

## **Shariah Advisory Council (SAC) of Securities Commission (SC) Resolution No. 37**

### **Underlying Assets, Ventures and Investments in Sukuk Structuring**

In sukuk structuring which is based on *`uqud mu`awadhat*, *`uqud ishtirak* and *`aqd wakalah bi al-istithmar*, the underlying assets, ventures and investments in *wakalah* respectively are considered as assets that become the basis for structuring such sukuk structure. However, a question arose regarding to what extent such assets can be accepted by Shariah.

#### **Resolution**

The SAC of SC had resolved as follows:

1. A Sukuk based on *`Uqud Mu`awadhat*, *`Uqud Ishtirak* and *`Aqd Wakalah bi al-Istithmar*

The underlying assets in *`uqud mu`awadhat*, ventures in *`uqud ishtirak* and investments in *wakalah bi al-istithmar* which become the basis for these sukuk structuring must comply with Shariah.

2. Sukuk based on *`Uqud Mu`awadhat*

(1) Types of Underlying Assets

Underlying assets can be classified to tangible assets such as building and land, and intangible assets such as receivables, usufruct of an asset, rights of intellectual property, etc.

(2) Underlying Asset Used for Shariah Non-Compliant Activities

Asset that is used for Shariah non-compliant activities cannot be used as an underlying asset in sukuk structuring.

(3) Receivables as Underlying Asset in Sukuk Structuring

Receivables are allowed to be used as an underlying asset in sukuk structuring provided that the receivables must be *mustaqir* (established and certain) and transacted on spot basis either in the form of cash or commodities.

(4) Encumbered Asset as Underlying Asset

Encumbered asset is allowed to be used as an underlying asset in sukuk structuring such as an asset that is pledged to financial institution or jointly-owned with other parties. However, consent by the chargee or the joint-owner of the asset must be obtained prior to using the asset as an underlying asset of sukuk.

(5) Mixed Asset as Underlying Asset for Sukuk Ijarah

Mixed asset is allowed to be used as an underlying asset for Sukuk *ijarah* subject to the following requirements:

- i. If rentals received from Shariah non-compliant business or activities in the Mixed Assets could be determined, such rentals must be less than 20% of the total rentals received; or

- ii. If the rentals could not be determined, the lettable area to be used for Shariah non-compliant business or activities in the Mixed Asset must be less than 20% of the total lettable area.

*Reference:*

*Resolutions Of The Shariah Advisory Council Of The Securities Commission Malaysia,*

<https://www.sc.com.my/api/documentms/download.ashx?id=83f46cef-97ee-4c9f-993d-d710ff9b600b>