

AN ASSESSMENT OF ENFORCEABILITY OF FOREIGN JUDGMENTS AND SPV INCORPORATION IN SUKUK WITH A SPECIFIC REFERENCE TO SAUDI ARABIA, UAE, AND BAHRAIN

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ABSTRACT

In both Islamic and conventional finance, SPVs (Special Purpose Vehicles) are a crucial part of securitisation. In an Islamic mode of securitisation, the SPV is accountable to facilitate the management of *Sukuk*, holding the title of the underlying asset, serving as a bankruptcy remote, and facilitating the cash flow for the investors. While *Sukuk* agreements are primarily regulated by English law, *Sukuk*'s Shari'ah framework and underlying contract are governed under the jurisdiction of the local laws where *Sukuk* assets are located. Given this background, the study aims to examine the enforceability of foreign judgements and SPV framework of Saudi Arabia, Bahrain, and UAE, and afterward qualitatively analyse to determine the best practices from jurisdictions such as the United Kingdom, the United States of America, Malaysia, the Cayman Islands, and Turkey which can be incorporated in the selected jurisdictions. In this essence, secondary data is obtained from multiple resources such as *Sukuk* laws and regulations as well as articles, books, websites, and academic writings. These materials are then compared and analysed using the content analysis method. Thus, the regulations with respect to SPV incorporation and enforceability of foreign judgment will be examined as the analysis of these aspects will assist the Islamic finance community to reform their SPV framework in ways that explicitly and efficiently ensure transparency and inclusively

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disclose the scope of the role and status of all parties involved in an SPV formation.

Keywords: SPV, Securitisation, *Sukuk* Framework, Foreign Judgment.

PENILAIAN KEBOLEHCUASAAN PENGHAKIMAN ASING DAN PERBADANAN SPV TERHADAP *SUKUK* DENGAN RUJUKAN KHUSUS KEPADA ARAB SAUDI, UAE, DAN BAHRAIN

ABSTRAK

Dalam kewangan Islam dan konvensional, SPV (Special Purpose Vehicles) adalah segmen penting dalam pensukuritan. Manakala dalam cara pensukuritan Islam, SPV bertanggungjawab untuk memudahkan pengurusan *Sukuk*, memegang gelaran aset asas, berfungsi sebagai kawalan kebangkrutan, dan memudahkan aliran tunai untuk pelabur. Perjanjian *Sukuk* dikawal terutamanya oleh undang-undang Inggeris manakala rangka kerja Shari'ah *Sukuk* dan kontrak asas ditadbir di bawah bidang kuasa undang-undang tempatan di mana aset *Sukuk* berada. Berdasarkan latar belakang ini, kajian ini bertujuan untuk mengkaji kebolehkuasaan penghakiman asing dan rangka kerja SPV di Arab Saudi, Bahrain dan UAE, dan kemudiannya penganalisaan secara kualitatif untuk mencari amalan terbaik dari bidang kuasa maju di negara-negara seperti UK, Amerika Syarikat, Malaysia, Kepulauan Cayman, dan Turki yang boleh digabungkan dalam bidang kuasa terpilih. Pada dasarnya, data sekunder diperoleh daripada pelbagai sumber seperti undang-undang dan peraturan *Sukuk* serta artikel, buku, laman web dan penulisan akademik, dan kemudian dibandingkan dan dianalisa menggunakan kaedah analisis kandungan. Oleh itu, peraturan berkenaan dengan perbadanan SPV dan kebolehkuasaan penghakiman asing akan diteliti kerana analisis aspek ini akan membantu komuniti kewangan Islam untuk memperbaharui rangka kerja SPV mereka dengan cara yang jelas dan cekap bagi memastikan ketelusan dan mendedahkan skop peranan secara inklusif dan status semua pihak yang terlibat dalam pembentukan SPV.

Kata Kunci: SPV, Pensukuritan, Rangka Kerja *Sukuk*, Penghakiman Asing.

INTRODUCTION

Sukuk are Shari'ah-compliant securities that constitute undivided shares in the underlying assets, usufructs, or services for the *sukuk* holders or investors. The structure of a *Sukuk* is based upon contracts outlined by the Shari'ah which requires that the underlying asset must adhere to Shari'ah norms. This comprises of prohibition of interest (*riba*), uncertainty (*gharar*), and speculation (*maysir*). Similarly, Shari'ah also emphasises ethical and equitable businesses that contribute to the benefit of society,¹ since *Sukuk* is based on Shari'ah-compliant exchange contracts which are the means of transferring ownership. They also possess the features of tradability and liquidity.² Furthermore, by virtue of having such attributes, *Sukuk* holders are exposed to the risk and return associated with the underlying asset or project.³

Given this backdrop, it must be acknowledged that *Sukuk* plays a fundamental role in Shari'ah-compliant securitisation and involves many parties such as the obligor, *Sukuk* underwriter, SPV, board of directors, trustees, and investors.⁴

¹ "Accounting and Auditing Organization for Islamic Financial Institutions," AAOIFI, accessed July 12, 2022, <http://aaoifi.com/shariaa-standards/?lang=en>.

² Kamaliah Salleh et al., "Public Venture in Private Companies Through Crowdfunding Method of Peer-To-Peer Lending in Malaysia," *IJUM Law Journal* 30, no. 1 (2022): 91-128.

³ Linklaters, *Shari'a-compliant Securities (Sukuk)* (London: Linklaters LLP, 2012); Mohamad Syafiqe Abdul Rahim and Ahmad Hidayat Buang, "The Theory of Product Innovation and Its Application in Islamic Banking," *Journal of Islamic Finance* 10, no. 2 (2021): 112-123.

⁴ Rodney Wilson, "Innovation in the Structuring of Islamic Sukuk Securities," *Humanomics* 24, no. 3 (2008): 170-181.

Nonetheless, when it comes to the SPV incorporation, its level of relevance rises and it becomes more significant because in a *Sukuk* structure., an SPV is responsible in facilitating the management of *Sukuk*, holding the title of the undelaying asset, servicing a bankruptcy-remote, and facilitating the cash flow for the investors. This is because in an Islamic mode of securitisation, the underlying assets are owned by the security holders.⁵ Similarly, the extent of accepting and rejecting foreign judgements in UAE, Saudi Arabia, and Bahrain is grounded on distinct circumstances. *Sukuk* agreements are primarily regulated by English law while Shar'iah aspect of the transaction, namely *Sukuk's* Shari'ah framework and underlying contract are governed under the jurisdiction of the local laws where *Sukuk* assets are located. As a result, there is uncertainty, unpredictability, and ambiguity in the legal conflict resolution process.⁶

Hence, this study aims to examine the enforceability of foreign judgements involving SPV framework in Saudi Arabia, Bahrain, and UAE. It then attempts to qualitatively analyse the best practices of other jurisdictions such as the United Kingdom, the United States of America, Malaysia, Indonesia, and Turkey. The paper will only

⁵ Mohammad Soleimani and Mustafa Shadab, "Roles and Functions of Special Purpose Vehicles (SPV); a Comparison between Islamic and Conventional Finance," *Journal of Emerging Economies and Islamic Research* 8, no. 1 (2020): 1; Abu Umar Faruq Ahmad, "Regulation, Performance and Future Challenges of *Sukuk*: The Evidence from Asian Markets," in Dilip S. Mutum, Mohammad Mohsin Butt, and Mamunur Rashid, *Advances in Islamic Finance, Marketing, and Management: An Asian Perspective* (Howard House, Wagon Lane, Bingley BD16 1WA, UK: Emerald Group Publishing Limited, 2016).

