

# P.R.I.M.E. Finance

## Panel of Recognized International Market Experts in Finance

### Islamic Finance & Sustainable Development



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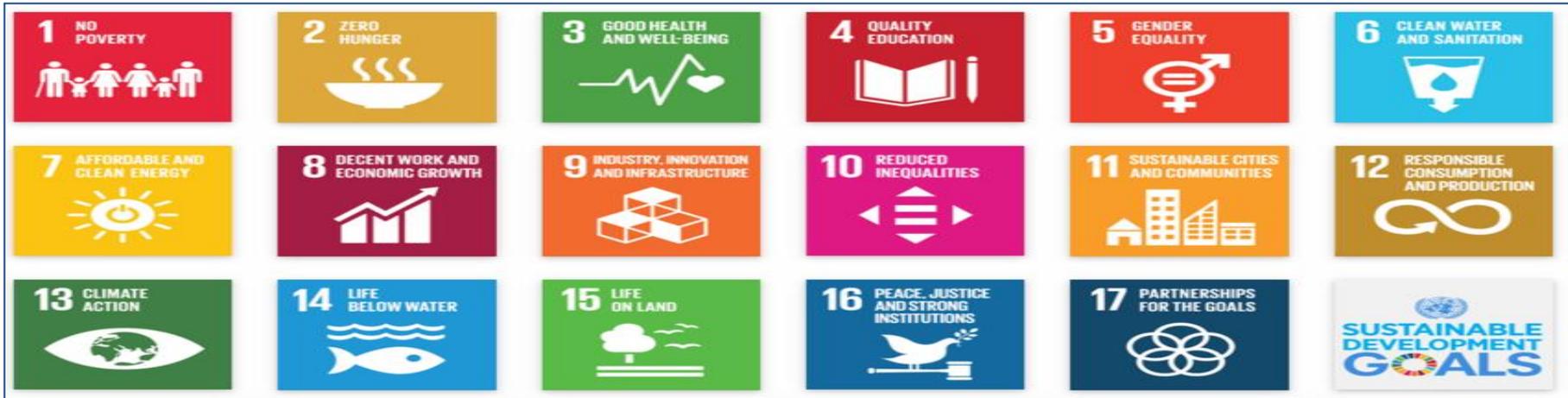


Salahuddin Manzoor  
P.R.I.M.E. Finance Annual Conference 2019  
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# Discussion Points

- ❖ UN Sustainable Development Goals 2030
- ❖ Faith & SDG
- ❖ Islamic Finance & SDG
- ❖ Islamic Microfinance - Akhuwat Microfinance
- ❖ Green Sukuks – Islamic Bonds for SDG
- ❖ Islamic Finance & Dispute Resolution
- ❖ Summary & A Role for PRIME Finance in Islamic ADR?





- The scale and ambition of the 2030 Agenda for Sustainable Development, as embodied in the 17 SDGs, call for substantial financial and technical resources
- The annual funding gap is estimated to be close to \$2.5 Trillion for the next 15 years \*
- These sums are far beyond the scope of individual governments and the multilateral funding agencies to supply
- Private sector funding, capabilities and know-how need to be mobilized to sustain the new development agenda

\* “Unleashing the potential of Islamic finance and impact investing for the SDGs,” -

[Gülçin Salıngan](#)

Deputy Director, UNDP Istanbul International Center for Private Sector Development (ICPSD), Posted Sept 26, 2018

## FAITH & SDG: All Faiths Advocate Environmental Responsibility

**Hinduism:** Hindu philosophy with its deep notions of trusteeship of earth resources and its reverence for nature as a sustainer of humanity had encapsulated within it the modern notion of sustainable development. The assets of nature are there for humans to use for their sustenance and development. But the assets of nature are held in trust. This is the essence of the modern concept of sustainable development and Hindu philosophy provides a strong philosophical base for this concept.\*

“Do not cut trees, because they remove pollution.” (*Rig Veda*, 6:48:17)

“Do not disturb the sky and do not pollute the atmosphere.” (*Yajur Veda*,5:43)

**Buddhism:** Dalai Lama’s teachings encapsulate Buddhist thought on this subject:

“ Because we all share this planet Earth, we have to learn to live in harmony peace with each other and with Nature.

This is not a dream but a necessity” \*\*

\* From the speech Judge C. G. Weeramantry delivered at the inaugural meeting of the World Future Council held in Hamburg on 9 -13 May 2007

\*\* <http://www.pewforum.org>.



