

# ***Sukuk: A Veritable Tool For Effective Waqf Fund Management In Nigeria***

*Sukuk:  
A Veritable  
Tool*

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## **Abstract**

Since its emergence in the early 2000's, *Sukuk* has been regarded as the most significant innovation recorded in the Islamic capital market. *Sukuk* is generally regarded as an equivalent of conventional bond, *Sukuk* paved way for mobilization of long term Shari'ah compliant funds for equally Shari'ah compliant undertakings. Islamic capital market experts have developed various Shari'ah compliant *Sukuk* structures, notable among which is *Waqf*-based *Sukuk* structure. Viewed as a distinct ethical capitalism and a veritable vehicle for long term financing, *Waqf* was found to record tremendous impact in all spares of human needs. The paper seeks to unveil how *Waqf*-based *Sukuk* could be used to attain effective mobilization as well as management of *Waqf* assets. It explores the possibility of issuing *Waqf*-based *Sukuk* for the development, renovation, reconstruction and modification of *Waqf* assets in Nigeria. The paper employs a non-experimental, deductive-analytical approach, in its investigation. Evidences show that *Waqf*-linked *Sukuk* has been successful in the development of *Waqf* assets in countries like Indonesia, Singapore and Saudi Arabia. Accordingly, the paper develops a *Waqf*-based *Sukuk* (ijarah) framework for fund mobilization for development of *Waqf* properties in Nigeria. We strongly recommend that both formal and non-formal *Waqf* institutions in Nigeria should utilize this outlet to effectively develop, deepen and manage their philanthropic activities.

## **Keywords:**

*Sukuk, Waqf, Fund management, Build operate and transfer (BOT).*

## **INTRODUCTION**

There are a sizable number of assets under different endowments A *wqaf* (plural of *Waqf*) in Nigeria which are not being utilized in the most productive manner. Most of such *Waqf* assets are in the form mosques, *Islamiyah* schools, houses and shops. Majority were built and donated for hundreds of years and as such the buildings are now dilapidated and therefore need renovations and



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or reconstruction to derive better benefits from them. There is also sizable acres of land that were donated as *Waqf* by individuals which are yet to be developed. Hence, there is need to find a viable way of generating finances for the repair, reconstruction and in some cases full development of these lands. One of the most major problems associated with the management of *Waqf* assets in most Muslim societies is that most of the assets are traditional *Waqf* with little or no income generating capacity; mosques, houses, orphanages, schools, hospitals, arable land etc. With little coming from these endowments, it leaves meager space for their development or modernization. Often, *Waqfs* rely on governments at the State and Local levels for assistance. That despite serving as abode of huge assets, *Waqf* institutions in Muslim countries globally face many challenges such as, among others, lack of financing, of efficient management teams, of legal consultation (Maghbul and Alhajam, 2018).

Further, evidence in the literature lament the problem of low capacity or expertise of the *Waqf* asset administrators (*Nazir*) in modern knowledge and skills for managing such assets as well as modern sources of financing to develop these assets. On this note, Maghbul and Alhajam (2018) posit that there is lack of good governance and *Waqf* managements such that, in most cases, are not transparent and accountable to *Waqf* stakeholders. Moreover, by encouraging the use of these traditional methods for developing *Waqf* properties, it will give them legal justification to further expropriating and abusing *Waqf* assets in the name of development.

Consequently, the administration or management of *Waqf* foundations remains largely traditional with *Nazirs* sitting on pool of dilapidated, yet scattered assets that hardly maintain themselves but often degenerate over time. Recent advances in the field of Islamic finance have paved way for effective development of these classes of assets through funding from Shari'ah compliant investors. Literature is replete with a number of financing arrangements like cash *Waqf*, *Waqf* shares and *Waqf Sukuk*.

Against this background, this paper seeks to explore the possibility of developing a *Waqf-based Sukuk* framework for effective development, renovation, reconstruction and upgrading of existing *Waqf* assets in Nigeria in the light of experiences from other jurisdictions. The paper comprises of five sections. Section 1 constitutes the introduction while section 2 presents a review of key concepts and literature on *Waqf*, *Sukuk* and the concept of build, operate and transfer (BOT). Section 3 reviews successful application of *Waqf-based Sukuk* in Singapore and Saudi Arabia, section 4 outlines the

*Waqf*-based *Sukuk* framework of the paper and finally, section 5 presents conclusion and recommendations.