⁶ Nicolas Bremer, "Seeking Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in the GCC Countries," *McGill Journal of Dispute Resolution* 3, no. 37 (2016).

evaluate the *Sukuk* structure of Saudi Arabia, UAE and Bahrain as they are civil jurisdictions and since the Islamic finance industry of these nations are regarded to be mature and developed. Consequently, the analysis of these areas will facilitate in framing recommendations for the respective jurisdictions.

LITERATURE REVIEW

The Significance of the SPV and its Requirement for the issuance of *Sukuk*

SPV is a crucial part of a securitisation in both Islamic and conventional finance, and it is defined as a legal vehicle formed by a corporate (known as the sponsor or originator) by transferring assets to the SPV to perform some specified objective or constricted activity, or a sequence of similar transactions. These SPVs are intended to carry out the transaction(s) for which they were founded, and they have no authority to make substantial decisions; their regulations are laid down and thoroughly explain their functions. Indeed, there are no employees at an SPV, and it does not have a physical presence.⁷ Partnership, limited partnership, and joint ventures are the most common legal forms of SPVs. Furthermore, in some circumstances, it is required that the SPV must not be possessed by the corporation on whose behalf the vehicle is formed.⁸

⁷ Mohammad Soleimani and Mustafa Shadab, "Roles and Functions of Special Purpose Vehicles (SPV): A Comparison between Islamic and Conventional Finance," *Journal of Emerging Economies and Islamic Research* 8, no. 1 (2020): 1.

⁸ CFI Team, "Special Purpose Vehicle", Corporate Finance Institute, 2021, <https://corporatefinanceinstitute.com/resources/knowledge/strategy/special-purpose-vehicle-spv/>.

On the other hand, in Shari'ah-compliant mode of securitisation such as asset backed *Sukuk*, a true sale of the assets occurs, and underlying assets are possessed by the shareholders and the SPV merely facilitates the cash flows for them. These securitised assets are known as Asset Linked Securities and are not debt securities, whereas their capital and yields are not secured or risk-insured. These distinctions – risk-sharing and possession of underlying assets – have significant consequences for SPVs in Islamic finance.⁹ Usually, for *Sukuk* issuance, an SPV is required to accomplish multiple objectives such as, to share and isolating the risks of the project, securitisation of loans, transfer of assets, and avoiding taxes on property sales.¹⁰

SPV Establishment in UAE, Saudi Arabia, and Bahrain

United Arab Emirates

1. The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are the two most prominent SPV regimes in the UAE. The DIFC and ADGM SPVs are typically utilised to keep massive investments, such as real estate, and accumulation of investment funds. Most often, international investors use the ADGM SPVs to maintain their investments in continental businesses so they can take the benefit of advantageous legal and regulatory environment

⁹ Mohammad Soleimani and Mustafa Shadab, "Roles and Functions of Special Purpose Vehicles (SPV): A Comparison between Islamic and Conventional Finance," *Journal of Emerging Economies and Islamic Research* 8, no. 1 (2020): 1.

¹⁰ CFI Team, "Special Purpose Vehicle", Corporate Finance Institute, 2021, <https://corporatefinanceinstitute.com/resources/knowledge/strategy/special-purpose-vehicle-spv/>.

that promotes efficient trust formation.¹¹ However, to incorporate a special purpose firm in DIFC, only a private limited firm by shares can be used as a special purpose vehicle. This sort of venture will enjoy numerous advantages which are not applicable to other Dubai free zone businesses. Its registration with the DIFC Authority will be executed based on the Memorandum and Articles of Association, that must describe the SPV's distinctive goals.¹² While ADGM's SPV structure is often regarded as a highly flexible and cost-effective approach towards asset holdings and investments.¹³ The structure provides enough freedom to businessmen and asset owners while also separating financial and legal risks. Under the direct application of English law or Common Law, SPVs follow companies' regulations 2008, which assure uniformity among all business entities.¹⁴ Nonetheless, the procedure of forming an SPV in the UAE *Sukuk* market is entirely digital and can be undertaken online, and authorities do not require any

¹¹ "Special Purpose Vehicles – CBD Dubai," <https://cbddubai.com/business-in-uae/special-purpose-vehicles/>.

¹² Adwani Adwani, Rosmawati Rosmawati and M. Ya'kub Aiyub Kadir, "The Responsibility in Protecting The Rohingya Refugees In Aceh Province, Indonesia: An International Refugees Law Perspective," *IJUM Law Journal* 29, no. 2 (2021): 1-21; [Companyincorporationdubai.com](https://companyincorporationdubai.com), "Open a SPV/SPC in Dubai," Dubai Incorporation, September 27, 2021, <https://companyincorporationdubai.com/open-a-spvspc-in-dubai/>.

¹³ Maheran Makhtar, Zuhairah Ariff Abd Ghadas and Mahbul Haque, "Analysis of Workers 'Rights in the On-Demand Economy with Special Reference to Vertical Inequality," *IJUM Law Journal* 30, no. 1 (2022): 129-155.

¹⁴ Development by Doddle Agency | <https://doddle.agency.com>, "Setting up a Special Purpose Vehicle (SPV)," Setting up a Special Purpose Vehicle (SPV) | PRO Partner Group, <https://www.propartnergroup.com/services/adgm-spv/>.

physical meetings or the submission of hard copies of documents.¹⁵ Furthermore, they do not require complete casualisation of foreign corporate documents as part of the establishment procedure, just document certification is necessary, which lowers the cost of time and money. The registration process is as described below: For the application process, it is mandatory for the applicant to form a profile and prepare and review the necessary documents. Meanwhile, for preapproval and application a quick business plan that details the shareholders, objectives, and organisational structure of the company must also be developed.

2. Upon completion of all mandatory forms, the application along with the above-stated documents and required payment shall be submitted.

3. The process might be completed within few days, provided that all the required documents and information is submitted correctly. The applicant can check the status of his application via online dashboard. The applicant will also be updated through email and will be notified if the application requires any changes. Final decision by the Registrar will be notified through email.

4. Upon a successful application, the soft copy of the license will be provided, and the client will also receive a link in the email allowing him to make an appointment to collect all original documents.¹⁶

¹⁵ Nor Fadzlina Nawi et al., “Policy, Legal and Regulation Research in The Sharing Economy: A Bibliometric Analysis and Systematic Literature Review,” *IIUM Law Journal* 30, no. 1 (2022): 1-33.

¹⁶ Development by Doddle Agency | <https://doddle.agency.com>, “Setting up a Special Purpose Vehicle (SPV),” Setting up a Special Purpose Vehicle (SPV) | PRO Partner Group,

Kingdom of Saudi Arabia

In the context of Saudi Arabia, an SPV is a vehicle that is formed and licensed by CMA under “The Rules for Special Purposes Entities” for the issuance of investment units and debt instruments, and it is a legal entity and has financial autonomy. As per the “Rules and Regulations issued by the Capital Market Authority,” it shall cease to exist by the end of the purpose for which it was established. However, for the issuance of a debt instrument, an SPV shall be formed by obtaining the CMA license thus, as per the standardised form approved by the CMA an application form to establish and license a “Special Purpose Entity and an application to register a director of a Special Purpose Entity should be filled out and submitted to the Special Purpose Entities Department in the Authority along with By-laws of Special Purposes Entities”.¹⁷ On the other hand, to issue investment units an SPV can be initiated by obtaining the CMA license henceforward, the fund manager shall fill out the section on founding a “Special Purposes Entity” in the investment fund establishment's form, in addition to submitting the “By-law for the Special Purposes Entity” according to

<https://www.propartnergroup.com/services/adgm-spv/>; Suhaidi Suhaidi et al., “Regulating Compensation for the Protection of Traditional Fishermen Affected by Pollution in Indonesia,” *IIUM Law Journal* 29, no. 2 (2021): 95-113.

