *Shariah*. These infrastructures are mainly divided into two parts - asset-based and asset-backed. Lease-based *Sukuk* are usually asset-based. And the rest are asset-backed.¹⁷ The primary features of *Sukuk* are three, namely:

- a. It is related to a special project;
- b. It is backed by specific assets which is called ‘underlying asset’;
- c. *Sukuk* holders basically generate profit from the underlying asset.

2.2 Mechanism of Sukuk

The mechanism of *Sukuk* is quite similar to the process of securitization. Securitization is the process of packaging a pool of assets like mortgages, auto loans, accounts receivables, or home equity loans into tradable securities that can be sold to investors of *Sukuk*. *Sukuk* are participation certificates against a single asset or a pool of assets.¹⁸ The *Sukuk* is an asset-based security where the major credit risk is that of the originator who is required to pay the *Sukuk* holder depending on the underlying asset’s performance. A conventional bond does not give any proprietary right in an underlying asset but rather just a contractual claim against the issuer.

Sukuk investors are often unaware of their risks. By definition, the *Sukuk* holder is the owner of the asset, not the creditor of the asset. A *Sukuk* is designed to escape the Islamic injunction on interest payments. Operation of *Sukuk* manages this by paying *Sukuk* holders with the cash flows produced by specific assets, which are put into a special-purpose vehicle (SPV) as part of the contract. Many financiers assume that the bonds were asset-backed, providing them a claim on the assets in the event of a default. But, in reality, most *Sukuk* are asset-based, holding investors title of the cashflows but not of the underlying assets themselves.¹⁹ Generally the following parties are involved in a *Sukuk* agreement:

Subscribers: The *Sukuk* holders or the investors who invest in *Sukuk* instrument are subscribers.

Originator: Whenever any government or private entity or financial institution requires capital, it identifies the assets and transfers the same to a Special Purpose Vehicle (SPV). This issuing agency is called the originator.

¹⁷ *ibid.*

¹⁸ Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance: Theory and Practice* (John Wiley & Sons, Incorporated 2011) 184 <<http://ebookcentral.proquest.com/lib/unimelb/detail.action?docID=693367>> accessed 2 February 2021.

¹⁹ ‘Sukuk It Up’ [2010] *The Economist* (Online, 15 April 2010) <<https://www.economist.com/finance-and-economics/2010/04/15/sukuk-it-up>> accessed 2 February 2021.

Special Purpose Vehicle (SPV): An SPV is a separate entity which is formed particularly for the securitization process. SPV is the purchaser of the asset from the originator.

Credit enhancers: The originator arranges different forms of credit enhancement tools to be provided in order to reduce the overall perceived risk of the *Sukuk* instrument. This can take the form of a third-party guarantee- from a solvent Islamic financial institute or a sovereign.

Trustee: This indicates the party which is engaged in the protection of the interests of the *Sukuk* holders, overseeing the activities of the SPV.

Shariah Board: This board is responsible to provide any opinion and advice on *Shariah* issues regarding the operation of *Sukuk* instrument.

Obligor: Obligor is responsible for periodic lease payment to the *Sukuk* holders. It holds the *Sukuk* property on lease from the trustee on behalf of the *Sukuk* holders. The obligor also makes the closing interest payment and redeems the bond by refunding the principal amount to the bond holders.

2.3 The Most Commonly Used Sukuk Types

In the Islamic financial market, Mudaraba (profit sharing), Musharaka (profit-loss sharing), Murabaha (profit-selling), Ishtisna (product-making), Karj Hasan (good credit), Salam (advance purchase) and Ijara (lease) *Sukuk* are prevalent.

2.4 Bond vs. Sukuk

Although the objective of issuance of *Sukuk* is the same as conventional bond, but there are significant distinctive features of *Sukuk* as an Islamic bond. Conventional bonds are a means of raising funds based on interest payment. *Sukuk*, on the other hand, is an Islamic means of raising interest-free funds. There are difference between conventional bonds and Islamic *Sukuk* bonds. A bond is a contract executed between a lender and a borrower. It specifies the amount of the loan, the repayment period and the interest rate. It is not *Shariah*-compliant as it contains interest, speculation, etc. And *Sukuk* is an investment certificate that guarantees ownership of underlying assets. Usually, *Sukuk* holders get periodic payments from the income generated by the underlying assets.

3. Prospects of Sukuk in Islamic Financial Market of Bangladesh

Islamic financing is governed by *Shariah*-based regulation, so Muslim investors have access to financial services through investment in *Shariah*-compliant instruments. An essential goal for Islamic finance is to uphold high moral values according to *Shariah*, work for equality in the distribution of wealth in society, and to serve life, tradition, and intellect. Interest (*riba*), gambling (*maisir*), and

uncertainty (*gharar*) are prohibited by *Shariah* law. Due to these high standards, the Islamic finance sector's growth rate appears to be significant and accelerated.²⁰

Developing countries can use *Sukuk* to raise development financing. For instance, governments can use *Sukuk* to finance the construction of roads, railway, ports, sanitation etc. The government of Bangladesh has decided to release *Sukuk* to meet the cost of various development projects, like schools, water treatment projects etc. Through the floating of *Sukuk*, a new safe investment tool with *Shariah* compatibility is being introduced in the domestic financial market.²¹

The introduction of the *Sukuk* would reduce the government's debt dependency on conventional banks. The pressure on conventional banks to finance the government will also be reduced. Opportunities will be created for Islamic banks to invest their idle money to help Bangladesh Bank implement the monetary policy. Bangladesh Bank says that from now on, in addition to the existing treasury bills and bonds and savings certificates, this *Shariah*-compliant Islamic bond *Sukuk* will also be a new source of government funding, which will be spent on development activities.²² To meet the budget deficit, the government could only take loans from conventional banks. But the government could not take any loan from the Islamic banks due to lack of *Shariah*-compliant instruments. *Sukuk* has opened significant opportunities to take loans from Islamic banks which will ultimately reduce government's reliance on conventional banks. Besides, it will also decrease the cost of paying interest on the loan from a traditional banking channel.

