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The Feasibility of Issuing Ṣukūk under the Current Laws and Regulations in Algeria

Kelayakan Mengeluarkan Ṣukūk di bawah Undang-undang dan Peraturan Semasa di Algeria

Mohamed Ghezal*, Rusni Hassan**, and Ahcene Lahsasna***

Abstract
The growth of Ṣukūk market has been nothing short of phenomenal. Many countries and corporations are looking to raise funds using Ṣukūk. However, several countries face legal impediments and regulatory constraints. Muslim countries such as Algeria is still yet to develop unique regulation to implement Ṣukūk due to current conventional legal and regulatory hindrances. Thus, this paper aims to critically examine the feasibility of the current laws in issuing Ṣukūk. This research is an exploratory study that utilizes qualitative analysis for the review of commercial and financial laws to find out the key elements from the current legal system in Algeria and examine whether it can permit the introduction of Ṣukūk. The study finds that the legislative provisions in commercial law, civil law, and other regulations, which are general in nature, are facilitative to the issuance of Ṣukūk. However, the current regulations in the capital market constitute an obstacle to the listing of Ṣukūk in the Algerian capital market. The research suggests initiating amendments to the current legal and regulatory provisions to allow the issuance of Ṣukūk as a preliminary step and then issuing a Ṣukūk law in the second phase. The contribution of this research is highly significant to the literature in the field of Ṣukūk regulation, and it can be a reference to policy makers to understand the modifications needed for the current Algerian legal system to pave the way for Ṣukūk issuance in the country.

Keywords: Ṣukūk, Legal and regulatory framework, Algeria.

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The Feasibility of Issuing Şukūk under the Current Laws and Regulations in Algeria

Abstrak

Kata Kunci: Şukūk, rangka kerja undang-undang dan peraturan, Algeria.

Introduction
Şukūk is one of the most important financial instruments traded in Islamic financial markets. Its expansion and the increase in the number of countries and companies issuing it in the world have drawn the interest of other investors and issuers alike. The Şukūk issuance for the year 2018 was estimated at $ 123.15 billion, which was a slight increase of 5% over the year 2017,1 Malaysia, Indonesia, and Saudi Arabia were among the top issuers.

Many Muslim and non-Muslim countries have issued sovereign and corporate Şukūk with and without amendment to their local legislations. The presence of significant regulatory structures in such jurisdictions may facilitate the smooth introduction of Şukūk in capital markets2 whereas, the absence of such regulations will decrease the trust and create uncertainty. Indeed, Şukūk has been introduced in many countries

after setting up a law related to Ṣukūk or amending their legal and regulatory framework to officially regulate the issuance of these securities.

Among the countries that have changed their laws are Malaysia, Indonesia, Turkey, Tunisia, Pakistan, Luxembourg, the United Kingdom, Nigeria, Morocco, Jordan, and others.³ More efforts from policy makers, regulators, and Sharī‘ah board members should be made to improve the current legislation and overcome various legal impediments that face promoting Ṣukūk. While some countries still face multiple legal challenges and obstacles preventing the issuance of Ṣukūk, Algeria is one of these countries that is starting the stage of searching for a legal framework that would allow it to introduce this instrument into the local financial market.

In Algeria, the discourse on Ṣukūk started with Lachemi Siagh⁴ in 2008 when he declared in an international conference that Algeria must have a new legal system to facilitate Ṣukūk issuance. After that, in 2010, the first statement issued by an Algerian financial authority –COSOB⁶– reported that the Algerian legislator did not recognise Ṣukūk as financial securities in both commercial and civil laws.

