

GETTING THE
DEAL THROUGH 

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CONTENTS

Introduction	5	Pakistan	34
Laurent Marlière ISFIN – Islamic Markets Advisors		M Wisal Khan and Waheed Iqbal Legal Oracles Advocates and Corporate Consultants	
France	7	Philippines	38
Jean-Baptiste Santelli De Gaulle Fleurance & Associés		Rafael A Morales and Amer Hussein N Mambuay SyCip Salazar Hernandez & Gatmaitan	
Indonesia	11	Turkey	41
Retno Muljosantoso and Nur Eka Pradata Soemadipradja & Taher		Harun Kılıç Kılıç & Partners Attorneys at Law	
Italy	15	United Kingdom	46
Stefano Padovani and Alessandra Pirozzolo NCTM Studio Legale Associato		John Dewar and Munib Hussain Milbank, Tweed, Hadley & McCloy LLP	
Japan	21	United States	51
Takashi Tsukioka Nagashima Ohno & Tsunematsu		John H Vogel Crowell & Moring	
Kazakhstan	25	Uzbekistan	56
Curtis B Masters and Gulnur Bekmukhanbetova Baker & McKenzie – CIS, Limited		Atabek Sharipov and Nodir Yuldashev Grata Law Firm	
Luxembourg	30		
Florence Stainier and Bishr Shibliq Arendt & Medernach			

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Overview

1 In general terms, what policy has your jurisdiction adopted towards Islamic finance? Are Islamic finance products regulated differently from conventional instruments?

In light of the Turkish legal system's commitment to secularism, Islamic finance has not been a major consideration, and conventional financial intermediation has been practised in line with European norms. Nevertheless, following the financial crises in 2001 and 2008, Islamic finance in the Turkish market has grown as public attitudes have become more tolerant, and Islamic finance's role in the global economy has increased as has the will to attract capital from the Gulf region. The present government, led by the Justice and Development Party (AKP), aims to create a more favourable regulatory framework for Islamic finance and to encourage product diversification and foreign investment from Islamic countries. The main legislative approach is to regulate Islamic finance within the framework of existing conventional legislation and amending legislation to accommodate Islamic finance models approved by the *shariah* scholars.

2 How well established is Islamic finance in your jurisdiction? Are Islamic windows permitted in your jurisdiction?

The practice of Islamic finance in the banking sector first gained legitimacy in Turkey in 1983 when 'special finance houses' were introduced. However, these only accounted for a small share of banking services until the 2001 economic crisis, which led to fundamental reform of Turkey's financial system. The new Banking Law No. 5411 dated 19 November 2005 (the Banking Law) regulated them and officially replaced the term 'special finance' with the term 'participation banking'. Participation banks are regulated by the Banking Law as conventional banks and are authorised to perform any banking services within the scope of Islamic finance principles. The Banking Law also created a Savings Deposit Insurance Fund for participation banks, to provide security for their depositors. As a result, accounts of up to 50,000 Turkish lira – which was increased to 100,000 Turkish lira in 2013 – became insured and additional uninsured deposits became eligible for protection under Turkey's bankruptcy laws.

The Union of Private Finance Houses founded by the previous Banking Law No. 4389 to address common issues among market participants and provide a level of state control for the sector was also renamed the Participation Banks Association of Turkey, which currently consists of the five main practising institutions in Turkey: Albaraka Turk Participation Bank, Kuveyt Turk Participation Bank, Bank Asya Participation Bank, Türkiye Finans, and Ziraat Participation Bank. Within the framework of existing conventional legislation and amending legislation to accommodate Islamic finance, Turkish participation banks use various financing models approved by the *shariah* scholars, such as *sukuk al-ijarah*, *mudarabah*, *musharakah* and *murabahah*, and do not deal with 'sinful' businesses.