The significant benefits and advantages of *Sukuk* can be summarized as follows :

- a. **Investment Opportunity for the Islamic Banks:** *Sukuk* will create opportunities for Islamic banks to invest their idle money. This will also increase their profitability. In addition, it will be easier to maintain the statutory liquidity ratio (SLR) with the Central Bank.²³ *Shariah*-based banks and financial institutions have more than 45 per cent of the excess liquidity

²⁰ Theodore Karasik, Frederic Wehrey and Steven Strom, 'Islamic Finance in a Global Context: Opportunities and Challenges Symposium: Islamic Business and Commercial Law' (2006) 7 *Chicago Journal of International Law* 379, 380.

²¹ The Financial Express, 'Investment Sukuk: A Bangladesh Perspective' (*The Financial Express*) <<https://today.thefinancialexpress.com.bd/27th-anniversary-issue-2/investment-sukuk-a-bangladesh-perspective-1606037593>> accessed 17 February 2021.

²² Zamir Uddin, 'Sukuk Era Begins' *The Daily Star* (Online, 29 December 2020) <<https://www.thedailystar.net/business/news/sukuk-era-begins-2018825>> accessed 17 February 2021.

²³ Zamir Iqbal and others, *The Stability of Islamic Finance: Creating a Resilient Financial Environment for a Secure Future* (John Wiley & Sons 2010) 46. <<http://ebookcentral.proquest.com/lib/unimelb/detail.action?docID=822431>> accessed 2 February 2021.

in the country's banking sector. Whereas, conventional banks have the opportunity to invest in a variety of instruments for liquidity management, but *Shariah*-based banks and financial institutions have not. As a result, most of their liquidity remains unused. Through the *Sukuk* issue, the liquidity of these banks and financial institutions can be spent on various development projects of the government and creating alternative investment opportunities for *Shariah*-compliant institutions as well as using the *Sukuk* as an SLR.²⁴

- b. **Regulatory Management Benefits of Bangladesh Bank:** Bangladesh Bank as the central bank has been able to implement its repo and reverse repo activities with conventional banks but the regulator was facing difficulties to do so with Islamic banks. As a result, the central bank had to rely on conventional banks to implement monetary policy. In the wake of issuance of '*Sukuk*' bond, Bangladesh Bank will be able to complete such activities with Islamic Banks as central regulatory bank of the country.
- c. **Potentials of greater Investment by Muslim community :** Muslim community want *Shariah*-compliant instruments for investment instead of interest-based product as per guidance of Islamic *Shariah* and principles. *Sukuk* is an interest-free Islamic bond and its risk/profit sharing feature is compatible with Islamic principles of economic and financial transactions. Due to its features and characteristics, it is expected that Muslim community would be more interested for greater investment in *Sukuk* .

As mentioned above, there are many opportunities for *Sukuk* bond issue in Bangladesh. However, the biggest opportunity in this case may be that the issue is to be listed on the stock market. Because by being listed, an investor can withdraw the investment whenever he needs money by selling the instrument. According to the Finance Department of Bangladesh government, the share of *Shariah*-compliant banks in the entire banking system is about 25 percent. However, there is no *Shariah*-compliant instrument to finance the government's deficit by the Islamic banks. As a result, on the one hand, financial institutions are deprived of the opportunity to invest in a more secure sector. On the other hand, the government cannot use the funds of Islamic financial institutions to finance

²⁴ Express (n 21).an Islamic equivalent of bonds, is a certificate representing ownership in tangible assets or the assets of particular project or special investment activity. As opposed to conventional bonds, which merely confer ownership of a debt, Sukuk grants the investor a share of an asset, along with commensurate cash flows and risk. Thus, the primary condition of issuance of Sukuk is the existence of assets on the part of the issuer which may be the government corporate entity, banking and financial institutions or any entity which wants to mobilise financial resources. Identification of suitable assets is the first and arguably the most integral step in the process of issuing Sukuk certificates. These authors have made an attempt to describe the mechanics of Sukuk, their structure with particular focus on regulatory framework for sukuk issuance in Bangladesh. Definition: Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI).

its deficit. The finance department says the government's interest expenditure will also be reduced if deficit financing is done through *sukuk*.²⁵

4. Challenges and Limitations of *Sukuk* Market

Sukuk market has significant potentials to thrive in the immediate Islamic financial market of Bangladesh, however, the market here is in its just beginning phase. *Sukuk* has raised a variety of practical and legal challenges pertaining to the governing structure that designed to regulate it. The most prominent challenges of them are as follows:

4.1 *Limitation as to Operational Strategy*

The first challenge is our overall lack of understanding of *Sukuk* and the lack of technical strategy capabilities. The deficits are not from the conceptual stage, but from the operational stage. The problem is that any kind of product in the Islamic financial system is developed following the conventional product. As a result we become imitators. It can be called mimicking industry.²⁶ For example, Islamic banking products are made by imitating traditional banking loan products. They are, of course, products of Islamic banking, but the structures they follow often do not achieve the larger goals of *Shariah*.