Following the aforementioned statement, many others attempted to discuss the legal issues that can be faced in the introduction of Ṣukūk. Research conducted by Baraihlia (2013) and Nasser and Benzid (2014) studied the possibility of issuing Ṣukūk in Algeria within the current legal framework. The authors found that there is many legal, regulatory, and taxation impediments that affect the development and growth of a Ṣukūk industry in Algeria. They added that a new Ṣukūk law or amending the existing clauses in several legislations such as commercial law, civil law, tax law, consumer protection law, and currency and credit law should be made before any issuance of Ṣukūk. However, Mebtoul (2017) carried out some investigations into the possibility of issuing Ṣukūk in the capital market in Algeria. The author interviewed 100 rich traders. He investigated the future adoption of interest-free bonds or what is so-

³ IFSB. Islamic financial services industry stability report, Kuala Lumpur, Malaysia, 2018, p.128.
⁴ An international expert, He was the manager of consulting company STRATEGICA FINANCE Algeria.
⁶ Commission d’Organisation et de Surveillance des Opérations de Bourse.
The Feasibility of Issuing Ṣukūk under the Current Laws and Regulations in Algeria

called Ṣukūk. The results found that 95% of potential investors categorically will refuse to buy those interest-free bonds based on 0% interest if the government issue them soon.

Another study, Ghezal (2014) examined the experience of three Arab countries – Jordan, Egypt, and Tunisia – Ṣukūk law. He concluded with recommendations of enacting new law of Ṣukūk that can help Ṣukūk issuance in Algeria. Likewise, the draft of a proposed law prepared by the Algerian Supreme Islamic Council (SIC) submitted to the people’s National Assembly at the end of 2017. The proposed law was based on the creation of private Ṣukūk law. However, the suggestion is merely an amendment of the commercial law under the section of financial securities. Algerian Supreme Islamic Council (2018) proposes to add four articles to the former law as follows: Article 715(133), Article 715(134), Article 715(135), and Article 715(136). These articles define publication of the underlying contract, Ṣukūk revenue, and specific terms to Ṣukūk respectively.

The issue of introducing Ṣukūk in Algeria continued to be a topic of discourse in drafting the Finance Law of 2018. The former Prime Minister mentioned the possibility of issuing Islamic Ṣukūk during the year 2018 as one of the non-traditional financial instruments. However, the year 2018 witnessed the financing of the government budget deficit by printing money, and the Ṣukūk issuance process was not completed. The director of the Algiers Stock Exchange attributed this delay to the preparation of the legal rules and provisions related to the issuance pro-

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7 Abderrahmane Mebtoul, "What will be the impact of the launch of a new interest-free bond loan, based on Islamic finance, to be launched by the Algerian Ministry of Finance?" Réflexion, March 5, 2017.


9 Al-Watan newspaper, (Meziane RABHI), L’émission d’obligations islamiques autorisée- Issuance of Islamic bonds permitted-, Algeria, date of 24/09/2017.

10 Unconventional financing was limited to printing money by the central bank for the government for a period of five years 2018 to 2022, while the issuance of sukuk was not provided until further notice.
cess. As a result, the mature regulatory framework for integrating Şükūk into the Algerian financial regulations is not in sight yet as some legal hindrances need to be resolved in the first phase.

Therefore, concerning Algerian conventional financial regulations, whether they are ready to accommodate the specificities of Şükūk and issue them under the current regulations without legal impediments. This study does not investigate all the issues involved in Islamic finance regulation in Algeria. Rather, it focuses on critically examining the provisions of the prevailing laws in Algeria and the way to overcome the regulatory issues in introducing Şükūk. To achieve this objective, this empirical research adopts a qualitative approach focusing on document review of different Algerian conventional laws and regulations that relate directly to financial securities. To this end, this paper is structured into many sections. Following an introduction, the second is dedicated to review the current literature in the field of the legal and regulatory framework of Şükūk. The third section after that explains the methodology applied to achieve the objective of this study. The discussion and analysis of the issues of the existing laws in Algeria and its ability to accommodate Şükūk is more detailed in the fourth section while the fifth section concludes this research.

Literature review

Legal issues and challenges in issuing Şükūk

The legal and regulatory framework of issuing Şükūk is a precondition to the development of Şükūk market. The presence of a comprehensive regulatory structure in any jurisdiction may facilitate the smooth Şükūk introduction in the capital market and the absence of advanced regulation will decrease the trust in the market.