In recent years, participation banking has increased. There are political reasons (AKP in government for the third consecutive term, which brings stability as well as the government's predisposition for alternative sources of funding) and economic reasons (a distrust of conventional banking following crises in 2001 and 2008, and a desire to attract investors from Gulf countries) for the growing attractiveness of participation banking. Despite the shift towards Islamic banking, participatory banking services constitute a small part, approximately 6 per cent, of the whole banking sector, with four participation banks on Turkish market. Despite this overall

low market share, participation banking is experiencing steady levels of growth in terms of total assets and percentage of the entire financial sector in Turkey. Information on market shares and active development of participation banks within the banking sector according to the Participation Banks Association of Turkey data is given in the following tables:

Market shares of participation banks within the banking sector (% 2011-2013)					
Year	Total assets	Net assets	Funds provided to use	Funds collected	Net profit
2011	4.6	4.3	5.8	5.6	4
2012	5.1	4.1	6	6.2	3.9
2013	5.5	4.6	6.2	6.5	4.3
2014	6.2	5.4	5.1	4.1	0.4

Participation banks' active development and market shares within the sector (million Turkish lira, 2011-2013)			
Year	Total assets	Variation	% market share
2011	56.077	29.4	4.6
2012	70.245	25.3	5.1
2013	96.022	36.7	5.5
2014	104.073	8	5.2

The first state-owned participation bank, Ziraat, started its operations on 29 May 2015 with an initial capital of US\$300 million. The capital for establishment of Ziraat's Islamic Unit is allocated by the Public Treasury due to the fact Ziraat's own capital would be religiously unlawful since Ziraat Bank performs conventional banking on an interest rates basis. Following the foundation of Ziraat Participation Bank, the Turkish Banking Regulatory and Supervisory Authority has permitted the setting-up of two other state-owned participation banks, Halkbank and Vakıf Halkbank, which will be established by Türkiye Halk Bankası AŞ, one of Turkey's largest state-owned banks, with an initial capital of 1 billion Turkish lira. Vakıf is expected to be established by the end of 2015 by the Prime Ministry Directorate General of Foundations, which will use most of its revenues for restoration and other charity works undertaken by the Directorate General of Foundations. It is clear that the Islamic finance window for conventional banks opened in this regard. Further, they may be seven participation banks in operation within Turkey by the end of 2015. However, it remains uncertain whether Garanti Bank will enter the market within its current structure or by establishing a new company for participation banking, since it is still unclear if a bank may perform conventional banking and participation banking at the same time through one establishment because of the lack of specific regulations on Islamic finance in Turkey.

The first legal framework for lease certificates (*sukuk*) was set up in Turkey by the Communiqué on the Principles regarding Lease Certificates and Asset Lease Companies in April 2010. This communiqué paved the way for Turkish financial institutions to offer *sukuk* inside and outside Turkey. However, the legal framework from April 2010 has regulated only *sukuk al-ijarah*.

A new communiqué, the Communiqué on Lease Certificates (Sukuk), was adopted by the Capital Markets Board (CMB) on 7 June 2013, and introduced five different forms of *sukuk*, or lease certificates.

Kuveyt Turk issued offshore US\$100 million *sukuk al-ijarah*, listed on the London Stock Exchange with a maturity of three years through its Cayman Islands SPV in 2010 and then *sukuk al-ijarah* of US\$350 million listed on the London Stock Exchange with a five-year maturity through its Turkish asset lease SPV. In September 2012, the Treasury issued its first sovereign *sukuk*. It has now issued three *sukuk*, two of them lira-denominated, totalling 3.14 billion lira, and one dollar-denominated, worth US\$1.5 billion. Turkish banks have issued several *sukuk*, and the Treasury has announced it will issue lira-denominated *sukuk* twice a year. It is stated that the amount of demand for *sukuk* outstrips the issued supply fivefold. According to research and general sectoral demands, trading value of *sukuk* is increasing steadily in the Turkish market as well as in the global market. While *sukuk* issuance in Turkey amounts to US\$2.98 billion as of the third quarter of 2014, the total amount of *sukuk* traded amounts to about US\$8 billion according to the Annual Report 2014 of the Participation Banks of Association of Turkey. The market remains vibrant.

Regulations govern both the Treasury and corporates and allow any company as specified in the relevant regulation or the Treasury to issue *sukuk* whenever there is demand for an issue. The development of Turkey's *sukuk* market is of interest to countries around the world, since the fast-growing economy could become a major issuer of Islamic debt and influence trends throughout the industry. According to research and general sectoral demands, the trading value of *sukuk* is increasing steadily in the Turkish market as well as in the global market.