4.2 *Insufficient Bond Issue*

The *Sukuk* market has insufficiency in terms of frequent and high-quality sovereign issue. The absence of adequate and high-quality sovereign issue is causing failure to play its important role for the development of all capital markets. Due to this failure of role play, *Sukuk* is becoming unable to build a benchmark yield curve for the market. That is why, it becomes difficult for other issuers and investors to assess the Islamic bond market confidently.²⁷

4.3 *Limited Viability for Small Scale and Short-term Fund Raising*

Sukuk is usually connected to a specific real asset, rather than to a pool of assets like securitization. This model can be viable for sovereign or multinational borrowers who have large scale assets to securitize, but poses hardship for institutions that want to raise capital on a smaller scale. Furthermore, *Sukuk* issued against *salam* or *murabahah* contracts cannot be traded in secondary markets. The majority of Islamic Banks hold a large portion of assets that can be securitized, but so far no Islamic commercial bank can issue *Sukuk*, mainly due to the lack of large-scale assets or the holding of short term *salam* or *murabahah*- based assets. Islamic

²⁵ 'Sukuk Era Begins' (n 22).

²⁶ Abdul Karim Aldohni, 'A Compatibility Analysis of Islamic Financial Disputes: English International Law and Islamic Law' (2019) 14 *Journal of Comparative Law* 218, 220.

²⁷ Iqbal and Mirakhor (n 18) 198.

banks can utilize the securitization process to take the assets off their balance sheets in order to improve the liquidity of their current portfolios. The challenge is to develop *Sukuk* based on pools of heterogeneous assets with varying tenure and various credit qualities.²⁸

4.4 Conformity with International Interest Rate Benchmark

A notable criticism relating to the Islamic bond *Sukuk* is that its floating rate are usually closely connected with the global interest rate benchmark such as the London Inter Bank Offer Rate (LIBOR). That's why, when it comes to pricing, it competes directly with the conventional bonds in the level of relative spreads. Conventional borrowers think that there is no inherent reduced cost advantage from tapping into *Sukuk* market as because terms of *Sukuk* are mostly derived from competitive pricing level of conventional bond market.²⁹ In reality, they consider conventional bond market are more liquid and cheaper than *Sukuk* bond. Therefore, borrowers need to formulate a long-term and strategic approach about the various ways of reducing the overall funding cost by tapping into Islamic markets, rather than focusing on a single transaction.

4.5 Lack of Appropriate Legislative and Regulatory Framework

Despite there is a good demand for Islamic product *Sukuk*, Bangladesh still lacks appropriate legislative and regulatory framework to reasonably meet the expected level of issuance and trading of *sukuk*. Bangladesh has adopted regulation to accommodate needs of Islamic bond *sukuk* within its domestic market structure, however, style of operation and execution of *sukuk* as envisaged in the regulation is not efficient enough to motivate the players in the market. It has raised important technical and regulatory issues which are creating obstacles to the smooth issuance and trading of the *sukuk* bond. For example, the only *sukuk* bond floated in Bangladesh is *ijarah sukuk* which requires the owners of operating assets to execute a leasing transaction. While government of Bangladesh and their related public sector bodies are generally the owner of operating assets, some domestic laws and regulations in relevant sectors have prohibitory provisions which prevent public sector bodies to pledge or lease assets required to structure the transaction.³⁰

²⁸ *ibid.*

²⁹ Hossein Askari, Zamir Iqbal and Abbas Mirakhor, *Globalization and Islamic Finance: Convergence, Prospects and Challenges* (John Wiley & Sons, Incorporated 2009) 30. <<http://ebookcentral.proquest.com/lib/unimelb/detail.action?docID=822430>> accessed 2 February 2021.

³⁰ Mohammad Kabir Hasan and Mufti Abdullah Masum, 'Comments on Sukuk Prospectus' (7 January 2021) <https://bonikbarta.net/home/news_description/252410/> accessed 14 April 2022.

4.6 Lack of Credibility in Market Structure and Practices

Due to difficult circumstances and practices of market abuse surrounding capital market, i.e., price manipulation, front running, insider trading, blank selling, Bangladesh do not have a good reputation among foreign investors. Foreign investors and borrowers feel themselves vulnerable to market abuse and less confident about the credibility of the trading market of *Sukuk* bond.³¹

4.7 High Cost of Sukuk Process

Since *Sukuk* is based on collateralized cash flows, its funding should be relatively cheaper. However, there are certain factors which in reality increase the cost of *Sukuk* process. The issue of bond *Sukuk* often encounters a competitive disadvantage and hardship in cost-effective terms.³² For example, all kind investors of *Sukuk* have the tendency to hold *Sukuk* till maturity due to deficiency of quality bond issue in *Sukuk* market. This results in low level activity in stock market and almost no secondary market in most *Sukuk* issues which eventually reduces liquidity and increases transaction cost of *Sukuk* by the way of high bid-ask spreads. Besides, there are some intermediation cost of *Sukuk* process which happen specifically when conventional banks co-lead with Islamic bank by taking a larger share of fees. It should be mentioned that a conventional investment bank generally not intend to invest its time and effort to promote small-scale and short-tenured *Sukuk* in the local market. It appears that *Sukuk* process cost includes cost of financing itself, cost of time for management and organization, and the necessary documentation thereof. The provision of administrative and human capabilities for the issuance of *Sukuk* also create a huge financial burden. Additionally, monitoring cost of *Sukuk* process is also high. In the absence of specific legal legislation governing detailed structure process of *Sukuk*, the high cost of putting into *Sukuk* bond in the market is creating real obstacle for Islamic banks to enter into the area of *Sukuk* market as efficient issuer.³³