¹⁷ Alshamrani, Ali. "Sukuk issuance and its regulatory framework in Saudi Arabia." *Journal of Islamic Banking and Finance* 2, no. 1 (2014): 305-333.

the form approved by the authority and sending it to the “Investment Product Issuance Department in the Authority”.¹⁸

The Kingdom of Bahrain

In Bahrain, it is required under the PCD-4.1.2 (Prudential Consolidation and Deduction Requirements) that “all locally incorporated banks must obtain the CBB’s (Central Bank of Bahrain) specific written approval if they intend to act as originator, sponsor, or manager of a special purpose vehicle ('SPV'), or if they intend to participate in the creation of an SPV, or if they intend to acquire a holding of 20% or more of the equity capital of an SPV”. In addition, under Paragraph PCD-4.1.2 the CBB requires any bank licensee linked with an SPV to validate the following points in any request for approval.¹⁹ Below the points are described in steps:

1. The objective of SPV;
2. The nature of relationship amongst the Bahraini conventional bank licensee and the SPV (i.e., “originator, sponsor, manager, investor, controller etc”).
3. The recommended consolidation and accounting method of the SPV in respect to the Bahraini conventional bank licensee, both for the Prudential Information Report (PIR) and the audited financial reports, as approved with its external auditor;

¹⁸ “هيئة السوق المالية” العوده للموقع الرئيسي, <https://cma.org.sa/en/Market/SPEs/Pages/default.aspx>.

¹⁹ Alkhan, Ahmed M. "A critical analysis of special purpose vehicles in the Islamic banking industry: The Kingdom of Bahrain as a case study." PhD diss., University of Bolton, 2016.

4. The accessibility of financial and other information relevant to the SPV and access to its business premises and records; and
5. Whether the bank is providing the SPV with any guarantees, warranties, or financial/liquidity support of any kind.²⁰

ENFORCEABILITY OF JUDGEMENTS: AN OVERVIEW

Another problem that adds to the difficulty of resolving disputes originating from or related to *Sukuk* agreements is the participation of contradictory jurisdictions in *Sukuk* agreements. This is because the origination, issuance, trading of *Sukuk* instruments, and conflict resolution all involve several jurisdictions battling the most fundamental legal problems. *Sukuk* agreements are primarily regulated by English law, while the Shari'ah portion of the transaction, namely the *Sukuk's* Shari'ah framework and underlying contract, commonly falls under the jurisdiction of the local laws where *Sukuk* assets are located. As a result, there is uncertainty, unpredictability, and ambiguity in the resolution process.²¹ For instance, in Dana Gas *Sukuk* the underlying contacts and agreements such as, "Declaration of Trust, Agency Agreement, Purchase Undertaking, Sale Undertaking, Security Agreement, Security Agency Agreement, Ordinary Certificates and Exchangeable Certificates" are governed by English law and subject to the non-exclusive jurisdiction of the English Courts. Whereas the *Mudarabah* Agreement, the UAE Share Pledges and the

²⁰ "Special Purpose Vehicles – CBD Dubai," <https://cbddubai.com/business-in-uae/special-purpose-vehicles/>.

²¹ Bremer, Nicolas. "Seeking Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in the GCC Countries." *McGill J. Disp. Resol.* 3 (2016): 37.

UAE Mortgage were governed by the laws of the UAE”.²² Nonetheless, GCC countries are the front-line players of *Sukuk*, they are involved in the majority of *Sukuk* issuance directly or indirectly. In fact, majority of *Sukuk* are being offered and issued by GCC countries²³. The enforcement of foreign judgments is still not quite clear because English law is still being used as the governing law in many *Sukuk*. The norms are changing, and efforts are being made to ease the way of enforcement of English law. To achieve their goals, considerable and significant developments have been made regarding arbitration. “Most notably, with the UAE’s accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 in 2006, the most relevant international legislation for enforcing foreign arbitral awards became applicable in the GCC, Other GCC countries have also amended their arbitration laws significantly over the last few years. They have made considerable efforts to advance their standing as attractive arbitration venues, by setting up a number of arbitration centres throughout the GCC for instance. This started with the opening of the Abu Dhabi Commercial Conciliation & Arbitration Centre in 1993 and has further intensified over the past decade with the evolution of numerous arbitration centres in Bahrain, Qatar, Dubai, and Kuwait.²⁴ When conflict arises between the parties

²² Muhammad Salahuddin Hekmatyar and Ebrahim Parkar, “An Evaluation of Dana Gas’s Mudarabah *Sukuk* from Shariah and Legal Perspectives,” *European Journal of Islamic Finance* 9 (2018).

²³ “GCC Sukuk: A Primer,” GCC Sukuk: A Primer | Saturna Capital, <https://www.saturna.com/insights/white-papers/gcc-sukuk-a-primer>.

²⁴ Nicolas Bremer, “Seeking Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in the GCC Countries,” *McGill Journal of Dispute Resolution* 3, no. 37 (2016).

in *Sukuk*, there are two methods to solve the issues. The first approach is to seek judgment from the court and the second method is to approach arbitration bodies to arbitrate the problems.²⁵

Enforcement of Foreign Judgement in Selected Jurisdictions

There are some conditions that need to be followed to enforce English law in the GCC countries. The conditions will be elaborated in detail and efforts will be made to compare the extent of accepting and rejecting the enforceability of English judgments in the Kingdom of Saudi Arabia, the Kingdom of Bahrain, and the United Arab Emirates.

The Kingdom of Saudi Arabia

As far as the Kingdom of Saudi Arabia is concerned, English judgement must be submitted to the Enforcement Department which would have the discretion to enforce all such judgement, or such part thereof as it is not inconsistent with Saudi Arabian Law. In considering a request to enforce a foreign judgement, the Enforcement Department would ordinarily require the party seeking enforcement to demonstrate that,²⁶

²⁵ Khachaturian, Minas. "Arbitration in the Arab States of the Gulf (GCC): An Overview." *Rom. Arb. J.* 9 (2015): 39.

²⁶ International Arbitration, "Enforcement of Foreign Judgments and Arbitral Awards in the Kingdom of Saudi Arabia," Shearman & Sterling LLP in Association with Dr. Sultan Almasoud & Partners (Shearman & Sterling LLP, September 2016), https://www.shearman.com/~/_/media/Files/NewsInsights/Publications/2016/09/Saudi-Arabia-Publications/Enforcement-of-Foreign-Judgments-and-Arbitral-Awards-in-the-Kingdom-of-Saudi-Arabia.pdf.