Further, 'Katilim Index', launched on 6 January 2011, with the sponsorship of all participation banks, index consultancy by Bizim Securities Inc and calculations by the Istanbul Stock Exchange, is a share index formed of companies trading on the Istanbul Stock Exchange National Market and conforming to participation banking principles. Accordingly, issuers that are not principally engaged in 'incompatible activities' (interest-based financing, trade, services and intermediation; alcoholic drinks and tobacco products; gambling and games of chance; pork and similar food; press, publication and advertisement; tourism and entertainment; weapons; and gold, silver and currency futures trading) may be included in the index. Additionally, companies are required to achieve some financial ratios. The ratio of total interest-bearing loans of eligible companies to their market capitalisation must be under 30 per cent, the ratio of interest-bearing cash and securities to market capitalisation must also be below 30 per cent and the ratio of income from incompatible activities to total income must be lower than 5 per cent. The 30 companies with the largest public market value of shares constitute the index companies.

3 What is the main legislation relevant to Islamic banking, capital markets and insurance?

The main legislation for Islamic banking is the Banking Law, which governs conventional and participation banking. Deposit banks, participation banks, development and investment banks, foreign bank branches in Turkey, financial holding companies, the Banks Association of Turkey, the Participation Banks Association of Turkey, the Banking Regulation and Supervision Agency (BRSA), and the Savings Deposit Insurance Fund and their activities are subject to this law. The BRSA regulates and monitors the whole banking sector including participation banks with regard to risk management, capital adequacy and soundness.

Capital Markets Law No. 6362 governs capital markets and capital market instruments, issuers, sponsors, capital market institutions, exchanges, and brokers along with the Capital Markets Association of Turkey, Appraisal Experts Association of Turkey, central clearing institutions, central securities depositories, the Central Registry Agency and the CMB. The CMB regulates and monitors the market.

The main pieces of legislation regulating insurance are the Insurance Code No. 5684, the Catastrophe Insurance Code No. 6305, and articles 1401-1535 of the new Turkish Commercial Code No. 6102, and the Regulation on the Establishment and Operation Principles of Insurance and Reinsurance Companies. The objective of the Insurance Code No. 5684 is to regulate insurance operations. All insurance and reinsurance companies, the Association of Insurance, Reinsurance and Pension Companies of Turkey, intermediaries, actuaries and loss adjusters operating in Turkey are subject to the code. There is no specific regulation of Islamic insurance. Nevertheless within the framework of existing conventional legislation,

some insurance companies in Turkey use Islamic insurance models and provide such products approved by the *shariah* scholars, such as *takaful*.

Supervision

4 Which are the principal authorities charged with the oversight of banking, capital markets and insurance products?

The BRSA and also the Savings Deposit Insurance Fund are charged with the oversight of banking. The regulatory and supervisory authority for capital markets is the CMB. The principal authority charged with the oversight of the insurance sector is the Insurance Directorate General of the Undersecretariat of the Treasury, which is a government authority functioning under the Prime Ministry.

5 Identify any notable guidance, policy statements or regulations issued by the regulators or other authorities specifically relevant to Islamic finance.

The CMB's Communiqué on Lease Certificates (Sukuk) governs the procedures and principles for lease certificates and asset leasing companies.

The BRSA's Communiqué on Uniform Chart of Account and its Explanation to Be Implemented by Participation Banks aims to ensure uniformity of accounting and financial reporting for participation banks.

6 Is there a central authority responsible for ensuring that transactions or products are *shariah*-compliant? Are IFIs required to set up *shariah* supervisory boards? May third parties, related parties or fund sponsors provide supervisory board services or must the board be internal?

There is no central authority to oversee whether transactions or products are *shariah*-compliant. *Shariah* boards are not permitted in the Turkish legal system and IFIs may not establish boards named '*shariah* boards' within their corporate structure. However, IFIs do establish 'consultancy boards' within their corporate structure by regulating their duties and powers in their founding charters. Although these boards are named as consultancy boards in their founding charter, their aim is to provide consultancy services in accordance with Islamic finance rules. Today, all four of the participation banks in Turkey have such consultancy boards.