## **REVIEW OF CONCEPTS**

### **The Concept of *Waqf***

*Waqf*, in the Arabic language, literally means to stop, contain or preserve. Conceptually, *Waqf* refers to charitable endowments. It is a voluntary and irrevocable dedication of one's wealth, either in cash or kind, and its disbursement is dedicated for Shari'ah compliant projects that are beneficial (Elasrag, 2017). It generally refers to holding and preserving a certain philanthropy-sadaqah (charity) with the intention prohibiting any use or disposition of the property outside the specific purposes to which the property is dedicated, in such a way that it cannot be bequeathed or sold. It transfers wealth and changes property rights from private to public.

*Waqf* has three fundamental characteristics. First, *Waqf* should be irrevocable. Majority of scholars agree that a property declared as *Waqf* cannot be revoked by the declarant or his heirs. Secondly, it should be perpetual once created. Majority of jurists are on this view. This implies that a *Waqf* property cannot and should not be confiscated by government or individual, this will ensure regular and continual support from the *Waqf* property towards financing charitable purposes such as mosques, hospitals, orphanages, and schools or any purpose that will improve the welfare of the Muslim community. Finally, a *Waqf* property or asset should be inalienable once created. This is because the property donated or declared as *Waqf* has been dedicated for the sake of Allah for some charitable purpose. All jurists agree that *Waqf* is like a frozen asset and hence, cannot be sold, disposed, mortgaged, gifted, inherited or alienated in any way whatsoever. It can however be given out on a long term lease (Hikr) or be made the subject of a dual lease payment in an effort to develop it.

*Waqf* has played a crucial role in social welfare and economic development of the Ottoman Empire through the provision of healthcare, education and training facilities for the society. In view of this there is strong need for improving the existing financing and management mechanism of *Waqfs* (Tahir, Abdul Hamid & Ismail 2005). Lahsasna (2013) made a strong case for *Waqf* to be upgraded to a level where they become a sustainable source of funding and are able to generate income on their own, thereby decreasing dependency on third-party donations. The need for *Waqf* asset to continue existing and providing economic benefit to beneficiaries requires

that it should be aligned to an investment product or mechanism which is perpetual in nature where preservation of capital is necessary as is the case with *Sukuk* (Marzuki et al., 2012). The trend now is towards promoting cash *Waqf* for management of *Waqf* assets. Cash *Waqf* has the potential to serve as capital for the development of idle *Waqf* land (Anwar & Isa 2016).

Earlier on Tahir et al. (2005) found that a large number of *Waqf* trustees (*Mutawalis*) are not well trained in property and financial management hence, the need for experts in the Islamic financial sector to help manage and offer innovative financial tools like *Waqf* linked or Social Responsible Investment *Sukuk*. Ismail et al. (2015) explore the potentials of a sovereign *Sukuk* linked to *Waqf* assets for the development of massive local *Waqfs* that are underdeveloped in Indonesia. The *Waqf* linked *Sukuk* issuance is intended for real economic sector development, just like a project based *Sukuk*. Depending on the investors' preference, the *Sukuk* can be fine-tuned to serve both commercial and social purposes. Islamic Wealth Management (2015) identifies instruments such as Cash and E-*Waqf* Fund, Per-square Feet Value Certificate, and *Sukuk* issuance as some of the ways through which funds can be accumulated for the development of *Waqf* assets.

### ***Waqf-based Sukuk***

*Sukuk* is derived from the Arabic word *Sak* (singular) which has *Sukuk* as plural which means a certificate or note. Technically *Sukuk* is an evidence (claim) of ownership. It is a certificate of equal value with part or whole of the ownership of tangible property to obtain products and services in asset ownership and a specific project or a specific investment. The International Islamic Fiqh Academy issued a statement in 1988, defines *Sukuk* as “*Any combination of assets (or the usufruct of such assets) can be represented in the form of written financial instruments which can be sold at a market price provided that the composition of the groups of assets represented by the sukuk consist of a majority of tangible assets*”. Further, the Accounting and Auditing Organization Islamic Finance Institutions (AAOIFI), defines *Sukuk* as: “*Investment sukuk are 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 subscription and the employment of funds received for the purpose for which the sukuk were issued.*”

The general process for issuance Sukuk requires broad three steps: creation of a special purpose vehicle (SPV) to represent the investors, issuance of the certificates and putting them into circulation and securing the cash-flow through the period of the contract from the issuer to the investor. Added to these in the structuring are: the originator of the *Sukuk* otherwise the obligor and investors who are the *Sukuk* certificate holders. The SPV often doubles as trustees and managers, coordinating the interests of both parties the obligor and investors (Oubdi and Raghibi (2018)).