## All Faiths Advocate Environmental Responsibility

**Judaism:** Many theologians regard the land as a primary partner of Jewish covenant, and Judaism and especially the practices described in the Torah may be regarded as the expression of a fully indigenous and land- or earth-centered tradition. In [Genesis](#), too, God instructs humanity to hold dominion over nature, but this may be interpreted in terms of [stewardship](#) as well. Eco-centric discussions of Judaism can be found in the work of such modern scholars and rabbis as [Arthur Green](#), [Arthur Waskow](#), Eilon Schwartz, [Lynn Gottlieb](#), Mike Comins, Ellen Bernstein, and [David Mevorach Seidenberg](#).\*

**Christianity:** Christianity has a long historical tradition of reflection on nature and human responsibility with an emphasis on humanity while incorporating environmental concerns within a framework of Creation Care. Christian environmentalists emphasize the ecological responsibilities of all Christians as stewards of God's earth. Green Christians point out that the biblical emphasis is on [stewardship](#), not [ownership](#). Of particular concern to such Christians are the current widespread reliance on [non-renewable resources](#), [habitat destruction](#), [pollution](#), and all other factors that contribute to [climate change](#) or otherwise threaten the health of the [ecosystem](#).\*

\* [https://en.wikipedia.org/wiki/Judaism\\_and\\_environmentalism](https://en.wikipedia.org/wiki/Judaism_and_environmentalism) & *Christian views\_on\_environmentalism*



**Islam:** Muslims believe that the world was created by God (Allah), which warrants respect, obedience and gratitude towards Him. This includes respect for animals, other people, and the environment.\*

❖ The primary source for guidance for Muslims in all areas is the Qur'an, which Muslims believe is the direct Word of God. There are around 650 references to ecology and conservation within this text:

• *“AND THE SKY HAS HE RAISED HIGH, AND HAS DEvised (FOR ALL THINGS) A BALANCE, SO THAT YOU MIGHT NEVER TRANSGRESS THE BALANCE: WEIGH, THEREFORE (YOUR DEEDS) WITH EQUITY, AND DO NOT UPSET THE BALANCE” - 55:7-9\**

❖ Among the faiths, Islam has the distinction of extending the domain of equity, balance, morality and sustainability to the realm of banking and finance.

❖ This has meant that a whole new world of Islamic Finance has been formally organized starting in the 1970s:\*\*

- In 1975, the [Islamic Development Bank](#) was set up with the mission to provide funding to projects in the member countries.<sup>1</sup>
- The first modern commercial Islamic bank, [Dubai Islamic Bank](#), was established in 1979.
- The first Islamic insurance (or *takaful*) company — the Islamic Insurance Company of Sudan — was established in 1979
- The Amana Income Fund, the world's first Islamic mutual fund (which invests only in sharia-compliant equities), was created in 1986 in Indiana.

In 2015 World Islamic Leaders called on people of all faiths to address the global climate crisis, asking, "What will future generations say of us, who leave them a degraded planet as our legacy?"

\* <http://www.pewforum.org>. \*\* [https://en.wikipedia.org/wiki/Islamic\\_banking\\_and\\_finance](https://en.wikipedia.org/wiki/Islamic_banking_and_finance)



# Funds flow to Emerging Markets in 2017 & Islamic Finance\*

- Foreign aid from official donors was US\$146.6
- Foreign direct investment flows to developing economies was US\$671 billion
- And based on the [World Investment Report by UNCTAD](#), global foreign direct investment totaled US\$1.43 trillion
- Islamic finance, as one of the fastest growing sectors in the global financial industry, provides a unique opportunity for innovative solutions.
  - With their emphasis on inclusiveness and broad understanding of business society relations, Islamic finance principles are highly aligned with the SDGs
  - From \$200 Billion in 2008, forecasts indicate that Islamic finance assets are expected to reach \$3.8 trillion by 2022
- UNDP & IDB set up the Global Islamic Finance & Impact Investing Platform (GIFIIP)
  - GIFIIP has developed training programs to facilitate Islamic Finance in Impact Investing
  - Through the platform, UNDP will adopt the seal for commercial Islamic finance to endorse eligible Islamic based investments aligned with the SDGs
  - GIFIIP introduced a new series of Green Sukuk stakeholder workshops to build a greater understanding of the concept and potential in renewable energy sector for Islamic financiers (Malaysia & Indonesia have successfully issued Green Sukuks)

\*"ACHIEVING THE SDGS: POTENTIAL OF ISLAMIC FINANCE THROUGH INNOVATIVE INVESTORS AND INSTRUMENTS,"

[Tegegnetwork Gettu](#), UNDP Associate Administrator, September 27, 2018.