4.8 Small-size Islamic Banks

The small size of Islamic banks and its short-term financing activities generally constitutes hardship to advance its development in compliance with *Shariah*. Besides, there are lack of experienced human resources regarding the mechanism of Islamic financing to ensure harmonization of *Sukuk* bond in compliance with *Shariah*.³⁴

³¹ Iqbal and Mirakhor (n 18) 203.

³² *ibid* 198.

³³ Khalid Ibrahim Talahma, 'Islamic Bonds (Sukuk): Opportunities and Challenges' (2015) 15 *Asper Review of International Business and Trade Law* 391, 420.

³⁴ *ibid* 419.

4.9 High Monitoring Cost

It is to be mentioned that *Sukuk* process has not been yet got rid of the necessity of monitoring cost to select agents with required competence and credentials. With a view to obtain a contract on favourable terms, borrowers of *Sukuk* market sometimes exaggerate their competence and ability during the application process. The cost reduction of monitoring system about *Sukuk* process generally results in adverse selection and wrong choice of borrowers. In order to avoid adverse selection, investors required to play crucial role in terms of monitoring the selection process of borrowers to ensure actual performance on behalf of borrowers as per required terms and manners. Investment bank must exercise due diligence and provide a transparent execution of *Sukuk* deal.

4.10 Problem of Complexities as to Structure

The problem of sophistication within the structure of *Sukuk* is one of the prominent challenges to the promotional activities of this market. The necessity of these *Sukuk* bonds to be in compliance with principles of *Shariah* and with market structured practices has created specifically sensitive and complex set of cash flows and prospectus even for a simple type of *Sukuk*. Due to being a highly complex structured product, it becomes challenging to assess its market value and in the event of default, the unwinding process becomes complex as well. The problem of complexities as to *Sukuk* structure is creating hindrances for spontaneous participation of both investors and issuers.³⁵ The lack of universal interpretations and uniformity of standards as *Sukuk* structure across different jurisdictions are creating further challenges for the aspired growth of *Sukuk* market.³⁶ The structures that are regarded as acceptable in one domestic market might have the possibility of not getting equal acceptability in other jurisdictions due to the divergence in interpretations and conflicts of different Fatwa standards. In this regard, the most illustrious example of this divergence in interpretations and standards is the difference between structures that are accepted as tradable in Malaysia and those that can be traded in most Golf countries. This type of absence of universal uniformity is restricting the depth of the market for any specific *Sukuk* issue.³⁷

5. Loopholes in the Existing Legal Framework of *Sukuk*

On 23 December 2020 Bangladesh Bank published the first ever prospectus to raise Tk 8,000 crore through the issuance of the *Sukuk* to implement a safe water supply project under the ‘Bangladesh Government Investment *Sukuk* Guidelines, 2020’ (BGISG). The following part discusses some loopholes of the BGISG in the light of the published prospectus under the following heading:

³⁵ Iqbal and Mirakhor (n 18) 199.

³⁶ Talahma (n 33) 418.

³⁷ Iqbal and Mirakhor (n 18) 198.

5.1 Lack of Transparency in Shariah Advisory Committee

Rules of procedure of the *Shariah* advisory committee is not mentioned in the guideline. The guideline proposes that the constitution of the *Shariah* Advisory committee and its tenure is determined by Bangladesh Bank.³⁸ As per the mandate of the guideline, Bangladesh Bank can also work as a SPV. So, the *Shariah* Advisory Committee might not act independently under the umbrella of central bank.

5.2 Mandatory Advice from Shariah Board:

The purpose of forming a *Shariah* Board is to ensure *Shariah* compliance of *Sukuk*. And for this, it is essential to take the advice of the *Shariah* Board. But the issue of this obligation to take advice from the *Shariah* board is missing in the published guidelines. Moreover, when and how the advice may be taken is not stipulated in the guideline. Rather, rule 15 states that any reorganization, change or termination of *Sukuk* must be carried out with the proper approval of the Trustee, the *Shariah* Advisory Committee and the Originator. But terms and conditions of *Sukuk* can also be changed for *Shariah* purposes. So, it is not desirable that *Shariah* compliance is dependent on the opinion of others.

5.3 Lack of Certainty as to the Disposal of Principal Amount

According to rule 10(3) of the guideline, the profit of each *Sukuk* will be paid on the terms described in the prospectus and the purchase price of *Sukuk* will be payable on maturity. *Sukuk* is not a bond. Unlike bonds, the principal amount cannot be guaranteed by the originator at the outset. Therefore, the matter should be clarified in the guideline. The return of principal amount is also mentioned in the rule 12(3)(4). Rule 13(7) states that ‘at the expiration of the term, the *Sukuk* assets shall be transferred from the SPV to the originator in the price and manner specified in the prospectus’. One of the recognized principles of *Sukuk* instrument is that no security or assurance of principal amount can be provided for *Sukuk* holders. They will only get the real value of the underlying asset at the end of the tenure. It can be more or less than its face value. But the policy adopted in the guideline is that the originator will receive *Sukuk* assets at a price stated in the prospectus, not according to the real value at the time of termination. It implies that the regulation is guaranteeing the original capital to be paid to the *Sukuk* holders. So, if the project suffers a loss, the originator will be obliged to refund the predetermined value as stated in the prospectus.