Şükūk is continuing to gain attention of issuers and investors as the fundamental instrument within the Islamic capital market worldwide to raise funds or invest in (IIFM 2019). It has developed quickly due to conducive rules and regulations that were set up to ensure investors’ trust in the capital market. Nonetheless, there is several legal impediments that remain unsolved in some Muslim and non-Muslim countries. This situ-

13 IFSB. Islamic financial services industry stability report, 128.
The Feasibility of Issuing Şukûk under the Current Laws and Regulations in Algeria

ation may have arisen from the assumption that Şukûk can be accommodated in the existing conventional bonds’ legal framework. For this case, strong regulations are required to be enacted to regulate issuing, listing, and trading Şukûk in the capital market and setting up an appropriate litigation procedure in case of disputes relating to Şukûk default.

Capital market authorities (CMA) in different countries have enacted new provisions and rules for dealing in Şukûk. Examples of CMAs’ regulations include Şukûk law No. 30/2012 by the government of Jordan in 2012 and Turkey’s law No. 4749 in 2012 related to public finance and debt management regulation to permit Şukûk issuance. Other nations enacted additional provisions to permit the issuance of Şukûk such as UK’s Government Alternative Finance Regulations in 2014 (GAFR) (S.I. 2014/1327), and in the same year of 2014 Luxembourg supported its capital market regulations with issuing of Şukûk Law.

The rise of Şukûk as an investment or financial instrument in capital markets has been slowed by some legal impediments in some jurisdictions. According to Nazar (2011), Lahsasna & Lin (2012) and Tariqullah et al (2014) found that the rise of utilizing Şukûk as financial tools in capital markets has led to a few cases of litigation. The authors

20 Awadzi Elsie Addo. Designing Legal Frameworks for Public Debt Management. (International Monetary Fund, 2015, 29.)
examine some areas of conflict between western law and Sharīʿah which include bankruptcy, true sale, SPV, and Ṣukūk standardisation. Unlike Wan Abdulla Rahim (2012) endeavoured to identify general rules that must be presented in such jurisdictions to reinforce the Sukūk legal framework. The findings of Nazar (2011) and Tariqullah (2014) are important in identifying Sukūk structures that suffer from a lack of legal provisions and the existing regulations that are less supportive of Sukūk issuance. Nevertheless, they suggest arriving at sound regulations that facilitate the issuance of Sukūk. Moreover, they added that efforts from policy makers, regulators, and Sharīʿah board members should be made to improve the current financial legislations of those jurisdictions which want to issue Sukūk.

Besides that, Andreas Jobst et. al. (2008) and Balibek (2017) discuss existing challenges confronting Sukūk introductions by the sovereign government who want to issue Sukūk. For example, they argued that seasonal in issuing Sukūk in some countries should overcome legal impediments in their legislations. They found that the rules and regulations of issuing Sukūk under commercial, capital market and Sharīʿah provisions should be compatible with the local country’s laws. Likewise, other researchers suggest that more endeavours are required for encouraging and facilitating Sukūk issuance to reduce areas of conflict between Sharīʿah and governing laws.

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The Feasibility of Issuing Ṣuḳūk under the Current Laws and Regulations in Algeria

Current Algerian Financial Legislation

After independence from the French colonization in 1962, Algeria has adopted the Roman civil law. The existing Algerian financial services framework consists of commercial code, civil code, capital market regulations, currency and credit law, and securitisation law. These prominent laws are further explained below:

1. Commercial law established under the order No. 75-59 of 26 September 1975 represents the overarching law where it contains different provisions relating to the creation of commercial companies, different types of securities, bankruptcy rules, and others. This law was modified by Legislative Decree No. 93-08 of 25 April 1993 to follow the development of the Algerian capital market.

2. Civil law established under order No. 75-58 of September 26, 1975 stipulates personal and civil affairs, their rights, and different civil contracts.

3. The capital market regulation established under the Legislative Decree No. 93-10 of May 23, 1993 governs the functions and roles of the stock exchange.

4. Currency and Credit law N 03-10 dated August 26, 2003 repeal the previous currency and credit law No.90-10 of April 21, 1990. This law was enacted to clarify the responsibilities and the authorities given to the Central Bank of Algeria (CBA).

5. Securitisation law number 06-05 enacted on March 12, 2006 was established to help commercial banks in managing their liquidity via packaging their mortgage loans into securities through securitisation.

