Transforming Dubai into a globe centre for Islamic bonds

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The initiative, called “Transforming Dubai into a Global Centre for Islamic Bonds”, primarily aims at making Dubai the world capital of the sukuk market, hence potentially also transforming Dubai into the world capital of Islamic finance. According to reported statistics, Dubai’s publicly listed Sukuk market alone was valued in 2012 at around USD 10 billion, making Dubai a major player in listed sukuk issuing competing with the world leaders Malaysia and London. Regionally, the UAE leads the sukuk market followed by the main regional issuers, Saudi Arabia and Qatar respectively.

Distinguishing factors:

The distinguishing factors behind the success of Dubai’s sukuk industry, and Islamic finance more generally, can be attributed to various factors including economic, legal, administrative, and cultural factors. By way of an example, Dubai was the pioneer in 2010 to exempt Ijara transactions (a structure whereby title to property needs to be transferred to the bank and back to the customer) from the double payment of registration fees payable on a transfer of title; hence rendering this type of transaction more feasible, attractive, and effective. Dubai made these changes ahead of its competitors, including London where the same approach was adopted more recently.

On the economic and cultural side, the fact that Dubai is a tax free haven in which a large portion of local and regional fortunes culturally relate to Islamic finance has clear advantages. On the legal and administrative side, the necessary legal instruments were introduced in the UAE ahead of the other countries of the region and were accompanied by an effort from the executive and administrative bodies to adapt and anticipate market needs. These factors have contributed to the UAE becoming the first country in the region to achieve a leading position.

To meet the goals set by this ambitious initiative and rise with Dubai to global leadership in this field, we believe that the current legal infrastructure can be further improved and a number of hindering issues would need to be addressed going forward.

Issues and solutions:

Although we believe that the majority of the Shariah supervisory boards in the UAE have somewhat unified approaches on most major issues, it remains true that there is currently no accreditation process for Shariah scholars practicing in the UAE and the role of Shariah supervisory boards need to be more clearly defined. Is the role of the Shariah scholar a compliance, executive, advisory or auditing role? If the role is perceived to be an executive role then a conflict of interest may arise if a Shariah scholar is serving on multiple boards to various types of institutions. To address this issue, Malaysia for instance has limited Shariah scholars to advising only one institution per market segment.

Also, many Islamic structures, such as sukuk and property musharaka, apply the concepts of trust and beneficial ownership, which are concepts that is not accepted under UAE law and makes enforcement of Islamic structures in the UAE challenging and, to a certain extent, uncertain. Beneficial ownership is where an individual or group of individuals indirectly benefit from the title of the asset held in the name of someone else. If the local legislator could consider recognising this legal concept or introduce alternatives, this would add certainty to the application of these structures under UAE law and any related security granted over assets located in the UAE. As an example, options available in other jurisdictions include the ability to record beneficial interests in land and to legally register trust interests.

In addition, many Islamic structures entail the incorporation of an offshore special purpose vehicle (SPV). For transactions out of the UAE, offshore jurisdictions such as Jersey, the Cayman Islands and the British Virgin Islands are the popular but relatively limited choices. A one stop shop for the incorporation of SPVs for financing purposes within Dubai or the UAE would be advantageous, especially if key criteria such as speed of incorporation, low start up and annual maintenance costs, can be met.

Another issue is that courts throughout the UAE are sometimes faced to situations where they need to qualify Islamic finance arrangements using conventional laws that were not initially designed to suit Islamic finance structures because of the lack of adapted laws to date. As an example, the Dubai Courts have taken the view that an Ijara transaction viewed in its entirety is a contract for sale of property on deferred payment terms, rather than a lease. Although the approach of the Dubai Courts seems to have so far solved the issue of lack of specialised legalisation, laws specifically designed for Islamic finance structures, or which can encompass both the Islamic and the conventional models should be adopted as soon as possible to avoid misinterpretation, confusion or potential complications in the future.

Al Tamimi’s engagement:

Sukuk has been a reliable financial instrument in developing many projects and certainly big projects such as airports and maritime infrastructure projects and other projects which required large scale funding in the region. Al Tamimi and Company has had the opportunity to be involved in some of these Islamic finance based projects; which in turn has helped us to identify and understand the recurrent issues among the jurisdictions of the region and how to overcome these issues to the extent possible. As you may recall from our October 2012 Law Update edition, Jordan passed a new law governing sukuk in mid September 2012 and was then followed by Tunisia, while it is now expected that other countries in the region will finalise the process of passing laws specifically governing the issuance of sukuk. We will naturally keep you updated on all major developments in this regard.

Please do not hesitate to contact us if you have any questions in regard to the above.