Therefore, this feature resembles to the traditional bond. AAOIFI *Shariah* Standard no. 17 clearly states that “It is not permissible for the issuer to undertake

³⁸ Bangladesh Government Investment Sukuk Guidelines, 2020 ss 3,4.

to purchase the *Sukuk* at their nominal value”.³⁹ The Bangladesh guideline adopted the AAOIFI *Shariah* Standard as guiding principles.⁴⁰ Therefore this feature is contradictory with *Shariah* principles. There must be a risk-gain relationship between the *Sukuk* holder and the issuer. If the profit goes down then the income of the *Sukuk* holder will come down. Then *Sukuk* holders will get less return. But asset-based *Sukuk* depends on the guarantor’s capacity. If the government itself guarantees a return on government projects, it turns into interest. However, the government can provide third party guarantee for the financing of private sector projects.

5.4 Conflict of Interest

It appears from the prospectus issued by Bangladesh bank that the officers of the debt management department of Bangladesh Bank are simultaneously issuers and trustees. One of the notable features of *Sukuk* is that it is operated through trust. The role of the trustee is to protect the interest of the *Sukuk* holders. Debt management department will perform the regulatory role other than the role of trustee. But 50 percent of the trustees are held by the issuer.⁴¹ Not only is that, the chairman of *Shariah* Board, which is a more important position is also an official of debt department. Overlapping appointments like this can create a clear ‘conflict of interest’.⁴² It is doubtful how far it will be possible for the trustees and the *Shariah* Board to act independently. Similarly, the issuer and the SPV are identical. It also does not go with the international standard of *Sukuk* infrastructure.

5.5 Certainty as to the Determination of Sukuk Asset

In the recently issued prospectus *Sukuk* asset has been described as “Ownership of existing and future asset including usufruct under the project “Safe Water Supply to the Whole Country” of Government.”⁴³ It is not clear from the prospectus that what are the nature and feature of the asset. There is no direction in the regulation as to how to determine the *Sukuk* asset and what are the criterion of those assets are.⁴⁴ It is essential to decide on the asset of the *Sukuk* as the price of *Sukuk* is dependent on it. In addition, the future asset is also shown here as an underlying asset, which was not clarified in the prospectus. The process of asset acquisition is not at all transparent in the official *Sukuk* prospectus. It is a basic condition for a lease agreement that the leased assets must be specified and not forbidden under

³⁹ ‘Accounting and Auditing Organization for Islamic Financial Institutions’ (n 13) ss 17, 5/2/2.

⁴⁰ Bangladesh Government Investment Sukuk Guidelines, 2020 ss 2(18), 3(e).

⁴¹ ‘Prospectus: The Offer of Ijarah Sukuk’ <https://www.bb.org.bd/mediaroom/notice/sukuk_prospectus.pdf> accessed 14 February 2021.

⁴² Hasan and Masum (n 30).

⁴³ ‘Prospectus: The Offer of Ijarah Sukuk’ (n 41).

⁴⁴ Hasan and Masum (n 30).

the *Shariah*⁴⁵. We can make a list of what assets we can use for *Sukuk* and what we cannot. We can monetize existing assets to issue *Sukuk* or use future assets. *Sukuk* assets must be transferred to the SPV at a fair value or a value reasonably close thereto. If there is no actual sell contract between the SPV and the originator, it will not be *Shariah* compliant instrument.

5.6 Necessity of Credit Rating of Sukuk is Absent in the Regulation

Credit rating is essential for the effective functioning of the *Sukuk* market. But the guideline does not provide any provision for credit rating of the *Sukuk*.

5.7 Prospectus is Not Detailed

A detailed outline of the proposed *Sukuk* infrastructure must be discussed in the *Sukuk* prospectus. Investors always take their investment decisions on the basis of the information stated in the prospectus. But the guideline does not provide any specific stipulation regarding the content of the prospectus. As for example, rule 13(3) of Bangladeshi *Sukuk* guideline states that the *Sukuk* assets acquired by the *Sukuk* sale proceeds will be used in the manner described in the prospectus. But unfortunately, the prospectus did not outline in detail about this matter. Standard form of the prospectus must be included in the guideline.

5.8 Absence of Approval Process by Shariah Advisory Committee

Since *Sukuk* is a *Shariah* compatible instrument, every aspect of the instrument should be endorsed by the *Shariah* advisory committee. The regulation of Bangladesh also mandates this fact.⁴⁶ But the process of approval and the timeframe are not mentioned in the regulation. Clear cut and simplified approval process of *Shariah* advisory committee is necessary for the smooth operation of the *Sukuk*.

5.9 All other Regulatory Approvals and Compliance with Relevant Laws and Guidelines

Tax planning and legal analysis of tax implications, registration of the instrument remain crucial for *Sukuk*.⁴⁷ Law of taxation, Company law and Trust laws need to be tailored in such a way to ensure the development of Islamic finance infrastructure, proper valuation of *Sukuk* assets and proper discipline. An issuer and its adviser must ensure that the issue, offer or invitation to subscribe or purchase *Sukuk* has

⁴⁵ AAOIFI (n 13) ss 9, 3/1.