The laws mentioned above are the main constituents of the Algerian financial services framework. Several amendments have been enacted to reflect the change in social necessities and the advancement of information technologies.

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Methodology

This research adopts the exploratory qualitative method. The exploratory study is adopted when the situation is unknown and the concept is unclear to the researcher\(^\text{28}\). Due to the lack of information about the solutions adopted to solve a particular problem or a phenomenon, a thorough investigation is needed to find out the core elements of that phenomenon\(^\text{29}\). Furthermore, the study aims to examine the adequacy of the current Algerian financial regulations to facilitate the issuance of Şukûk. An in-depth exploratory research is adopted to examine the primary resources of laws and regulations and secondary resources of research and books to identify areas in the prevailing laws and regulations that may hinder the introduction of Şukûk in the Algerian capital market.

The data collection is based on a document review analysis. This type is suitable to detect the sources of the main legislation that are applicable to issue securities in the Algerian context. Where the source of data is secondary, the existing published and unpublished documents from different books on law, journal papers, regulations, and many laws relate to financial framework constitute relevant documents. It provides helpful legal textual resources in the matter to reach the objective of this research\(^\text{30}\). The Algerian finance laws consist of commercial, civil, banking, securitisation, companies, as well as the capital market regulations. The importance of these sources of data gives a picture of the current laws whether they allow or not to implement Şukûk in the Algerian regulatory framework.

Findings and Discussion

The prevailing laws and regulations in Algeria are characterized by uncertainties regarding the Islamic financial industry in general and Şukûk in particular. The current Algerian legal provisions do not mention the concept of Şukûk, especially in the commercial and civil law, as stated in the report of the Stock Exchange Authority –COSOB\(^\text{31}\).

\(^{29}\) Robert A. Stebbins, *Exploratory research in the social sciences*. Vol. 48: (Sage, 2001), 89.
\(^{31}\) COSOB, annual report 2010, 29.
Current legal and regulatory obstacles to issue Śukūk in Algeria
The main legal impediments facing the issuance of Śukūk in Algeria are as follow:

- Issuing Śukūk as a financial instrument in the Commercial Law.
- Absence of Islamic financial contracts in Algerian commercial and civil law.
- Ownership of assets according to the Algerian commercial and civil laws.
- Establishing Special Purpose Vehicles according to the commercial law.
- Regulations for issuing securities in the capital market.

Issuing Śukūk as a financial instrument in the Commercial Law
Commercial law is one of the legal pillars for the issuance of securities in Algeria. The amendments that were carried out in 1993 by the Algerian legislators on the commercial law came to add some articles like Article 715. These amendments established the legal infrastructure for the issuance of securities and the establishment of a stock exchange

Nonetheless, the current Algerian commercial law is devoid of any definition related to Islamic investment or Śukūk. Article 715(30) gives a special definition of the securities issued by joint stock companies and the possibility of being listed and quoted on the stock exchange and represents a share of the company's capital or the right of indebtedness.

It is noteworthy that both the shares and the various types of bonds mentioned in the commercial law are not compatible with the characteristics of Islamic Śukūk in terms of asset ownership and indebtedness. This means that the current commercial law lacks an explicit definition of the term investment Śukūk and the parties involved in the issuance process. Therefore, it is necessary to enact a law or add legal provisions to enable the issuance of Śukūk.

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Absence of Islamic finance contracts in Algerian commercial and civil law

The absence of Islamic commercial contract law in the Algerian commercial law constitutes a major impediment to the issuance of Ṣuṣūkūk. Without clear definitions for the main underlying contracts, the legal framework for the issuance of Ṣuṣūkūk will be lacking. However, the Algerian legislation mentioned commercial contracts such as guarantee, agency, commercial leases, and other conditions related to these contracts from articles 30 to 77 and 169 to 202 of the Commercial Code. Furthermore, the Civil Code mentioned some contracts from Article 351 to 586 like sale, company, civil leasing, contracting, and agency.

Regardless of the mentioned contracts’ compatibility with Islamic financial contracts, they remain incomplete and do not address many of the terms and conditions that must be fulfilled to issue Ṣuṣūkūk. For example, in the Civil Code, in the lease contract in articles 467 to 537 there is no detailing of the types, terms and conditions of an Islamic lease.