- Established in 2011:
  - *Akhuwat provides interest free loans to the economically poor so that they may acquire a sustainable livelihood*
  - *Being Sharia-compliant, the organization sees interest as a barrier to widespread proliferation of capital.*
  - *In keeping with the principles of equity and social justice, burdening the poor with exorbitant interest rates is also viewed as undermining the overarching goal of poverty alleviation.*
  - *Akhuwat believes in an inclusive society without any discrimination on the basis of caste, color, creed, gender, politics or faith. Akhuwat is a non-political and pro-poor organization*
- Currently Akhuwat Islamic Microfinance (AIM) has over 800 branches all over Pakistan
- AIM has a work force of 7045 volunteers, 90073 donors and 3.1 million direct beneficiaries
- Having started by extending two PKR 10,000 interest free loans in 2011, AIM crossed the PKR 50 Billion disbursement milestone in 2018 – currently at PKR 76.5 Billion
- Akhuwat's collection percentage remains close to 100%
- *In its collection process, disputes are managed through Counselling (Nasiah) and Sulh (Negotiation, Mediation)*

\* <https://www.akhuwat.org.pk>



## Akhuwat, Pakistan – World’s Largest Islamic Microfinance Institution\*

- Dr Amjad Saqib, founder and managing director of Akhuwat spoke at [United Nations](#) in April 2018.
- Dr Saqib presented *Akhuwat ka Safar* (Akhuwat’s Journey) in the United Kingdom (Birmingham, Oxford, Cambridge and London) in June 2018.
- Akhuwat attended a panel Discussion “An Interaction with Donor and Funding Agencies” in Cambodia on 25<sup>th</sup>
- Akhuwat was registered in the Uganda, Africa as a legal entity.
- Akhuwat attended the 30th RCCI Awards in Turkey.
- Dr Amjad Saqib spoke about *Akhuwat ka Safar* on an Independence day event in Sweden..
- Dr Saqib is actively spreading the word of Akhuwat’s success around the world to provide a proven, workable and effective model for sustainable development at the grassroots level

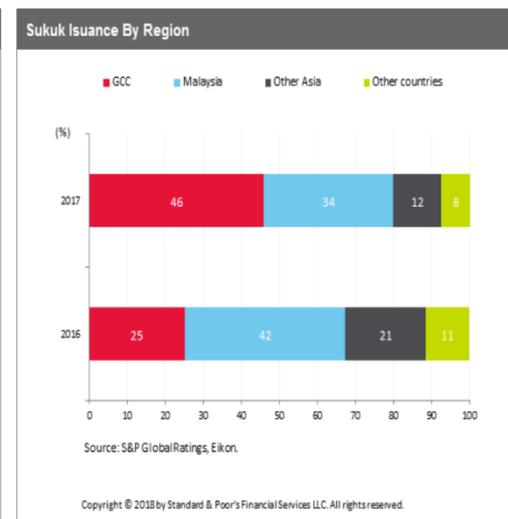
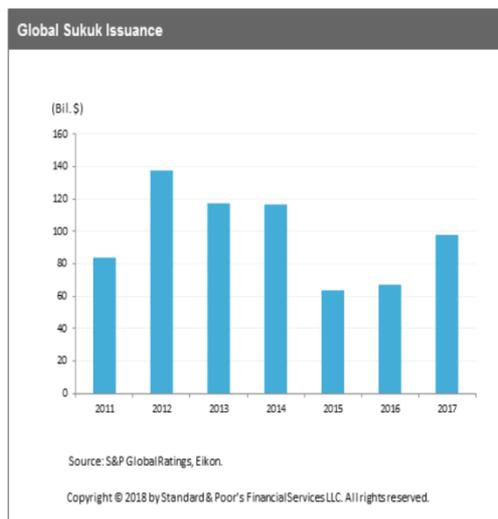
<https://www.akhuwat.org.pk>



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## Green Sukuk – Sharia Compliant Debt Issued for Green Energy Projects