⁴⁶ Bangladesh Government Investment Sukuk Guidelines, 2020 s 3.

⁴⁷ Ayman H Abdel-Khaleq and Christopher F Richardson, 'New Horizons for Islamic Securities: Emerging Trends in Sukuk Offerings Symposium: Islamic Business and Commercial Law' (2006) 7 *Chicago Journal of International Law* 409, 418.

complied all the relevant financial guidelines of Bangladesh Bank, relevant laws like company act, income tax act. There is no such provision in the guideline to meet the requirements of other laws of the land. But this must be expressly mentioned in the regulation.

5.10 Lack of Coordination Among the Regulators

Sukuk is a capital market instrument. But Bangladesh Securities and Exchange Commission (BSEC) is not at all involved in any issues of the existing *Sukuk*. BSEC, Ministry of finance and Bangladesh Bank must act jointly to device the effective mechanism of *Sukuk* in Bangladesh. All the experts of concern departments have to work together.

5.11 Absence of Islamic Financing Law

Islamic banks are being considered with procedural importance in the overall economic infrastructure of Bangladesh. But there is no specific Islamic banking or financing law yet, it is being managed or regulated through various regulations and circulars of Bangladesh Bank. Since we have no exhaustive law regarding Islamic finance, *Sukuk* holders might be deprived from any effective and efficacious remedy in case of any default or manipulation.

5.12 Amendment of the Terms of Condition of the Sukuk

During the lifetime of the *Sukuk*, sometimes it is necessary to amend or reconstruct the terms and conditions of the *Sukuk* instrument. Art 15 of the *Sukuk* guideline of Bangladesh allows the amendment, reconstruction and termination of the *Sukuk* with the prior approval of the trustee, Shariah advisory committee, and originator. But the amendment procedure and the criterion of an amendment has not been mentioned in the guideline.

5.13 Lack of Trading Facility of Sukuk in the Capital Market

Sukuk may be traded in the capital market with certain limitations imposed by the securities laws. In Bangladesh, the securities market has considerable scope for expansion and attract foreign investment. *Sukuk* can be used as a fund diversification instrument to support the securities market and boost allocation of funds to the government and private enterprises. Bangladesh has recently introduced Alternative Trading Board (ATB) which will create opportunities for institutions to invest in unlisted companies, bonds, debentures, *Sukuk*, open-end mutual funds, and alternative investment funds subject to the prescribed conditions. But the government is yet to formulate detailed policies and rules to enable ATB to function in handling the trading of *Sukuk*.⁴⁸

⁴⁸ 'Alternative Trading Board Needs Clear Policies, Guidelines' (*The Business Standard*, 28 July 2020) <<http://tbsnews.net/economy/stock/alternative-trading-board-boost-investments-smes-speakers-112711>> accessed 17 February 2021."plainCitation": "Alternative Trading Board Needs Clear Policies, Guidelines' (The Business Standard, 28 July 2020).

5.14 Absence of Dispute Resolution Mechanism

The *Sukuk* guideline does not provide for any dispute resolution mechanism in case of any default of the Islamic bond *Sukuk*. Hence, recourse to the protection of the investors is absent in the existing guideline.

6. Recommendations

After issuing the first *Sukuk* the Bangladesh government can start doing homework on the basis of its experience. Bangladesh should develop a well responsive regulatory and supervisory framework for *Sukuk* which will fine tune the existing rules to facilitate its development. In other words, for banking purposes *Sukuk* need to be regulated in such a way where the product can fit nicely into prevalent type of conventional banking transactions. To develop a locally relevant regulatory regime this research paper focuses on the regulatory structure of *sukuk* in Malaysia. Malaysia is the global leader in *Sukuk* market with its comprehensive *Sukuk* regulations, policies and best practice guidelines. Malaysian experience can be the perfect fit for Bangladesh to develop a sophisticated system to regulate *Sukuk* bond in Bangladesh. Taking into account the Malaysian practices and experiences relating to Islamic product *Sukuk* the possible action of Bangladesh to promote market structure, legislative and regulatory framework pertaining to *Sukuk* are analyzed as follows:

6.1 Credit Rating of Sukuk Issue must be Mandatory

Credit rating is essential for the effective functioning of the *Sukuk* market. Credit rating is an important process because the rating alerts the investors to the bond's quality and stability. High credit rating gives assurance to the investors about the safety of the *Sukuk* and minimum risk of default. Malaysian legislation requires that all *Sukuk* must be rated by a rating agency.⁴⁹ Chapter 9 of the Malaysian Guideline on *Sukuk* deals with rating requirement and articulates detail provision on appointment of credit rating agency. A *Sukuk* with high rating can attract a large group of investors. But we should keep it in mind that we must not ignore the core *Shariah* ingredients to satisfy the credit rating agencies. So, the Bangladesh guideline must make credit rating mandatory for *Sukuk* issuance.

6.2 Detailed Amendment Procedure

Amendment, reconstruction and termination procedure must be explicitly ascertained to secure clarity and consistency. Principal terms and conditions must not be allowed to alter because these alterations might change the nature of the instrument.⁵⁰ Malaysian guideline provides specific rules as to the revision of

⁴⁹ 'Guidelines on Sukuk(Malaysia) 2014' s 9.01 <http://www.shariahlaw.com/files/web_syariah/guidelines/19_SC_sukukGuidelines_140828.pdf> accessed 19 May 2022.