The structure *waqf*-based *sukuk*, does not differ from that of an investment *Sukuk* except in the objective of the investors. While the objective of an investment *Sukuk* investor is that of making profit, the holder of *Waqf*-based *Sukuk* certificate is driven by desire of deriving maximum reward from the Almighty Allah and His blessings by serving public interest.

There are numerous classes of *Waqf* assets that are laying idle that could be utilized as underlying assets for the purpose of *Sukuk* issuance and thereby making it possible to link *Sukuk* with *Waqf* in an effort to mobilize long term funding. This particular feature is what attracts attention of experts to turn to the *Sukuk* for the effective utilization of *Waqf* assets in addition to other classical contracts such as *hikr* and *ijaratayn*. *Hikr* is one of the modes through which *Waqf* assets in the form agricultural land or real estate investment can be financed, in *Hikr* the trustee can lease out the *Waqf* asset on a long lease at a nominal periodic rent, while in *Ijaratayn* there are two rent payments, the first is a lump sum paid for financing renovation or maintenance of the property and second is a periodic payment to be made over the period of the rent. The introduction of *Sukuk* instruments has helped to further accelerate the progress and development of *Waqf*. A number of *Waqf* linked *Sukuk* has already been issued in Singapore, Saudi Arabia and Malaysia with a huge success. These provide an important case study for other countries as well as good experiences to learn from.

*Waqf Sukuk* can be issued by endowment organizations, relevant government agencies in charge of *Zakah* and *Waqf* such as various *Zakah* and *Waqf* Foundations that we have in different states of Nigeria. It could also be issued by Islamic banks and charity organizations. The proceeds of the *Sukuk* can be used either for humanitarian needs with no immediate expected cash returns, or for investments which usually yields returns and can help in developing the endowment organizations on other projects.

## **The Concept of Build-Operate-Transfer (BOT)**

Build-operate-transfer is one of the contemporary options used in project financing. It enables client to have access to fund for construction on event of fund insufficiency. It could defined as a financing partnership between a private and government with parties involved receiving concession on design, planning, funding, execution and management of a project (Lekan, Opeyimi & Olayinka, 2013). The system provides an opportunity for a project to be managed after completion to enable the financiers recover the sum invested in the project. It was developed in response to the need to execute project effectively and to generate funds for high cost projects that became necessary for the government and for which funds are not readily available. In this type of arrangement, private investors undertake the project funding, operates it before transferring it to the government (Chege and Rwelamila, 2000 and Zhang, 2005).

On a typical BOT project, the financier looks primarily to the project as only means of payment in case financing facility is accessed in the project financing; this is usually premised on the credit worthiness assessment of the project at feasibility stage. So also, it involves security assurance, security taken on a typical BOT project is often restricted to the project. BOT mechanism is a complex structure comprising multiple, inter-dependent agreements among various parties. Some of such parties includes: government, private company (concessionaire), lenders (banks), equity investors, contractors, suppliers, operators and financial advisers. Government grants concession to the private sector (concessionaire), through concession agreement. The concessionaire is responsible for design, finance, construction, and operation of the facility. According to Akintoye, Hardcastle, Beck, Chinyo, and Assenova (2003), the concessionaire retains the title of ownership during the concessionary period, which is normally between 10-50 years, after which the title of ownership is transferred back to the government. The following agreements are involved in a typical BOT agreement: concession agreement, loan/financing agreement, shareholders agreement, construction contract, supply contract, off-take agreement, operation and maintenance agreement.

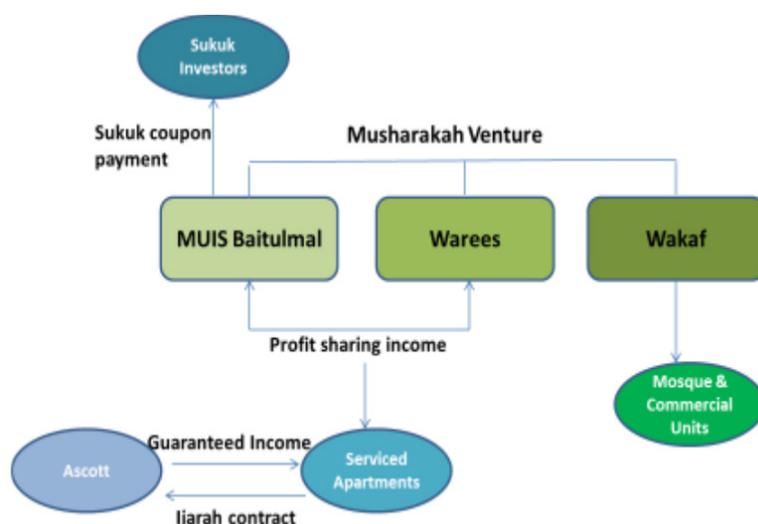
## **IMPLEMENTATION OF WAQF SUKUK: CASE STUDIES**

### ***Waqf Sukuk* in Singapore**

The Singapore *Waqf Sukuk* was issued to develop a *Waqf* property to an Arab merchant named Shaikh Ali B Omar Aljunied. It was for the development of 104 serviced-apartments, a mosque and a 6-storey commercial complex, the