1. The Saudi Arabian courts lacked jurisdiction over the relevant matter, but the international court that issued the ruling was competent;
2. The Kingdom of Saudi Arabia and the country where such foreign judgement was issued are parties to a bi-lateral agreement for the reciprocal enforcement of judgments, or that in the absence of such an agreement, such country would acknowledge and impose a Saudi Arabian judgement in the same way that it would an internal judgement;
3. In Saudi Arabian judgment the debtor had due process in the international case, including notification and the option to appear and defend himself;
4. In the nation where it was issued, the foreign judgement was final; and
5. There is nothing in the foreign judgment that is contrary to Saudi Arabia's Shari'ah or public policy, or that contradicts with a judgment or order made on the same subject by a competent judicial body in Saudi Arabia. If a final judgment has been delivered by a Saudi Arabian court or other adjudicatory authority in proceedings amongst the same plaintiffs and regarding the same issue, then Enforcement Department may refuse to enforce a foreign judgment, or if, prior to the inception of the proceeding in the nation where the foreign judgment was released, an action was filed before a Saudi Arabian court or other adjudicatory authority among the same plaintiffs and involving the same subject, and the decision of the Saudi Arabian court or other adjudicatory

authority is still pending. If a foreign judgment is not enforced in whole or in part under the aforementioned procedures, the party seeking to enforce the judgment may initiate a new proceeding in the Kingdom of Saudi Arabia before the appropriate court or other adjudicatory authority, and the outcome of such proceeding will be governed by the Saudi Arabian law and procedure in all contexts.²⁷

The Kingdom of Bahrain

Similar to the Kingdom of Saudi Arabia, the courts of the Kingdom of Bahrain do recognise and implement as an applicable judgment, a definitive and final judgment obtained in the courts of a foreign jurisdiction (e.g. England in this case), and a verdict based thereon could be given (without re-trial or examination of the merits of the case), provided that the following procedural requirements outlined in “Article 252 of the Bahrain Civil and Commercial Procedure Law of 1971” are satisfied. It has some conditions that should be observed in order to seek the acceptance of foreign judgement, the conditions are as follows;²⁸

1. Verdicts issued by the courts of Bahrain must be treated equally by the foreign courts of the jurisdiction in which they were issued;

²⁷ Al-Ammari, Saud, and A. Timothy Martin. "Arbitration in the kingdom of Saudi Arabia." *Arbitration International* 30, no. 2 (2014): 387-408.

²⁸ Al-Baharna, Husain M. "The Enforcement of Foreign Judgments and Arbitral Awards in the GCC Countries with Particular Reference to Bahrain." *Arab Law Quarterly* 4, no. 4 (1989): 332-344.

2. The judgment was issued by a court of competent authority according to the regulation of the jurisdiction in which it was issued;
3. In respect of which the court judgment was passed, the Bahraini courts are not competent to hear the case;
4. The parties were officially summoned to attend and were adequately presented at the hearings; the verdict has become final in compliance with the court's decision;
5. The judgment does not contradict any prior judgment or order rendered by the courts of Bahrain; and
6. The verdict shall not include anything which represents a breach of public order or ethics.²⁹

The United Arab Emirates

The United Arab Emirates has also imposed some mandatory conditions in accepting foreign judgement. The conditions are as follows.

1. That the UAE courts lack jurisdiction over the case in which the judgement or order was issued, and that the foreign courts that made it do so under the global standards for legal authority set down in their respective regulations;³⁰
2. That the judgement or order was released by a court of competent authority in the nation in which it was declared;

²⁹ Darwish, Jassim. "Commercial Legal Framework under the Bahraini Legislation." *Com. L. World* 36 (2022): 28.

³⁰ Badr, Ahmed Abdelhafez. "Jurisdictional challenges and enforceability of arbitration awards in the UAE." PhD diss., Université Paris Cité, 2019.

3. The contending parties in the case where the decision was issued were called to appear and did so;
4. That the decision or order, under the law of the court that issued it, has the effect of a faith accomplished; and
5. It does not clash with a prior decision or order made by a UAE court, and it does not include anything that is contrary to UAE public morality or order.³¹

Enforcement in the DIFC and ADGM

Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) are playing major and crucial role in recent years in resolving the commercial disputes which occur in GCC countries and globally.

DIFC

The Dubai International Financial Centre ("DIFC") was founded in 2004 in line with Federal Decree No. 35 of the United Arab Emirates (UAE), as part of Dubai's strategic goal to diversify its economic sources and attract cash and investments to the area. Federal Law No. 8 of 2004 established it as a Financial Free Zone. DIFC, being a separate jurisdiction inside the UAE, has the authority to establish its own regulatory environment for all civil and commercial concerns. The DIFC Authority, the Dubai Financial Services Authority ("DFSA"), and the Dispute Resolution Authority ("DRA") are three autonomous

³¹ Tarek Shrayh, "Enforcing Foreign Judgments in Dubai," Al Tamimi & Company, November 2013, <https://www.tamimi.com/law-update-articles/enforcing-foreign-judgments-in-dubai/>.

organisations that have been formed to facilitate and assist the growth and expansion of enterprises.³²

The UAE's judicial system includes the DIFC courts. They handle civil and commercial issues involving the DIFC or where the parties have agreed that the DIFC courts should have jurisdiction. A small "Claims Tribunal (SCT), a Court of First Instance, and a Court of Appeal" make up the DIFC courts. They were founded in 2004 by Dubai Laws 9 and 12 and function as a common law court, using the highest international legal procedural norms. The judiciary of the courts is drawn from common law countries across the world, as well as Dubai, and is of the greatest international repute.³³

Dubai Law No. 12 of 2004 (as amended by Dubai Law No. 16 of 2011) (the "Judicial Authority Law") contains a reciprocal protocol of enforcement between the DIFC and onshore Dubai courts, according to which a Dubai court's judgement can be enforced in the DIFC as if it were a DIFC court judgement, subject to certain procedural formalities being met. It also works in the other direction, allowing a DIFC court ruling to be implemented in Dubai in the same manner, and is a proven and true technique of enforcing domestic UAE judgements. Between 2008 and 2014, there were 61 seemingly successful enforcement proceedings between the DIFC and onshore Dubai courts,

³² "Special Purpose Company Regulations (SPCOR) - Amadlaw," https://amadlaw.com/wp-content/uploads/2011/05/DIFC_Special_Purpose_Company_Regulations.pdf.

³³ DIFC Courts, "Memorandum of Guidance as to Enforcement between the DIFC Courts and the Commercial Court, Queen's Bench Division, England and Wales," (Dubai, UAE: Judiciary of England and Wales, 2013).

according to the data as of 2 July 2014.³⁴ According to “article 7(6) of the Judicial Authority Law and article 24(1)(a) of the DIFC Court Law No 10 of 2004”, the DIFC courts possess authority to approve international court judgements (DIFC Court Law). Article 24(1)(a) of the DIFC Court Law states that the Court of First Instance (of the DIFC courts) has authority to confirm any decision, order, or award of any recognised foreign court under Article 7(4) (now Article 7(6)) of the Judicial Authority Law.³⁵

In the current disciplinary actions, the DIFC Tribunal issued a number of rulings regarding the implementation of the GCC Convention in the perception of the enforcement of a Saudi tribunal judgement:

1. The public order exemption implementation under Article 2(A) is limited and confined to situations that would be in violation of the UAE public policy. It is against the UAE public policy to deny implementing a final verdict of another GCC member rather than granting a stay of execution;
2. The bar for a compelling public policy argument that results in an absolute rejection to implement a final GCC ruling is unquestionably high;

³⁴ “Dispute Resolution in the Middle East,” DLA Piper Intelligence - Global Comparative Knowledge Sites, n.d., <https://www.dlapiperintelligence.com/dispute-resolution-in-the-middle-east/>.

³⁵ Susie Abdel-Nabi, Lucy Nash, and Clyde & Co, “Enforcement of Judgments the United Arab Emirates: Overview - Practical Law,” Thomson Reuters Practical Law (Thomson Reuters, May 1, 2022), [https://uk.practicallaw.thomsonreuters.com/0-619-4431?contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/0-619-4431?contextData=(sc.Default)).