- Islamic law contains a deeply entrenched ethical framework of concern for the environment and its diverse inhabitants covering land, water and air pollution, resource conservation, equitable mineral extraction and protection of plants and animals.\*
- Sukuk are participation certificates: AAOIFI229 defines “sukuk” as certificates of equal value representing an ownership interest in defined assets, usufruct, or services, as well as equity in a project or investment activity (the underlying assets being Sharia compliant). \*\*
- A sukuk structure is usually coupled with another nominal contract form, such as a lease (*ijara*), so that the rental income generated from the lease of the asset is shared pro rata among the sukuk investors (There are 14 types of sukuks as classified by AAOIFI).\*\*
- Sukuk issuance volume increased significantly to \$97.9 billion in 2017, thanks to jumbo issuances by some GCC countries.\*\*
- AAOIFI) and the Islamic Financial Service Board (IFSB) issued several new standards in 2017 aimed ultimately at smoothing the process of sukuk issuance. \*\*



\* “ Green Sukuk: The Introduction of Islam’s Environmental Ethics to Contemporary Islamic Finance”, UMAR F. MOGHUL\* AND SAMIR H.K. SAFAR-ALY

\*\* “Global Sukuk Market Outlook: Another Strong Performance In 2018?”, S&P Global Ratings



# Green Sukuk\* - A Successful Beginning

- Malaysia and Indonesia have taken the lead in the Islamic world to issue the first ever Green Sukuk
- Tadau Energy of Malaysia issued the first ever Green Sukuk in July 2017 raising MYR 260 Mn ( \$60.2Mn) to fund a solar project
- Republic of Indonesia followed in February 2018 by issuing a \$1.25 Bn Green Sukuk to combat climate change and preserve the island nation's biodiversity
- Bank Islam Malaysia has recently established the first ever environmental, social and governance - ESG - Sukuk Fund, which should also provide demand for Green Sukuks
- Issuance of Green Sukuks is expected to accelerate given the successful pioneering efforts of Malaysia and Indonesia and as policies to combat climate change gain momentum in emerging market countries.
- But the success of such initiatives and of Islamic Finance in general to raise significant funds for SDG will be aided by the development of a robust and dependable Islamic ADR process

\* "Private capital to drive green sukuk issuance," by Chito Santiago  
<https://esg.theasset.com/ESG/34984/private-capital-to-drive-green-sukuk-issuance>



# Process of Dispute Resolution in Islamic Law\*

The dispute resolution processes in Islamic law are meant for different types of disputes and some are relevant at various stages of a dispute. The Islamic concept of dispute resolution is a continuum of not less than nine processes of dispute resolution. The common processes of dispute resolution in Islamic law are:

- i. Nasihah (Counselling);
- ii. Sulh (Negotiation, mediation, conciliation, compromise of action);
- iii. Tahkim (Arbitration);
- iv. Med-Arb (A process that begins with mediation and ends in arbitration);
- v. Muhtasib (Ombudsman);
- vi. Wali al-Mazalim (Chancellor or Ombudsman Judge);
- vii. Fatwa of Mufti (Expert Determination);
- viii. Med-Ex (A combination of mediation and expert determination); and
- ix. Qada (adjudication)

➤ The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), a body that issues global standards on different aspects of Islamic finance, has issued the standard on arbitration.

➤ *However, principally IF dispute settlement in many Muslim continues to rely on litigation in civil courts with cases being decided by judges not trained in Sharia law.*

\* DISPUTE RESOLUTION IN ISLAMIC FINANCE: A CASE ANALYSIS OF MALAYSIA, Umar A. Oseni & Dr. Abu Umar Faruq Ahmad, 2011  
([https://www.researchgate.net/publication/265143356\\_DISPUTE\\_RESOLUTION\\_IN\\_ISLAMIC\\_FINANCE\\_A\\_CASE\\_ANALYSIS\\_OF\\_MALAYSIA](https://www.researchgate.net/publication/265143356_DISPUTE_RESOLUTION_IN_ISLAMIC_FINANCE_A_CASE_ANALYSIS_OF_MALAYSIA))



# Challenges in Implementing Islamic ADR

- Contracts for almost all Islamic products such as Murabha (Loan), Takaful (Insurance) or Ijara (Lease), contain an Islamic Arbitration Clause
- However, clients of Islamic banks (both retail and corporate) feel that the Islamic ADR process may be “managed” by the institution involved since Sharia experts might favour the institution for continued engagements
- Hence, in case of a dispute in an Islamic commercial contract, most retail and corporate clients of Islamic banks feel that they will receive less biased or more fair treatment in a civil court rather than through the Islamic ARD process
- It is due to this mistrust and the perception that the relatively less formal Islamic ADR process can perhaps be unjustly influenced, that the Islamic ADR clause in commercial contracts is almost never exercised (in Pakistan)
- Some IF institutions (lending banks) specifically exclude Sharia-based ADR in contract documentation in favour of the provision for litigation in civil courts to avoid credit exposure that may be caused by uncertainty and lack of legal precedence in Sharia-based ADR\*