It is also possible to receive consultancy services from scholars.

7 Do members of an institution's *shariah* supervisory board require regulatory approval? Are there any other requirements for supervisory board members?

There is no general regulation. IFIs may establish requirements for consultancy boards within their founding charter.

8 What are the requirements for Islamic banks to be authorised to carry out business in your jurisdiction?

According to the Banking Law No. 5411 Islamic banks require a banking licence from the BRSA to operate in Turkey as conventional banks. Article 7 of the Banking Law sets out the main requirements for a banking licence in Turkey as follows:

Any bank to be established in Turkey shall fulfil the following requirements:

- a) *It should be established as a joint-stock company,*
- b) *Its shares should be issued against cash and to name,*
- c) *The founders should meet the requirements indicated herein,*
- d) *Its members of the board of directors shall bear the qualifications set out in the corporate governance provisions in this Law and shall have the professional experience required for carrying out the planned activities,*
- e) *Its envisaged fields of activity shall be in harmony with planned financial, managerial and organisational structure,*
- f) *Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than 30 million New Turkish Lira,*
- g) *Its articles of association shall not be in conflict with the provisions of this law,*
- h) *There should be a transparent and open partnership structure and organisational chart that will not constitute an obstacle for the efficient supervision of the institution,*

- i) *There should not be any element that hampers its consolidated supervision,*
- j) *The work plans for the envisioned fields of activity, the projections regarding the financial structure of the institution including capital adequacy, the budgetary plan for the first three years and an activity programme including internal control, risk management and internal audit system showing the structural organisation must be submitted.*

For development and investment banks, their paid-up capital shall not be less than two-thirds of the amount provided in sub-paragraph (f) of the first paragraph.

The principles and procedures applicable to the enforcement of this article shall be set by the Board.

9 May foreign institutions offer Islamic banking and capital markets services in your jurisdiction? Under what conditions?

Foreign institutions may offer Islamic banking services in Turkey by opening a branch, establishing a subsidiary or acquiring a participation bank. Foreign institutions are subject to the same regulations as Turkish institutions and shall fulfil the conditions set forth in the related legislation as stated mainly in question 8. Two of the current participation banks in business in Turkey, Kuveyt Turk and Albaraka Turk, are foreign banks set up in Turkey in accordance with Turkish law. Aside from participation banks, international Islamic institutions that have a presence in Turkey, (representative office or branch) such as Arab Banking Corporation and Dubai Islamic Bank can offer Islamic products. Besides these, international subsidiaries of Turkish banks, especially ones in Netherlands may provide Islamic funding to their clients. It is also a common practice that capital markets products such as *murabahah* and *sukuk* are arranged and allocated by foreign institutions mostly through not only participation banks but also conventional banks. It should be underlined that conventional banks may not deal in Islamic products directly, but in a *murabahah* transaction, they can furnish collateral or guarantees that will enable their clients to receive funds from international finance organisations.

10 What are the requirements for *takaful* and *retakaful* operators to gain admission to do business in your jurisdiction?

Legal or natural persons who intend to gain admission in the insurance sector shall follow the instructions set out in the Regulation on the Establishment and Operation Principles of Insurance and Reinsurance Companies. The main steps can be specified as:

- establishment of a company in accordance with related law;
- registration with the Trade Registry and announcement, enhancing paid capital to the amount determined by the Secretariat of Treasury depending on the extent of licensing requests of the company; and
- application to the undersecretaries for a licence, with the listed documents.

Although there are no specific regulations for *takaful* or *retakaful* in Turkish jurisdiction; the regulations made in the New Turkish Commercial Code No. 6102 articles 1401–1535 related to insurance have opened new doors for insurance companies to perform their insurance business operations in *shariah*-compliant ways.

11 How can foreign *takaful* operators become admitted? Can foreign *takaful* or *retakaful* operators carry out business in your jurisdiction as non-admitted insurers? Is fronting a possibility?