cost of which was approximated to be \$35 million. The structure was based on musharakah. At the initial stage musharakah venture was entered into by 3 parties, that is, the *Waqf*, Baitulmal and Warees (wholly-owned subsidiary of MUIS). The *Waqf* contributed the land and capital, the baitulmal provided \$35 million from investors and Warees provided a nominal amount along with their expertise. The second stage involves a leasing contract agreement that was entered between the Special Purpose Vehicle (SPV) and Ascott International Pte. Ltd. who agrees to lease the property for a period of 10 years thus ensuring a steady flow of income as return to the investors.

The fact that it is a Musharaka venture means profit will shared in accordance with the proportion of capital invested by the 3 parties. As a result of the success recorded by this *Sukuk*, MUIS was awarded Mohammad Bin Rashid Al Makhtoum Islamic Finance Award in the category of Regional Continuing Contribution to Islamic Finance in that particular year. This innovative financing structure has resulted in increasing the revenue generated by the property from an annual rental of \$19,000 per annum to a gross income of \$5.3 million in 2006. Figure 1 illustrates the relationship among the stakeholders in the Musharaka *Waqf Sukuk*.



**Figure 1: Structure of Singapore Musharaka Waqf Sukuk**

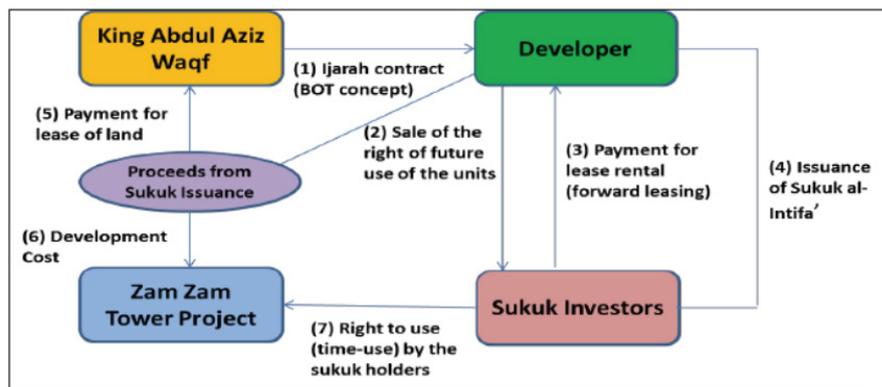
**Source:** Adapted from Zain and Sori (2017)

### **The Saudi Arabia *Sukuk Al-intifa'a***

The Saudi was a *Sukuk al intifa'a* issued in 2000 at the Holy City of Makkah. King Abdul Azis *Waqf* (KAAW) was the custodian of the *Waqf* (Nazir).

KAAW leased one of the *Waqf* properties, in this case a piece of land in the center of Makkah, to the Binladin Group on a BOT (Build- Operate-Transfer) concession contract for 28 years. Binladin Group was to build shopping complexes, towers and a hotel for KAAW as a settlement. Binladin then subcontracted the construction projects of the tower to Munshaat, a real estate company based in Kuwait. With this project, Munshaat will finance the construction, operate it and transfer it back to Binladin after 28 years.

This building Hotel accommodations with room spaces ranging from low prices up to royal suites. To be able to finance the project, Munshaat issued US\$ 390 million *Sukuk Al-intifa'a* (timeshare bond) for 24 years. This usufruct right will be divided into weekly time shares. Investors who bought this *Sukuk* are able to rent a space for a specific time or sub-leased their space to others. Munshaat will then gain the profit from the rent rate difference between the rate received from *Sukuk* holders and the rate paid to Binladin Group. Munshaat estimates 26% rate of return on this investment (Ahmed, 2004). Figure 2 outlines the structure of the *Sukuk al-intifa'a*.