3. A foreign award shall be properly executed in the DIFC courts, even when conflicting concerns about comity and litigation underway elsewhere in respect of third-country courts are advanced if those arguments do not exceed the strong public policy considerations in favour of implementation;
4. The breadth of Article 7 and the ban on the execution court evaluating the facts of the case are likely to capture issues of deception brought before the original court;
5. Reopening the investigation of claims such as deceit, which would necessitate delving into the grounds of the case as determined by the original court, is inadequate; and
6. The decision to implement a GCC member state's final verdict is an extremely robust public policy. "Factual analyses that show only a risk of offending principles of comity or illegality in the third country courts may not cross that threshold".³⁶

There have been occasions in English and Dubai courts, particularly the Dubai International Finance Centre (DIFC) where the courts were faced with issues which required the application of the Shari'ah. The present legal stance is that the courts may apply Shari'ah in an indirect manner. While "English and DIFC Courts" will not implement Shari'ah principles directly, there are methods in which they might do

³⁶ Peter Smith and Rashid Khan, "Bound by Conventions: The Enforcement of Judgments and the Service of Proceedings of the Courts of Saudi Arabia, the Dubai International Financial Centre and the Abu Dhabi Global Market," Al Tamimi & Company (International Litigation Group, November 25, 2020), <https://www.tamimi.com/law-update-articles/bound-by-conventions-the-enforcement-of-judgments-and-the-service-of-proceedings-of-the-courts-of-saudi-arabia-the-dubai-international-financial-centre-and-the-abu-dhabi-global-market/>.

so indirectly. They can, for example, apply Shari'ah values that are encompassed in a treaty; they can apply a national law that applies Shari'ah principles; they can use Islamic law as a construction aid; and/or they can decide a legitimate issue of IF [Islamic finance] principle under which a party's rights are conditional.³⁷ It is also critical to emphasise that the English court has the ability to implement Shariah law by incorporating the principles within the agreement. In *Shamil Bank of Bahrain v. Beximco Pharmaceuticals Ltd.*, the English Court of Appeal clarified that foreign law provisions may be integrated into a contract in the form of private legislation; however, this rule is subject to the criterion of clarity. The court must be able to regulate the applicable regulations that the parties have integrated with confidence. The court in *Shamil* noted that applicable "requirements of foreign law or an international code or set of regulations" might be included, but that such legislation, code, or set of rules must contain precise black-letter provisions rather than generic ideas. As a result, it's thought that an English court might enforce integrated conditions in a contract that are founded on codified Islamic law.³⁸

The Court of Appeal in the DIFC case of “*Deyaar Development P.J.S.C. v. Taaleem P.J.S.C. & National Bonds Corporation P.J.S.C.*”³² concluded that the *Murabahah* Agreement in issue properly included the AAOIFI and OIC Islamic Fiqh Academy

³⁷ Rupert Reed QC, “The Application of Islamic Finance Principles Under English and DIFC Law,” *Butterworths Journal of International Banking and Financial Law* 29, no. 9 (2014): 573-577.

³⁸ Kantaria, Saloni. "The enforcement of foreign judgments in the UAE and DIFC courts." *Arab Law Quarterly* 28, no. 2 (2014): 193-204.

Shari'ah Standards. 'On a genuine interpretation of the *Murabahah* Agreement, Shariah Standards were integrated into the *Murabahah* agreement since they were appropriately definite', the court said. This was due to certain components of Shari'ah law being sufficiently referenced and identified. This significant legal backing for Islamic banking via the adoption of codified rules is unusual, and it will accelerate the industry's growth. In certain ways, it may modify some experts' unfavourable views on Islamic financial litigation.³⁹ The particular role of the courts cannot be emphasised given the unusual character of cross-border Islamic finance operations such as *Sukuk* and its multijurisdictional nature, where the transaction agreements are controlled by various laws. For example, a Sharjah court recognised and enforced an arbitral award issued by the International Islamic Centre for Reconciliation and Arbitration (IICRA) in a case involving *ijārah muntāhiyah bi t-tamlīk* (lease contract ending with ownership or financial lease) between an Islamic bank and an individual foundation based in Sharjah in its judgement No. 953/2013 on March 16, 2013.⁴⁰ The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention) aptly provides for a framework for common legislative standards for the identification and execution of foreign arbitral awards. Both the DIFC and Qatar Financial Centre (QFC) arbitration laws are based on the UNCITRAL

³⁹ Umar A. Oseni, M. Kabir Hassan and S. Nazim Ali, "Judicial Support for the Islamic Financial Services Industry: Towards Reform-oriented Interpretive Approaches," *Arab Law Quarterly*, no. 34 (2020): 1-23.

⁴⁰ *Ibid.*

Model Law which also provides for the recognition and enforcement of foreign arbitral awards.⁴¹

ADGM

Similar to DIFC in Dubai, ADGM is a financial free zone in Abu Dhabi. It has its own independent legal and judicial system. Any judgment, decision or order taken by the ADGM has ability to be enforced directly in the other court through a streamlined execution process, without any type of re-examination pertaining to the merits. In the case of arbitral awards same process are applied to recognise and ratify it.⁴²

In comparison to the DIFC, the regulations of the ADGM Courts on the execution of foreign judgments seem to be more restricted. The reciprocity is not required by the DIFC for the enforcement of judgement sent from another jurisdictions. The ADGM courts, on the other hand do require reciprocity to be established.⁴³ As per the article 170 of the ADGM courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015, which asserts that, the ADGM courts should abide with the terms of any applicable treaty when the UAE commences it with a foreign country for the mutual

⁴¹ Chedrawe, Joseph. "Enforcing Foreign Judgments in the UAE: The Uncertain Future of the DIFC Courts as a Conduit Jurisdiction." *Disp. Resol. Int'l* 11 (2017): 133.

⁴² "Legal & Regulatory Risks for the Finance Sector," Allen Overy, February 10, 2021, <https://www.allenoverly.com/en-gb/global/news-and-insights/legal-and-regulatory-risks-for-the-finance-sector>.

⁴³ Blanke, Gordon. "Free zone arbitration in the DIFC and the ADGM." *Arbitration International* 35, no. 1 (2019): 95-116.

recognition and enforcement of judgements, and ADGM shall recognise and enforce decisions made by that foreign country. The GCC and the Riyadh Convention have defined the standards for reciprocity if any judgment is rendered by the Saudi courts.⁴⁴

RESEARCH METHODOLOGY

To achieve the objectives of this study the research employs a qualitative approach that comprises library research and content analysis method. Based on library research, the study employs comparative and content analysis methods whereas, the data with respect to SPV and enforceability of judgment is further coded and categorised within the text and then analysed to reach the conclusion through findings. In this essence, the secondary data was obtained from multiple resources such as laws and regulations of the UAE, Saudi Arabia, Bahrain, Turkey, USA, UK, and Malaysia, as well as articles, books, websites, and academic writings, and then compare and analyse them using analytical tools. The research examines the enforceability regulations and SPV framework of the UK, USA, Malaysia, and Turkey to discover the best practices which can be incorporated in the selected jurisdictions considering that their capital market is mature, well establish and greater in volume. As a result, this analysis will facilitate an adequate understanding of foreign judgments and SPV's landscape in each domain and further assist to make a few suggestions

⁴⁴ John Gaffney, "The Arbitral Jurisdiction of the Abu Dhabi Global Market - Tamimi.com," Al Tamimi & Company's (ICC Institute Newsletter, n.d.), <https://www.tamimi.com/pdflawupdate/?pageID=8877>.

that might be implemented in the regulatory environment of the UAE, Saudi Arabia, and Bahrain.