Dispute Resolution in Islamic Finance By Jonathan Lawrence (jonathan.lawrence@klgates.com), Peter Morton (peter.morton@klgates.com) and Hussain Khan (hussain.khan@klgates.com) of K&L Gates LLP "Global Islamic Finance Report 2012"



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- Firstly, the Sharia is a set of moral and religious principles rather than a legal code
- Secondly, in several Islamic countries such as Malaysia and Pakistan, judges are not trained in Sharia principles to pass competent judgement on IF disputes (*Their judgements are based on the application of commercial banking law and they state this at the outset*)
- Perhaps more understandably, English courts are also not equipped with the required Sharia expertise (*Partly for this reason, including "Sharia Compliance" requirement in documentation is meaningless*)
- In addition, Sharia law, not being a national law of any country but rather a set of religious principles followed by many Islamic countries, does not qualify in the international arena as the governing law of a contract under [Regulation \(EC\) No 593/2008](#) of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) - *Beximo Pharmaceuticals Ltd vs Shamil Bank (2004)\* (This is a problem for the development of cross-border international Islamic Finance)*
- Some GCC countries do have courts that apply Sharia principles in commercial litigation but their impact is limited to their domestic markets
- Amongst non-GCC Muslim countries, Malaysia is leading the way through a "Court Annex" mechanism which combines a civil court and independent Islamic expert opinion\*\*
- The big challenge for the expansion of international Islamic Finance to help with SDG will remain that cross-border complex IF transactions involving several jurisdictions – for example, a Sukuk (Islamic bond) issued by a European entity to raise funding from the Middle East – will most likely continue to be governed by English Law
- The other challenge, perhaps, will be the development of Islamic ARD located in jurisdiction viewed by the world investor community as completely impartial while being fully Sharia compliant.

\* Dispute Resolution in Islamic Finance By Jonathan Lawrence ([jonathan.lawrence@klgates.com](mailto:jonathan.lawrence@klgates.com)), Peter Morton ([peter.morton@klgates.com](mailto:peter.morton@klgates.com)) and Hussain Khan ([hussain.khan@klgates.com](mailto:hussain.khan@klgates.com)) of K&L Gates LLP "Global Islamic Finance Report 2012"

\*\* DISPUTE RESOLUTION IN ISLAMIC FINANCE: A CASE ANALYSIS OF MALAYSIA, Umar A. Oseni & Dr. Abu Umar Faruq Ahmad, 2011 ([https://www.researchgate.net/publication/265143356\\_DISPUTE\\_RESOLUTION\\_IN\\_ISLAMIC\\_FINANCE\\_A\\_CASE\\_ANALYSIS\\_OF\\_MALAYSIA](https://www.researchgate.net/publication/265143356_DISPUTE_RESOLUTION_IN_ISLAMIC_FINANCE_A_CASE_ANALYSIS_OF_MALAYSIA))



## Summary & A Role for PRIME Finance in Islamic ADR...

- It is clear that Islamic Finance can help bridge the large annual resource gap of \$2.5 Trillion in our quest to achieve the 2030 Sustainable Development Goals
- This is already being done, however modestly, through Islamic Finance mechanisms ranging from grass roots level Islamic microfinance institutions to the global capital markets such as the recent successful oversubscribed issuance of Green Sukuks
- However, for Islamic Finance to grow at an even faster pace, there needs to be a greater effort by the global community to provide both guidance and assistance in developing a robust Sharia-compliant dispute resolution mechanism
- This will provide international investors greater confidence in Islamic Finance structures and produce the required increase in investment flow for realization of SDG
- Perhaps PRIME Finance can play a critical role in setting up an Islamic Finance Arbitration Panel by inviting top Islamic Law Experts as well as Sharia Experts in an effort to create a globally accepted Islamic ADR panel
- PRIME Finance's growing reputation and its location in The Hague, recognized as the world's capital of impartial justice, may provide the confidence required in Islamic ADR which in turn will contribute to even more rapid growth of Islamic Finance.