⁵⁰ *ibid* 17.01, 17.02.

profit rate and maturity date. Any change to the *Sukuk* asset must be done on business perspective considering the interest of the *Sukuk* holders.

6.3 Independent Shariah Advisory Committee

Sukuk is totally a *Shariah* instrument. So, emphasis should be given to the observance of *Shariah*. But, it seems that the Bangladesh guideline lacks *Shariah* compatibility in some aspects. The guideline only provides for *Shariah* advisory committee, but it does not provide for “*Shariah* Supervisory Committee.” There is a small difference between ‘advisory’ and ‘supervisory’ committee regarding their privileges and status. Advisory committee can only provide advice regarding the issuance *Sukuk* and Islamic securities.⁵¹ But they cannot supervise the activities of the *Sukuk* issuers, originators or the SPVs. So, there is no national supervisory authority regarding the compliance of *Shariah* guidelines. Again, the Courts of Bangladesh are not bound to follow the instruction of *Shariah* Council. But *Shariah* compliance issue cannot be compromised in any way. In 1997, Bank Negara Malaysia constituted The *Shariah* Advisory Council on Islamic finance (SAC) to ascertain *Shariah* law for the purpose of Islamic financial business in Malaysia. Rulings issued by the SAC has binding force in Court and Arbitration proceedings.⁵² The independence of *Shariah* advisory committee is essential to ensure compliance with different issues of *Shariah* regarding *Sukuk*. In order to ensure transparency and independence, Bangladesh Bank must not be vested with the responsibility of forming *Shariah* Advisory Board, since they can also be the SPV. The government should have a separate and independent National *Shariah* Supervisory Board like Malaysia, who will be responsible for the formation of *Shariah* supervisory board for the government *Sukuk* consisting of the country’s wise scholars. Moreover, its infrastructural control will also be under that National *Shariah* Board. No government agency will be directly involved in it.

6.4 Making a Pool of Shariah Advisors:

The person with necessary qualification and experience of banking sector need to be appointed in the *Shariah* board in order to effectively tackle practical issues thrown up the operation of Islamic banking and finance sector of *Sukuk*. Guidelines on *Sukuk* 2014 specify that Malaysia has pool of *Shariah* advisers registered according to the *Shariah* advisers Guidelines. There are provision on the appointment of *Shariah* advisers in chapter 5, which provides clarity on the role of *Shariah* advisers about the *Sukuk*. Following the instance of Malaysia, Bangladesh can also formulate a guideline to make a pool of registered *Shariah* advisers. *Shariah* advisers must be capable of religious audit taking into account Islamic legal precepts and principles to ensure that *Sukuk* is not violating the same.

⁵¹ Bangladesh Government Investment Sukuk Guidelines, 2020 s 2(17), 3.

⁵² ‘Overview | Shariah Advisory Council’ <https://www.sacbnm.org/?page_id=3351> accessed 17 February 2021.

6.5 Greater Disclosure of Material Information

To gain the investors' confidence, it is necessary to deal with the default criterion of *Sukuk* in a clear and transparent manner. Asset-based *Sukuk* prospectus provides limited disclosures in respect of the underlying assets. Bangladeshi Guideline does not provide any specific provision for disclosure, due diligence and clarity with respect to information about the rights of investors and the underlying asset in case of default. Malaysian guideline categorically identifies the material information to be disclosed.⁵³ The originators of *Sukuk* need to specify the material information in the prospectus so that investors can make an informed choice on what is being offered and what they are buying.⁵⁴

6.6 Human Resource Development for Sukuk

Sukuk industry also requires professionals who have the necessary know-how and understanding regarding *Sukuk* instruments. Human resource development in Islamic finance remains one of the vital challenges faced by the *Sukuk* market.⁵⁵ The training and development of professionals are essential in modelling the future of a state-of-the-art *Sukuk* market. Islamic scholars and academics must be involved in formulating the *Sukuk* framework. A bunch of new and enterprising talented experts need to be created or evaluated, who are well versed in Islamic customs and laws, have a detailed idea of other conventional financing, and apply merit in a useful coordination. Having an Islamic background does not mean that they have specialize knowledge in Islamic finance jurisprudence. We need to increase the capacity of our policy makers, judges, legislators. Those who are involved in Islamic banking they must increase their capacity.

6.7 Sukuk Must be Included in the Monetary Policy

Malaysia is keen to develop their Islamic capital market, but their policy making at macroeconomic level remains conventional. Still the government is dependent on debt-based instrument to execute monetary policy. To introduce Islamic Capital Market, the government must accommodate risk sharing instruments like *Sukuk* in their monetary policy.⁵⁶ Bangladesh must also create enabling legislation to allow *Sukuk* to be traded in the capital market. While formulating monetary policy the central bank can into consideration the prospect of *Sukuk* in the economy of Bangladesh.

⁵³ 'Guidelines on Sukuk(Malaysia) 2014' (n 49) ch 16.

⁵⁴ Fara Mohammad, 'Greater Disclosure Required in the Sukuk Industry' (2010) 25 *Journal of International Banking and Financial Law* 258, 2.

⁵⁵ Younes Soualhi, 'Bridging Islamic Juristic Differences in Contemporary Islamic Finance' (2012) 26 *Arab Law Quarterly* 313, 325.

⁵⁶ Askari, Iqbal and Mirakhor (n 11) 99.