Ṣuṣūkūk can be mainly structured in fourteen structures mentioned in the Sharīʿah standards by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). Therefore, Algerian commercial and civil law make it clear that they are not familiar with the definitions and conditions of Islamic financial contracts governing this type of contract. Without laws that define and govern these contracts in a clear manner, the issuance of Ṣuṣūkūk will not be possible from a legal perspective.

Ownership of assets according to the Algerian commercial and civil laws

The Algerian legislation recognized under articles 715(61) to 715(63) of the Commercial Code state that the ownership of shares can be divided into two parts, namely the right to vote, which is a non-

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36 The structures of the Sukuk that were approved by the Accounting and Auditing Organization for Islamic Financial Institutions in Standard 17 on Sharīʿah Standards represented in: structuring Sukuk of Murābāḥah, Muḍārakah, Mushārakah, Salām, Istiṣnāʾ, and Sukuk of all kinds of Ijārah, agriculture, Wakālah, and Wakālah Investment.
The feasibility of issuing Ṣukūk under the current laws and regulations in Algeria

financial right, and a certificate of investment, which represents a financial right. While the legislation in the civil law confines the ownership to only one legal property including the right to enjoy and dispose of the property with its core elements but does not include the possibility of separation as stipulated in Articles 674 and 675 of the Civil Code. The rights to the asset cannot be transferred independently or what is known as the unit of financial disclosure of the thing and it is indivisible.

The Algerian legislation did not separate the ownership of the property into beneficial and legal ownership but made it a single restricted property. Algeria adopts the civil law system, unlike English common law which separates legal title and beneficial title since the eighth century, the Algerian legal system does not. But there is an exception in the commercial law about shares where a separation between the ownership shares as a right to vote and the ownership of shares as a certificate of investment could, generally, be a legal basis for the issuance of Ṣukūk. However, this will only be possible after legalising certain aspects like the transfer of the assets at the issuance and maturity.

Therefore, these legislative texts in the commercial and civil law are largely general and do not reflect special provisions that help in the issuance of Islamic instruments that take into account the smooth transfer of assets from one party to another.

Establishing Special Purpose Vehicles according to the commercial law

Special purpose vehicles (SPVs) are important in issuing Ṣukūk as they enable the issuance of Ṣukūk under a legal company financially independent from the originator, acting as a bankruptcy remoteness vehicle. The SPV is entrusted to the assets transferred to it by the originator.

37 Algerian Commercial Law, p 203.
38 Algerian Civil Law, p 110.
40 It means that property right is one which composes of beneficial and legal ownership and they cannot be separated one from the other.
for the benefit of Ṣukūk holders. The provisions of the Algerian commercial law in part five Articles 592 to 594 and Articles 715(82) to 715(85) related to commercial companies do not mention this type of special purpose vehicle. Similarly, the existing COSOB Regulation No. 12/01 through Articles 30 to 44 does not mention any legal rule indicating the incorporation of a special purposes vehicle.

However, Law No. 06-05 date of 02/20/2006 on Securitization of Mortgage Loans in Article 10 indicates that the Securitization Institution has the power to issue securities in the capital market on the basis of the purchase of mortgages due by banks and financial institutions and then securitizing them into negotiable securities in the stock market. The work of the securitization institution and its characteristics are very similar to that of an SPV. The Algerian legislator indirectly recognizes the establishment of these types of companies under different classifications and designations. Regardless, they are incompatible with the issuance of Ṣukūk based on Sharīʿah provisions and standards.

It is also not possible to issue Ṣukūk under a joint-stock company because the law requires it to have an initial capital according to Article 594 of the Commercial Code, or at least five million DZD in the case of an IPO. It also requires the company to have at least seven shareholders. These requirements cannot be achieved by special purpose vehicles that are established as orphan companies under the originator.