Finding and Discussion

The section tends to explore the best practices from developed jurisdictions such as the UK, USA, Malaysia, and Cayman Islands, consequently, these practices will be incorporated in the designated research domains.

SPV

To begin with, five components i.e., nature of the firm, ownership, shareholders, directors, lifespan, and taxation with respect to SPVs will be examined. The analysis of these factors will facilitate an adequate understanding of SPVs landscape in each jurisdiction and further assist to make some recommendations that might be encompassed in the SPVs regulations of the UAE, Saudi Arabia, and Bahrain. The discussion with respect to SPVs of each jurisdiction has been incorporated in following paragraphs.

Table 1. An analysis of SPVs regime in selected jurisdictions⁴⁵

Research Domains	Components & SPVs Regulations
UAE ADGM SPVs	<p>Ownership: Can be owned by private company, family/family office or individual.</p> <p>Shareholders and directors: The maximum required shareholders are three while no discussion with respect to directors has been incorporated in the SPVs regulations.</p>

⁴⁵ Author et al., 2022

	<p>Nature of the firm: Restricted Scope Company or Private Company Limited by Shares.</p> <p>Lifespan: Continue in perpetuity.</p> <p>Taxation: Zero taxation on assets, profits, and capital for 50 years and tax on personal income is waved.⁴⁶</p>
UAE DIFC SPCs	<p>Ownership: Special Purpose Companies (SPCs) can be incorporated by a “Shareholder, the Corporate Service Provider or any law or accounting firm”.</p> <p>Shareholders and directors: An SPC shall not have more than three Shareholders. Minimum two directors are must, and they are not required to reside in Dubai.</p> <p>Nature of the firm: SPC is a “Company Limited by Shares”.</p> <p>Lifespan: If there are no outstanding liabilities of an SPC then a voluntary winding up of an SPC can only be passed.</p> <p>Taxation: Zero taxation⁴⁷</p>
Saudi Arabia	<p>Ownership: owned by Saudi joint stock or limited liability company, capital market institution, a local bank, or a finance company.</p> <p>Shareholders and directors: At least two board members are required whereupon one of the members must be a Saudi resident. Whereupon the</p>

⁴⁶ “ADGM SPV Regulations - 10 Leaves,” 10 Leaves, n.d., <https://10leaves.ae/publications/adgm/adgm-spv-regulations>; Development by Doddle Agency | <https://doddle.agency.com>, “Setting up a Special Purpose Vehicle (SPV),” Setting up a Special Purpose Vehicle (SPV) | PRO Partner Group, <https://www.propartnergroup.com/services/adgm-spv/>

⁴⁷ Links Group Of Companies, “The Benefits of a Special Purpose Company within DIFC.,” Links Group, n.d., [https://www.linksgroup.com/the-benefits-of-a-special-purpose-company-within-difc/#:~:text=Zero%20tax.,enforcement%20of%20security%20within%20DIFC.](https://www.linksgroup.com/the-benefits-of-a-special-purpose-company-within-difc/#:~:text=Zero%20tax.,enforcement%20of%20security%20within%20DIFC.;); “Special Purpose Company Regulations (SPCOR) - Amadlaw,” https://amadlaw.com/wp-content/uploads/2011/05/DIFC_Special_Purpose_Company_Regulations.pdf.

	<p>role and duties of shareholders has not been discussed in SPV laws.</p> <p>Lifespan: At the end of the project the SPV shall be terminated.</p> <p>Taxation: Not mentioned.</p> <p>Nature of the firm: Not mentioned (ARABIA 2017).⁴⁸</p>
Bahrain	<p>Ownership: SPVs will be owned by locally incorporated Islamic banks.</p> <p>Shareholders and directors: Not mentioned.</p> <p>Lifespan: Not mentioned.</p> <p>Taxation: Bonds, <i>sukuk</i> and notes payments are not subject to taxation.</p> <p>Nature of the firm: Not mentioned (CBB 2021).⁴⁹</p>
Developed Jurisdictions	Components & SPVs Regulations
Malaysia	<p>Ownership: A shareholder is the owner of the firm while a director is accountable to carry out day to day operations.</p> <p>Shareholders and directors: It is required that the firm must have at least one director and one shareholder. The director must be an ordinary or permanent resident of Malaysia or holds a resident talent pass.</p> <p>Lifespan: SPVs in Malaysia have a finite file, it will be retained in the possession of Malaysian state.</p> <p>Taxation: A Malaysian SPV which issues <i>sukuk</i> will be exempted from Income Tax payment.</p>

⁴⁸ “Special Purposes Entities ,” Capital Market Authority, n.d., <https://cma.org.sa/en/Market/SPEs/Pages/default.aspx>; DIFC Courts, “Memorandum of Guidance as to Enforcement between the DIFC Courts and the Commercial Court, Queen’s Bench Division, England and Wales,” (Dubai, UAE: Judiciary of England and Wales, 2013).

⁴⁹ Salman Ahmed, Benjamin O'Brien-McQueenie, and Samer Almaz, “The Islamic Finance and Markets Law Review: Bahrain,” The Islamic Finance and Markets Law Review - The Law Reviews (Trowers & Hamllins LLP, November 3, 2021), <https://thelawreviews.co.uk/title/the-islamic-finance-and-markets-law-review/bahrain>.

	<p>Nature of the firm: It can be incorporated as a company under the Companies Act 2016 or as a limited liability partnership under the Limited Liability Partnership Act 2012.⁵⁰</p>
USA	<p>Ownership: Can be either owned by the originator or sponsor of the securitisation.</p> <p>Shareholders and directors: One shareholder and one director are a must.</p> <p>Lifespan: Independent to choose either indefinite or perpetual lifespan.</p> <p>Taxation: Applicable taxes are “federal, state, and local income taxes, franchise taxes, transfer taxes and withholding taxes”.</p> <p>Nature of the firm: In the USA SPVs are formed as a limited partnership (LPs), trusts, limited liability companies (LLCs) or as a real estate mortgage investment conduit (REMICs).⁵¹</p>
UK	<p>Ownership: SPV is established by a primary or parent firm to segregate financial risks.</p> <p>Shareholders and directors: Appointment of at least one shareholder and one director is a must.</p> <p>Lifespan: Independent to choose either indefinite or perpetual lifespan.</p> <p>Taxation: Withholding tax at the rate of 20 percent shall apply to interest payments raised in the UK</p>

⁵⁰ acclime_admin, “Setting Up a Joint Venture in Malaysia,” Acclime Malaysia, June 14, 2021, <https://malaysia.acclime.com/guides/joint-venture/>; “Essential Things to Know about Company Registration in Malaysia,” Business Advisory Services PLT, September 20, 2019, <https://bas.com.my/essential-things-to-know-about-company-registration-in-malaysia/>; “Recapitalisation and Consolidation of the Banking Sector,” Bank Negara Malaysia, July 13, 1998, <https://www.bnm.gov.my/-/recapitalisation-and-consolidation-of-the-banking-sector>; <https://www.companyincorporationmalaysia.com/open-spvspe-company-in-malaysia>.

⁵¹ Jordan E Yarett et al., “Structured Finance and Securitisation in the United States: Overview,” June 1, 2021, [https://uk.practicallaw.thomsonreuters.com/5014117?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5014117?transitionType=Default&contextData=(sc.Default)&firstPage=true).