**Figure 2:** Saudi Arabia *Sukuk al-intifa'a*  
**Source:** Adapted from Zain and Sori (2017)

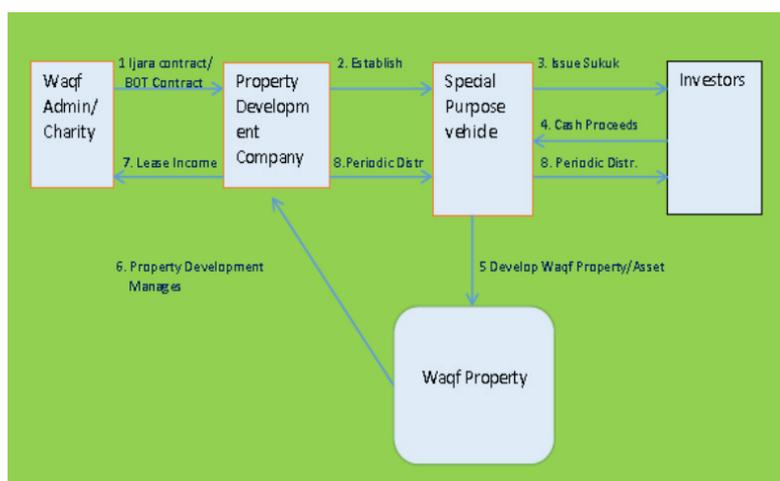
### MODEL

The proposed model begins with the *Waqf* institution which could either be an Islamic charitable Foundation or a *waqf* board under the state that has landed property or undeveloped land under its control. The purpose of the *Waqf* linked sukuk is to redesign an obsolete building that happens to be located in a choicest area or to develop an undeveloped land. The property or land will be given out on a long lease (Hukr) of say 20 years to a developer who will float an SPV for the purpose of mobilizing funds through an investment sukuk to develop the land into commercial shops based on principle of build-operate-transfer contract. The SPV appoints a property developer or company

to develop and manage the property. When developed, rent received will be remitted back to the investors up to the end of the lease period between the *Waqf* Foundation and the property developer through the SPV. On maturity of the contract, that is, 20 years, the *Waqf* Foundation will take possession of the developed property and will continue receiving the rent.

The working of the model is explained as follows:

- i) The *Waqf* administrator/Charity enters into an Ijarah contract (with BOT concept) with the property development company who receives the *Waqf* land on long term rent (*Hikr*), develops it into modern property for renting to businesses and operates/manages it. After the agreed period, the newly developed property is handed over to the *Waqf*/Charity.
- ii) The Property Development Company establishes (Special Purpose Vehicle (SPV) to raise funds.



**Figure 3:** *The Proposed Waqf-Based Model*

**Source:** *Authors Intuition*

- iii) SPV issues *Sukuk* for the development of *Waqf* properties/assets.
- iv) Investors provide the cash for the development of the land.
- v) SPV then proceeds with the agreed development on the *Waqf* properties/assets.
- vi) The SPV appoints a property development company to manage the *Waqf* properties/assets and charges a commission for its service. The agreed lessor (customer) of the properties enters into a forward leasing with the Property Development Company.

In the case where the property is not leased but is sold, the developed property on the *Waqf* land can be sold on a leasehold arrangement. The *Waqf* land is still rightfully belongs to the *Waqf* Foundation and it will continue to receive lease rental from the land as income.

- vii) The *Waqf*/Charity receives the agreed lease income and distributes it to beneficiaries annually.
- viii) The remaining income from the development of *Waqf* properties/assets is shared with the investors based on the agreed amount annually for an agreed period.

### CONCLUSION AND RECOMMENDATIONS

Effective management of multifarious *Waqf* assets in Nigeria is marred by a number of challenges. The nature of the assets which largely are on the form of traditional *Waqf* properties; land, houses, mosques, orphanages, hospitals, shops, etc., provide little or no room for generating much revenue in themselves. This is coupled with the fact that the *Waqf* administrators (*Nazirs*) are lacking in knowledge and skills in conventional art of Islamic fund management. Accordingly, the paper seeks to unveil how *Waqf*-based Sukuk could be used to attain effective development as well as management of these classes of *Waqf* assets. Using a non-experimental, deductive-analytical approach in its investigation, the paper in the light of experiences in Singapore and Saudi Arabia, develops a *Waqf*-based Sukuk (*ijarah*) framework for fund mobilization for development of *Waqf* properties in Nigeria.

It is hoped that stakeholders comprising religious scholars, *awqaf* authorities, academicians, practitioners, developers, financial institutions, would collaborate towards actualizing this model towards development of *waqf* locally in the light of existing globally best practices.

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