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43 Algerian Commercial Law, p 137-249.
44 In Algeria, the SRH mortgage refinance company was established on November 27, 1997. It is a financial institution accredited by the Bank of Algeria, whose main objective is to refinance housing loans granted by accredited financial intermediaries.
46 Badreddine Barhailiah, "The inclusion of Islamic instruments in Algerian regulation (Arabic)", p 21.
48 Algerian Dinars symbole.
Furthermore, if Ṣukūk are issued under the umbrella of bonds, other obstacles arise like that the SPV must have at least two annual financial statements in accordance with Article 715(82), which is not possible in the case of Ṣukūk issuance.

**Regulations for issuing securities in the capital market**

Regulation of the capital market in Algeria began in 1993 with the issuance of Executive Decree No. 93/10, which clarifies the functions, members and role of the various entities active in this market by an organization represented by the Management of Movable Values Company –Société de Gestion de Bourse de Valeurs–(SGBV) and the Committee for the Regulation and Control of Stock Exchange Operations (COSOB). A set of regulations governing the stock and bond market have been issued. It was expected that many companies would enlist on the stock exchange, but this did not happen, and currently, there are only six securities of stocks and bonds listed on the exchange.

The Commission – COSOB- has a role to play in the preparation of a memorandum as stipulated in Article 34 of Executive Decree No. 93/10. The draft of Ṣukūk regulations could be proposed by the capital market authority which may facilitate the handling of Ṣukūk.

The Commission Regulation No. 98/01 clarified the most important documents to be submitted by the issuing company to the Commission. However, some documents that usually come with issuance of Ṣukūk are not mentioned. For instance, Islamic financing contracts on which the structure of the Ṣukūk is based is not mentioned.

Concerning the issuance of Ṣukūk, some regulatory obstacles must be overcome before the process of listing and trading. Articles 30 to 44 of the Commission Regulation No. 12/01 regarding the conditions of acceptance of securities at the main market level present several obstacles that prevent the possibility of listing Ṣukūk. These obstacles include: the existence of three financial statements of the issuing company.

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51 French abbreviation means Société de Gestion des Valeurs de Bourse.
52 Ibid, Article 3.
54 COSOB, COSOB Instruction No. 98-01 of April 30, 1998 relating to the admission of securities to trading on the stock exchange, (COSOB, 1998), Algiers.
SPV here—making profits during the past years, proving the existence of a separate department internal audit, with a capital of at least 5,000,000.00 DZD and at least 150 shareholders in the issuing company—SPV. These conditions cannot be achieved by a joint share company under the Algerian Commercial Company Law. Thus, the current regulations are specifically focused on traditional financial instruments such as shares and bonds, as stated in Article 77 of the COSOB regulation No. 12-01\textsuperscript{55}.

**Absence of a central Shari‘ah body**

One of the obstacles arising from the absence of a centralized Shari‘ah supervisory body is the non-uniformity of fatwa which is paramount for investors as the absence of a unified fatwa structure might reduce trust and consistency and by consequence, predictability in the market. Moreover, the absence of such a central body under the authority of the CMA and controlled under its authority may lead to an imbalance in the role of the capital market resulting in loss of investors’ confidence in it\textsuperscript{56}.

The Algerian lawmaker through the Currency and Credit Law was able to make a full framework for Islamic finance in general and a special framework for the Shari‘ah Board to monitor Islamic financial products and Şukūk in particular\textsuperscript{57}. However, the Bank of Algeria preferred, instead of a full law, to issue an amendment as Regulation No. 18-02\textsuperscript{58} on Participatory Finance.

In the Regulation No. 18-02 Article No. 4, is not decisive on the existence of a supreme central Shari‘ah advisory body that control and approve the products issued by Islamic banks, but rather refers Islamic banks to a competent national body and did not name it clearly\textsuperscript{59}. It is

\textsuperscript{55} COSOB, COSOB Regulation No 97-03 of November 18, 1997, amended and supplemented by the COSOB regulation No 12-01 of January 12, 2012 relative to the general regulation of the stock exchange, (COSOB, 2012), Algiers.

\textsuperscript{56} Al Elsheikh, A. A. A., & Tanega, J, Sukuk structure and its regulatory environment in the Kingdom of Saudi Arabia, p 190-192.

\textsuperscript{57} Nasser and Binzaid, "Islamic Sukuk as a tool for financing economic development and the extent to which they can be used in Algeria(Arabic) ", p 26.