	<p>and made to a non-UK resident firm. While a UK occupant SPV shall be exempted from UK withholding tax. The other relevant tax regimes for UK SPVs are VAT and corporation tax for UK and non-UK SPVs.</p> <p>Nature of the firm: Can be formed as “Limited Liability Corporation, Public or Private firm Limited by Shares” or as an orphan entity.⁵²</p>
Cayman Islands	<p>Ownership: SPVs shall be wholly owned by a trust company or by an originator.</p> <p>Shareholders and directors: At the time of incorporation there is no requirement for a shareholder or director. However, the registrar should be notified upon their appointment.</p> <p>Lifespan: Limited lifespan.</p> <p>Taxation: The Cayman Islands have no “Income, Capital Gain, Inheritance, or Gift taxes” and there is no estate duty as well.</p> <p>Nature of the firm: Relying on the requirement of the contract “Cayman Companies or Trust” structures are employed for distinct Shariah compliant products and structures. Similarly, in the Cayman Islands often SPVs are incorporated as an “Orphan SPV”.⁵³</p>

⁵² Lim Wan Er , “The Complete Guide to Setting Up A Special Purpose Vehicle (SPV) Company,” May 25, 202, <https://osome.com/uk/blog/setting-up-special-purpose-vehicle-in-uk/>; Rupert Wall and Freddie Glebocki, “Structured Finance and Securitisation in the UK (England and Wales): Overview,” Thomson Reuters Practical Law, Sidley Austin LLP, December 1, 2019, [https://uk.practicallaw.thomsonreuters.com/15011955?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/15011955?transitionType=Default&contextData=(sc.Default)&firstPage=true).

⁵³ Maples Group, “Cayman Islands: Cayman Islands Special Purpose Vehicles,” Mondaq, March 1, 2000, <https://www.mondaq.com/caymanislands/environmental-law/8352/cayman-islands-special-purpose-vehicles>; Barnabas Finnigan, Jarlath Travers and Matthew Stocker, “10 Thing You Need to Know About Utilizing a Cayman Island SPV for Asset Finance Transactions,” Conyers, September 2021, <https://www.conyers.com/publications/view/10-things-you-need-to->

Enforceability of Foreign Judgements

The following table compares the enforceability of foreign judgements in the Kingdom of Saudi Arabia, the Kingdom of Bahrain, the United Arab Emirates, Malaysia, Indonesia, and Turkey.

Table 2. Comparative analysis of enforceability of judgments⁵⁴

Countries	Enforceability of Judgments
The Kingdom of Saudi Arabia	<p>Enforcement Department has the discretion to enforce English judgement where all of such judgement or such part thereof as is not consistent with Saudi Arabian Law. Parties seeking the enforcement of foreign judgement shall demonstrate the following requirements set by Enforcement Department of the kingdom.</p> <ul style="list-style-type: none"> • The Saudi Arabian courts lacked jurisdiction over the relevant matter, but the international court that made the ruling was competent; • The “Kingdom of Saudi Arabia” and the jurisdiction where such foreign judgement was delivered are parties to a bilateral agreement for the “reciprocal enforcement of judgments”, however, in the absence of such an arrangement, such state would acknowledge the Saudi Arabian judgement in the same way that it would an internal judgement;

know-aboututilising-a-cayman-islands-spv-for-asset-finance-transactions/; Anthony Oakes, “Islamic Financing and Investment Structures in Cayman Islands,” Lexology, November 3, 2021, <https://www.lexology.com/library/detail.aspx?g=276a915f-532a-4b98-8699-1e1c971499c0>.

⁵⁴ Author et al., 2022

	<ul style="list-style-type: none"> • In the overseas case, the Saudi Arabian judgement debtor had due process, including notification and the chance to present and defend himself; • In the nation where it was issued, the foreign judgement was final; • Nothing in foreign judgment violates the Kingdom's Shariah or public policy or contradicts with a decision or directive made by a relevant judicial authority on the same issue; and • If a conclusive verdict has been issued by a Saudi court or other arbitral authority in proceedings among the same plaintiffs and regarding the same subject matter, the Enforcement Department may reject to implement a foreign judgment.⁵⁵
The Kingdom of Bahrain	<p>The Kingdom of Bahrain also recognises and enforces the judgments obtained in the courts of foreign provinces. To seek the acceptance of foreign judgement the following procedural requirements outlined in “Article 252 of the Bahrain Civil and Commercial Procedure Law of 1971” shall be satisfied, those conditions are as follows.</p> <ul style="list-style-type: none"> • “Courts of the jurisdiction in which the judgment was issued must afford reciprocal treatment to judgments issued by the Courts of Bahrain;

⁵⁵ International Arbitration, “Enforcement of Foreign Judgments and Arbitral Awards in the Kingdom of Saudi Arabia ,” Shearman & Sterling LLP in Association with Dr. Sultan Almasoud & Partners (Shearman & Sterling LLP, September 2016), https://www.shearman.com/~/_/media/Files/NewsInsights/Publications/2016/09/Saudi-Arabia-Publications/Enforcement-of-Foreign-Judgments-and-Arbitral-Awards-in-the-Kingdom-of-Saudi-Arabia.pdf.

	<ul style="list-style-type: none"> • The judgment was issued by a court of competent jurisdiction according to the law of the jurisdiction in which it was issued; • That the Bahraini law courts are not competent to hear the case in respect of which the court judgment was passed; • The parties were duly summoned to appear and were duly represented at the proceedings; the judgment has become final in accordance with the court that passed it; • The judgment does not contradict any prior judgment or order rendered by the courts of Bahrain; and • The judgment does not contain anything which constitutes a breach of Islamic law, public order, or ethics of the requested country”. (The Act of Bahrain 1971).
United Arab Emirates	<p>United Arab Emirates also recognises and enforces foreign judgments. However, there are some conditions which are mandatory to be followed to accept the foreign judgement. Those conditions are as follows.</p> <ul style="list-style-type: none"> • The UAE courts lack jurisdiction over the dispute in which the judgment or decision was made, and the foreign courts that granted it performed so in accordance with the global norms for legal jurisdiction outlined in their respective laws; • That the judgement or order was released by a court of competent authority in the nation in which it was released;

	<ul style="list-style-type: none"> • The contending groups in the dispute where the decision was issued were called to appear and they did so; • That the decision or order, under the law of the court that issued it, has the effect of a <i>fait accompli</i>; and • It does not clash with a prior decision or order made by a UAE court, and it does not include anything that is contrary to UAE’s public morality or order.⁵⁶ <p>DIFC & ADGM</p> <ul style="list-style-type: none"> • Dubai’s court judgement can be enforced in the DIFC as if it was a “DIFC court” judgement; • DIFC court ruling can also be implemented in Dubai in the same manner;⁵⁷ • DIFC courts have the authority to confirm any decision, order, or award of any recognised foreign court (Abdel-Nabi, 2021); • Final judgment of a GCC member state shall be enforced; • Even though conflicting considerations about comity and lawsuits pending abroad in relation to third-country courts are presented, a foreign judgment should be enforced in the DIFC courts provided those considerations do not exceed the
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⁵⁶ Tarek Shrayh, “Enforcing Foreign Judgments in Dubai,” Al Tamimi & Company, November 2013, <https://www.tamimi.com/law-update-articles/enforcing-foreign-judgments-in-dubai/>.

