

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

## 8<sup>th</sup> Kuala Lumpur Islamic Finance Froum

(KLIFF 4 October 2011)

الحمد لله والصلاة والسلام على نبينا محمد وعلى آله وصحبه وسلم وبعد :-

Brothers & Sisters  
Assalamualiekum

It is indeed a great honor and a pleasure to address this august gathering and to speak at this grand occasion.

Let me at the out-set thank the organizers for giving me this most valuable opportunity.

I would like to also thank the academic, regulatory and professional bodies and institutions in this country who, through steady, consistent and well

thought of efforts succeeded in making Kuala Lumpur the undisputed International capital of Islamic finance.

Being in such a prominent position, a forum of this kind in this location is, without a question, the right place to address crucial questions and critical issues in Islamic finance one that constitute turning points in the future of this industry.

Brothers & Sisters

I am sure you are well aware that the part of Islamic finance that is making the high rate of growth is the Sukuk segment. Already the total size of Sukuk is much bigger than the size of Islamic banking assets.

It appears that every government in the world and the entire global corporate sector want to tap the savings of Muslim investors.

This is fine. There is no harm in a mutually beneficial arrangement. Except for the fact that some of these potential issuers do not give a hoot about Shari'ah. They are after the dough as the saying goes.

But they know, only too well, that no Sukuk issue will succeed without Shari'ah approval. It is because of this Shari'ah boards have been subjected lately to pressure to approve structures that lack some of the basic requirements on the pretext that it is impossible to change laws and regulations thus we need to change Shari'ah requirements or that conventional space have certain products that are missed in the catalog of Islamic finance and we must have them. For example: A corporate entity wants to issue Ijarah Sukuk in a country where stamp duty is very high. When the assets exchange hands through sale they are subjected twice to this tax, thus rendering the issue not feasible from financial point of view. Rather than trying to convince the tax authorities that such a transaction is a special case thus must not be subjected to the said stamp duty, they try to compromise the Shari'ah quality by attempting to bypass a fundamental Shari'ah requirements of true sale contract.

Another example: A country that lacks the legal infrastructure for the establishment of a trust or a special purpose vehicle wants to issue a sovereign Sukuk.

Amending the laws to permit such thing does not seem a very difficult thing to do. However, rather than doing that they opt for a short cut they want Shari'ah to give in by asking Shari'ah boards to permit a government ministry to be seller and buyer, to be lessee and lessor. A fictitious contract par excellence.

A third example: A Sukuk designed where the final outcome doesn't depend on the actual commercial fate or the effective outcome of bearing the risk of the investment. Rather, it is based on an indecent that is not related in any shape or form to the investment itself. Purpose: to emulate the new infamous credit default swap.

All of the above are examples of actual cases presented to Shari'ah boards. Rest assured. None of them was approved by a Shari'ah board. Nor that they have any chance of being approved. However, this doesn't stop me from being worried. Worried because Shari'ah boards now are like a dam where an increasing amount of water is accumulating behind it. A levee that is trying to prevent flooding but in vain. What is to be done? The

solution not letting water flow or let loose the flood. It is rather fortifying the dam and hardening the walls of the levee.

This is done by strictly adhering to a strong set of rules which constitutes what we may call Shari'ah governance. It is high time that we bind ourselves to rules that protect our Shari'ah from leaking. The subject of Shari'ah governance in its totality is beyond the scope of this rather short address. However, one aspect of governance is most relevant to the issue at hand and is doable with reasonable moderate effort. This is to do with transparency.

Most banking institutions treat their Shari'ah board declarations and the minutes of the deliberation leading to that declaration as top secret. Some even believe the fatwa itself is privileged and confidential. We have tolerated this in the past considering the cut throat competition between banks. But we must not allow even the remote possibility of false claims of Shari'ah approvals nor any opening for misleading the public about what has actually been approved by the Shari'ah board. The guise of secrecy

must not be exploited for this purpose. It is high time that Shari'ah boards insist on positing all their decisions and fatwa's on the internet site of the relevant institutions to be in the public domain. On the part of Shari'ah boards it is very important that we do not confine ourselves to merely delivering a judgment but rather opening ourselves to discussion and deliberation from outside the Shari'ah board membership.

This can be done, in addition to making our work open to outsiders by always providing a body of evidence from Shari'ah sources supporting the decision.

This means the fatwa will lend itself to scrutiny by all interested students of Shari'ah thus initiating a discourse that will result in wider acceptance and a higher degree of accuracy and flawlessness in the future.

For this purpose resolution must not be confined to permit or prohibit rather must be through and detailed reflecting full understanding of the issues at hand with a judgment that reveal the Shari'ah evidence upon which it is based.

It is not sufficient to spell out the salient features of the product. It is essential that people rest assured and feel comfortable that the Shari'ah board had explored all the aspects and addressed all the possibilities. Each Shari'ah board must welcome the examination of its decisions by peer reviews, coming from other qualified Shari'ah scholars.

And must be open to changing or modifying its previous decisions.

Financial institutions do not like to hear this. In fact such thing is classified as risk. But it is time they realize that a scholar has to answer to an authority much higher than the board of directors. He must be truthful to his own self and loyal only to Allah SWT. Thus, if in retrospect, he becomes convinced that a different view is the right Shari'ah position, he must not be held to any other regardless of what he approved in the past.

This says nothing about the permissibility of what has been approved in the past. They are valid and correct because they relied on proper fatwa. However, we can't advance in attaining a higher degree of adherence to

Shari'ah unless we have the possibility of revising, qualifying and even revising certain decisions, where there is something or that enable evidence that we mixed implementation is taking us to undesired territory or that the assumptions and information upon which scholars relied turned out to be incorrect.

Brothers & Sisters: I might have taken more time than has been allotted to me therefore I would like to conclude by saying that we have created a very unique institution called the Shari'ah board which contributed significantly in the success of Islamic finance. We have to relentlessly work hard to make it effective, robust, relevant and truthful.

Assalamualiekum O Rahmatullah O Barkatahu.