\textsuperscript{58} The bank of Algeria issued the regulation No. 18-02 to regulate and authorise officially the Islamic banking in Algeria.

\textsuperscript{59} Algeria Official Gazette, "Regulation No. 18-02 of November, 2018 on the conditions for the exercise of bank operations in the area of participatory finance by banks and financial institutions." (2018), Vol (73), p 19.
understood that the Supreme Islamic Council (SIC) is intended. The latter proposed the formation of a supreme advisory body to accompany Islamic financial institutions in Algeria before issuing the regulation No.18-0260.

One of the important facts about the issuance of Ṣukūk is that Ṣukūk is issued and structured by financial and banking institutions, which leads to raising the issue whether the Ṣukūk is subject to Bank of Algeria regulations in the absence of a Sharīʿah advisory body or the authority and laws of the Securities Commission, COSOB. Therefore, there are possible divergences in the powers of the Bank of Algeria—the banking supervisory authority—and the Regulation of Stock Exchanges and the Supreme Islamic Council.

**Possible Legal Solutions for the Application of Ṣukūk in Algeria**

The higher authorities of the country through the government may make some amendments and add some articles. Such amendments, as a first stage, can be to the commercial and civil law, the currency and credit law, the mortgage law, and then through the Commission Regulation by issuing regulations specifying how the Ṣukūk will be listed on the Algiers Stock Exchange61. These amendments may include:

1- A third paragraph should be added at the sub-section No. 6 of Section 11 (Transferred Values Issued by Joint Stock Companies) from Chapter Three “Joint Stock Companies from the Commercial Law” which includes the following articles:

- adding an Article 715(133) may provide a special definition of a Ṣukūk as it is an investment in securities of equal value and represents common ownership right for the assets on which this Ṣukūk is based.

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61 Barhailiah, "The inclusion of Islamic instruments in Algerian regulation (Arabic)", p 27; Nasser and Binzaid, "Islamic Sukuk as a tool for financing economic development and the extent to which they can be used in Algeria(Arabic) ", p 27; Mohamed Ghezal, "The Jordanian, Egyptian, and Tunisian Experience in Issuing the Islamic Sukuk Law and the Possibility of Algeria to Benefit from It ", p 30.
• adding an Article 715(134) may present the various characteristics of the Ṣukūk to distinguish it from shares and bonds.

2- A new section entitled "Islamic Finance Contracts" should be created at the level of the Commercial Law in which all possible contracts are detailed to build upon in structuring Islamic Ṣukūk as stated in the AAOIFI Standards.

3- A sixth chapter entitled "Special Purpose Company" should be added from Part One "in the rules of conduct of various commercial companies" of the Commercial Law. This chapter details the establishment and the legal form of this type of company, tax exemptions in the case of the transfer of assets to and from this company, and the assets that can be obtained besides other things.

4- Establishing a centralized special purpose vehicle to facilitate issuing sovereign Ṣukūk and identifying the institutions undertaking the commercial and administrative activities of the SPV.62

5- An eighth section should be added in the Bankruptcy Law which focuses on the separation of the financial assets of the special purpose vehicle and the originator and how to protect the rights of Ṣukūk holders against other creditors in front of the court.63 Provisions should be added to clarify how Ṣukūk investors could protect their interests in the event of bankruptcy.

6- With regards to the unified property stated in civil law, the Algerian legislation must add a new article explaining the possibility of dividing an object or property into the right of enjoyment and disposal—beneficial—on the one hand, and the legal right on the other hand with respect to the assets to be securitised. This will allow for having legal and beneficial ownership and facilitate the transfer of assets.

7- The Mortgage Law No. 06-05 should be amended to expand the securitization of mortgages for housing to include the various contracts of Islamic finance such as Murābahah and Ijārah in order to provide a mechanism for liquidating Islamic assets. Also, a sub article should be added to the second article of the Securitization of Mortgage law, known as Islamic securitisation. It should

62 Ghezal, "The Jordanian, Egyptian, and Tunisian Experience in Issuing the Islamic Sukuk Law and the Possibility of Algeria to Benefit from It ", p 27.