⁵⁷ “Dispute Resolution in the Middle East,” DLA Piper Intelligence - Global Comparative Knowledge Sites, n.d., <https://www.dlapiperintelligence.com/dispute-resolution-in-the-middle-east/>.

	<p>significant public interest considerations in support of execution.⁵⁸</p> <ul style="list-style-type: none"> • Any judgment, decision or order taken by the ADGM has the ability to be enforced directly in the other court through a streamlined execution process; • The reciprocity is not required by the DIFC for the enforcement of judgement sent from another jurisdictions. The ADGM courts, on the contrary do require reciprocity to be determined; and • ADGM states that if any judgement is rendered by the Saudi courts, its requirements for reciprocity has been established by the GCC and Riyadh Convention”.⁵⁹
Malaysia	<ul style="list-style-type: none"> • Foreign monetary judgement which falls within the scope of Reciprocal Enforcement of Judgments Act 1958 can only be implemented via a registering under REJA. <p>There are certain provisions which need to be followed to enforce the foreign Judgements in Malaysia, these are as follows:</p> <ul style="list-style-type: none"> • There must be a “reciprocal enforcement of judgment agreement” between the origin nation and Malaysia;

⁵⁸ Peter Smith and Rashid Khan, “Bound by Conventions: The Enforcement of Judgments and the Service of Proceedings of the Courts of Saudi Arabia, the Dubai International Financial Centre and the Abu Dhabi Global Market,” Al Tamimi & Company (International Litigation Group, November 25, 2020), <https://www.tamimi.com/law-update-articles/bound-by-conventions-the-enforcement-of-judgments-and-the-service-of-proceedings-of-the-courts-of-saudi-arabia-the-dubai-international-financial-centre-and-the-abu-dhabi-global-market/>.

⁵⁹ John Gaffney, “The Arbitral Jurisdiction of the Abu Dhabi Global Market - Tamimi.com,” Al Tamimi & Company’s (ICC Institute Newsletter, n.d.), <https://www.tamimi.com/pdflawupdate/?pageID=8877>.

	<ul style="list-style-type: none"> • There must be a definitive decision in that country's superior court for a specific amount of money; • The enforcement must be performed within six (6) years of the judgment date; and • The decision shall not be based on a marriage dispute.⁶⁰
Indonesia	<ul style="list-style-type: none"> • In Indonesia, external court rulings are not applicable. Indonesia is not a signatory to any international treaty concerning the acceptance and implementation of foreign court decisions. • Parties intending to implement a foreign court's verdict must file a new petition in an Indonesian court. • The foreign court verdict could be used as evidence in the new claim in an Indonesian court. <p>According to Indonesian Arbitration Law, the Judge is only allowed to evaluate the award to see if the following requirements are met:</p> <ul style="list-style-type: none"> • The “agreement to arbitrate” is legitimate and in writing, and or else meets the standards set forth in Article 4 of the Arbitration Law; • Complete legal authority to resolve amicably, as specified in Article 5 of the Arbitration Law; and • The award does not violate nation morals or order.⁶¹

⁶⁰ “Enforcement of Foreign Judgement Laws and Regulations: Malaysia,” ICLG.com, <https://iclg.com/practice-areas/enforcement-of-foreign-judgments-laws-and-regulations/malaysia>.

⁶¹ Suyud Margono, “Harmonization Arbitration Law: A Discourse for Investor–State Arbitration in the ASEAN Economic Community,” *Tarumanagara Law Review* 1, no. 1 (2019): 1-23; Sumitra Woodhull, *Enforcement of Foreign Judgments in Malaysia*, June 19, 2014, <https://dx.doi.org/10.2139/ssrn.2456562>.

Turkey	<p>The competent court of Turkey has the authority to implement and recognise foreign judgments and arbitral awards if the following criteria are satisfied:</p> <ul style="list-style-type: none"> • The content of the foreign verdict is conclusive and decisive under the legislation of the nation in which it was given; • The subject matter of the verdict is beyond the exclusive jurisdiction of Turkish courts; • The ruling does not stand against the Turkish constitution; • There is in effect a treaty among Turkey and the other nation, or a bilateral convention to which Turkey and the nation where the verdict is issued are parties; • There is a provision in the other jurisdictions' legal system that permits for the implementation of Turkish court judgements; or • Judgments delivered by Turkish courts are implemented <i>de facto</i> in the other jurisdiction.⁶²
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CONCLUSION AND RECOMMENDATIONS

After analysing the key points and common features of SPVs of each jurisdiction, the study suggests that the respective authorities and regulatory bodies should ensure that the SPVs framework shall fully define the scope of the role and status of the parties involved in an SPV

⁶² Jeffrey Golden, *The International Capital Markets Review*, 9th ed. (London: Law Business Research Ltd., 2019); Esenyel Partners, "Turkey: Enforcement of Foreign Judgments," Mondaq, April 29, 2020, <https://www.mondaq.com/turkey/international-courts-tribunals/923044/enforcement-of-foreign-judgments-2020>.

and they also need to draft disclaimers to encompass acts and omissions in carrying out all the constituent elements of their roles. Further, it is also asserted that the regulators should reform their SPVs framework in ways that explicitly and efficiently ensure transparency and inclusively disclose the rights and obligations of all parties involved in an SPV formation. Without which, these structural reforms legislations would inevitably see that the momentum of SPVs being eroded further, which in time will hinder the modernisation of the SPVs and jeopardise their efficient role.

Similarly, to encompass more robust and inclusive practices in the SPVs legislation of GCC nations, the study also recommends to the authorities of these nations to evaluate and examine the “Guidelines on the Offerings of Asset Backed Securities and Guidelines on the Offerings of Structured Product and Corporate Bonds and *Sukuk*” of Malaysia and “Asset Backed Securities Regulation under Dodd Frank Act 2010” of the USA. Moreover, the prolonged and rigorous process for SPVs incorporation, rigid regulatory requirements, high cost, weak legal system, exchange control and lack of transparency are some common areas that need immediate reform in these jurisdictions.

On the other hand, the study has discovered that the regulations with respect to acceptance of foreign judgments of the Kingdom of Saudi Arabia, the Kingdom of Bahrain and the United Arab Emirates are comprehensive and vibrant alike the regulations of Malaysia and Turkey. However, Indonesia is not a party to any international convention for recognition and enforcement of foreign court judgments. Therefore, foreign court judgments are not enforceable in Indonesia although foreign court judgment may be submitted as

evidence in the new claim in the Indonesian court. Similarly, in case of default by the issuer, the regulatory framework of DIFC for *Sukuk* is more comprehensive and more practical in the current scenario of globalisation, it has put adequate efforts to make the enforcement regulations smooth and attractive for the investors. In comparison to this, the enforcement regulations of the Saudi Arabia and the Kingdom of Bahrain do not have such a type of enforcement and judicial system that can smoothly enforce foreign judgements related to *Sukuk*. As a result, there is uncertainty, unpredictability, and ambiguity in the legal conflict resolution process.

Therefore, the study suggests referring to DIFC regulatory framework since DIFC has put adequate efforts to make the enforcement regulations smooth and attractive for the investors and recognises the enforcement of the UK laws for the governance of *Sukuk* agreements and in the case of default by the issuer, the *Sukuk* regulatory framework of DIFC is more comprehensive and practical in the current scenario of globalisation. Thus, the study recommends to the authorities of these nations to encompass such practices in their respective jurisdictions and learn from the regulatory environment of DIFC. Hence, the injection of such practices will lead to more vigorous and comprehensive legislations and further assist the investors and corporations to resolve their issues efficiently.