6.8 Awareness Activities for Sukuk

This is natural that people are reluctant to invest in an instruments which are not widely circulated and those which are not familiar to him. Misconceptions, misunderstandings, and misinformation related to Islamic finance need to be eliminated through awareness and dissemination of accurate information. Bangladesh Bank, Issue managers and stock exchanges can arrange road shows to publicize information about *Sukuk*.

6.9 Dispute Resolution Mechanism

A Dedicated commercial court is essential to deal with legal disputes pertaining to Islamic banking and finance. Bangladesh needs to establish a highly organized and detailed dispute resolution forum to facilitate easy and accessible resolution of disputes relating to Islamic banking and finance. Rule 4(3)(d) of Bangladeshi *Sukuk* guideline empowers the trustees to follow the laws of the land to settle any dispute. Guideline does not provide any dispute resolution mechanism if there is a dispute among the parties to the *Sukuk*. Since *Sukuk* is a *Shariah* product all the conventional court are not well equipped to deal with the disputes involved with *Sukuk*. In 2003 Malaysia has established a dedicated Court within the monetary jurisdiction of the High Court to deal with all the Islamic Finance related matters.⁵⁷ Apart from the traditional court based litigation system Malaysia has introduced Alternative Dispute Resolution(ADR) to resolve financial disputes. Malaysia has formed a scheme named Financial Ombudsman Scheme(FOS) under the authority of Islamic Financial Services Act, 2013. The FOS is considered as a ground breaking formula for Malaysia in handling the disputes between the Islamic financial service providers and their customers. Bangladesh can also introduce alternative dispute resolution mechanism like mediation, arbitration to settle the financial disputes more effectively.

6.10 Law Review Committee

Bangladesh bank can set up a law review committee to look at other jurisdictions and experience to effectively integrate *Shariah* principles into domestic banking and financial laws and regulations. Bangladesh Bank must engage Ministry of Law, Ministry of Finance, National Board of Revenue, Securities and Exchange Commission, Law Commission, and prominent *Shariah* scholars to formulate a comprehensive legal framework of Islamic banking and finance in Bangladesh.

⁵⁷ Mohammad Zawawi Salleh and Mohammad Johan Lee, 'Thirty-Five Years of the Malaysian Judiciary Adjudicating Islamic Finance Matters' (2020) 32 (Special Issue) *Singapore-Academy-of-Law-Journal* 41, 383.

6.11 Standardization of Legal Framework

Bangladesh is a common law country. *Shariah* law is also applicable in personal rights. Introducing a new product like *Sukuk* might be difficult and costly because of the diversity in the existing legal system and multifarious compliance requirements. Coordinated efforts are needed to adopt a standardized and harmonized legal framework regarding Islamic banking and financing.⁵⁸

7. Conclusion

As illustrated in the above mentioned sections, it is evident that Bangladesh still lags behind to adopt a comprehensive governing mechanism relating to effective and efficient operational management of *Sukuk*. In order to accommodate all segment of possible investors who might seek to engage with the Islamic bonds framework, Bangladesh needs to undertake a comprehensive review of its legal framework to introduce “locally relevant financing system” for *Sukuk* bond taking into account the existing conditions of capital market features, tax policies and the principles of Islamic financing system in order to narrow down *Shariah* differences, stabilize the market and increase the confidence upon *Sukuk* bond. It needs to undertake coordinated and conducive initiatives to standardize its legal systems with the aim of removing vagueness, potential flaws, defects and conflicting visions regarding the transaction status and operational framework of *Sukuk*.

The extent of Islamic finance in Bangladesh is about 25 percent of the total banking sector and its annual growth rate is about 14 percent.⁵⁹ In addition, compared to the conventional banking sector, the rate of return on equity is higher in Islamic finance and the amount of defaulted loans is also comparatively less. It indicates the immediate operational market of *Sukuk* certainly looks promising. Therefore, Bangladesh should devise a detailed, stage-by-stage description of operational and management of *Sukuk* transaction which would ultimately strengthen newly introduced Islamic bond to make significant contribution to the sustainable economic growth.

⁵⁸ Iqbal and Mirakhor (n 18) 203.

⁵⁹ Express (n 21).an Islamic equivalent of bonds, is a certificate representing ownership in tangible assets or the assets of particular project or special investment activity. As opposed to conventional bonds, which merely confer ownership of a debt, Sukuk grants the investor a share of an asset, along with commensurate cash flows and risk. Thus, the primary condition of issuance of Sukuk is the existence of assets on the part of the issuer which may be the government corporate entity, banking and financial institutions or any entity which wants to mobilise financial resources. Identification of suitable assets is the first and arguably the most integral step in the process of issuing Sukuk certificates. These authors have made an attempt to describe the mechanics of Sukuk, their structure with particular focus on regulatory framework for sukuk issuance in Bangladesh. Definition: Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI).

The sustainable growth of Islamic banking and finance largely depends on the easy accessibility for the users and wider acceptance of potential investors and issuers. Although Bangladesh regulatory regime of *Sukuk* has embraced the fundamental aspects of Malaysian regulatory regime of *Sukuk*, it lacks some clarity and certainty about the appointment of supervisory committee, standardized application forms, prospectus and process of *Sukuk*. The formations and roles of the trustee to protect the interest of *Sukuk* holders are also not following the best practices of other jurisdictions like Malaysia. In this regard, the next immediate step should be to develop a specific, intelligible, and technical regulatory framework of *Sukuk* transactions to reduce complexities of *Sukuk* structure, process and its management thereof.