63 Nasser and Binzaid, "Islamic Sukuk as a tool for financing economic development and the extent to which they can be used in Algeria(Arabic) ", p 31.
The Feasibility of Issuing Ṣukūk under the Current Laws and Regulations in Algeria

include its characteristics, how to list and trade it, and the financial institutions that are allowed to issue it. The addition of an article in Law No. 06-05 allows the securitisation of state-owned assets in preparation for the future issuance of sovereign Ṣukūk that permits the securitization institution to acts as a special purpose company.

8- The Central Bank of Algeria’s currency and credit council shall establish a central Sharīʿah advisory board rather than the commission market authority –COSOB– to facilitate the approval of Ṣukūk structure.

According to Article 34 of Chapter II on the Roles and Powers of the Commission stated in the Legislative Decree No. 93-10 that the Commission may submit a draft legislative regulation related to Ṣukūk to the Presidency of the Government. It may detail all regulatory procedures for listing, trading, and redemption of Ṣukūk, the work of financial intermediaries, Sharīʿah advisors’ approval of issuance, special purpose vehicle’s workings, and standardized offering prospectus template.

Conclusion
In this study of the legislative and regulatory challenges of Ṣukūk issuance in Algeria, an analytical exploratory study has been conducted on the most important laws, legislations, and regulations directly related to Ṣukūk issuance. Overall, legislative provisions in commercial and civil law and capital market regulations are mainly general and do not reflect special provisions that help in the issuance of Ṣukūk.

This study has shown that generally many legal impediments are faced in the introduction of Ṣukūk. Firstly, there is no legal basis for the definition of Ṣukūk in Algerian commercial law. Secondly, there is a total absence of Islamic financial contracts provisions in the Algerian commercial and civil law. Thirdly, The Algerian legislation has not sepa-

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64 Ibid.
65 the Council of Currency and Credit (C.C.C), his missions are determining and supervising monetary policy body, agreement of new savings and loan products, conditions of agreement and opening of banks.
rated ownership into beneficial and legal titles but has made it a unique property as stated in the Civil law.

The second major finding was that the establishment of special purpose vehicles in Algeria is not possible. Also, investors are not fully protected in the bankruptcy law as it does not clearly stipulate their right on the securitised asset. Lastly, the absence of the central Sharīʿah advisory body could lead to uncertainty and a lack of investors’ confidence.

Through the solutions presented earlier, it is highly recommended to initiate amendments to the current legislative and regulation texts allowing the issuance of Ṣukūk at a preliminary stage. Extensive research is needed to better understand when the legal sukuk framework can be implemented in the Algerian context.

**BIBLIOGRAPHY:**


Algeria Official Gazette. "Regulation No. 18-02 of November, 2018 on the conditions for the exercise of bank operations in the area of participatory finance by banks and financial institutions." Vol. 57, No. 73. 2018.

The Feasibility of Issuing Ṣukūk under the Current Laws and Regulations in Algeria


Al-Watan newspaper, (Meziane RABHI), L’émission d’obligations islamiques autorisée - Issuance of Islamic bonds permitted-, Algeria, date of 24/09/2017.


COSOB, COSOB Regulation No 97-03 of November 18, 1997, amended and supplemented by the COSOB regulation No 12-01 of January 12, 2012 relative to the general regulation of the stock exchange, Algiers. 2012.


Mebtoul, Abderrahmane. "What will be the impact of the launch of a new interest-free bond loan, based on Islamic finance, to be launched by the Algerian Ministry of Finance?" Réflexion journal, March 5, 2017.


The Feasibility of Issuing Ṣukūk under the Current Laws and Regulations in Algeria

Nasser, Sulaiman, and Rabia BinZaid. "Islamic Ṣukūk as a tool for financing economic development and the extent to which they can be used in Algeria (Arabic)." International Conference on Innovation and Financial Engineering Products and Applications between Traditional Financial Industry and Islamic Financial Industry, Sétif, Algeria. 2014.


Tariqullah, Khan, Elsiefy Elsayed, and Eunkyoung Lee. "legal and regulatory issues in issuing Ṣukūk in south korea lessons from developed countries' experience". 2014.