According to article 1 of the Regulation on the Establishment and Operation Principles of Insurance and Reinsurance Companies, foreign *takaful* operators may carry on insurance business by establishing a new company, entering into a partnership with an established company or opening a branch in Turkey. The minimum paid share capital of an insurance company must be 5 million Turkish lira paid in cash in all circumstances. Non-admitted insurers may not carry out business in Turkey, as all insurance and reinsurance companies must hold a licence to operate.

12 Are there any specific disclosure or reporting requirements for *takaful*, *sukuk* and Islamic funds?

No specific requirements for *takaful*, *sukuk* and Islamic funds are provided. Disclosure and reporting requirements of these instruments shall

be fulfilled in accordance with the Capital Markets Law, with reference to article 16 of the Communiqué on Lease Certificates (*Sukuk*). Information that is in the scope of disclosure obligation shall be notified to the Public Disclosure Platform, which is administered by the Istanbul Stock Exchange.

13 What are the sanctions and remedies available when products have been falsely marketed as *shariah*-compliant?

Because there is no inspectorate charged with supervision of *shariah*-compliant products within Turkey, there are no special regulated sanctions and remedies for falsely marketed products. The consultancy boards of participation banks will determine sanctions and remedies internally. Neither the BRSA nor any other governmental institution has an audit mandate on this issue. Damages a customer incurs arising from an agreement the customer entered into without knowing that the products were falsely marketed shall be subject to, and indemnified in accordance with, the general provisions of the Turkish Code of Obligations and consumer protection law.

14 Which courts, tribunals or other bodies have jurisdiction to hear Islamic finance disputes?

There are no specific courts, tribunals or other bodies to hear Islamic finance disputes. In general terms, national courts have jurisdiction in Turkey over Islamic finance disputes. However, it is possible to choose the jurisdiction and the law governing relationships that involve a foreign element. The Turkish Law on Private International Law and International Civil Procedure, No. 5718 (MÖHUK) addresses the law applicable to private law transactions and relationships that involve a foreign element, the international jurisdiction of Turkish courts, and the recognition and enforcement of foreign judgments without prejudice to any applicable international conventions to which Turkey is a party. Accordingly, in the cases where jurisdiction as to venue is not determined in accordance with the principle of exclusive jurisdiction, the parties may agree on the handling of the dispute containing the foreign element before the court of a foreign state or an international arbitral tribunal. A judgment or arbitral award rendered by a foreign court or arbitral tribunal may be recognised and enforced through a Turkish court judgment.

Contracting concepts

15 *Mudarabah* – profit sharing partnership separating responsibility for capital investment and management.

There is no specific legislation regulating contracting concepts of Islamic finance in Turkish legislation. Nevertheless, a basic principle of the Turkish law of contract is that parties are, in principle, free to determine for themselves what primary obligations they will accept and on what terms they will enter into a contract. In Turkey, the New Turkish Code of Obligations No. 6098 (TCO) addresses the main law applicable to private law transactions and contract law. One of the basic principles of Turkish law is that the parties are, in principle, free to negotiate and determine for themselves what primary obligations they will accept and on what terms they will enter into a commercial contract. Provisions of a contract that are used in numerous transactions and drafted by one of the parties, *ex parte*, are by law deemed as ‘standard terms’ and must be in line with articles 20 to 25 of the TCO to be valid in Turkey. Further, all partnerships that are not established according to the Commercial Code are subject to article 620 et seq of the TCO.

In view of the foregoing, there is no specific restriction for a *mudarabah* contract made in accordance with current Turkish laws to include a risk-sharing term and we can assume that the parties are allowed risk-sharing rather than risk-transfer elements as in venture capital funding, where a bank can share both profit and risk with the entrepreneur in a participatory arrangement.

16 *Murabahah* – cost plus profit agreement

Murabahah practices in Turkey are more like instalment selling, which allows buyers to pay the purchase price to the bank in instalments and in most of the cases banks do not need to inform the buyers about the cost of the asset.

Participation banks are not subject to any specific tax regime for *murabahah* operations. The tax obligations of banks are regulated within the Tax Law and related legislation. Participation banks shall be liable for company tax for profit they gained from *murabahah* operations in line with general tax regulations in Turkey.

Participation banks may ask for collateral by taking external guarantee from the buyers, asking for guarantee or establishing a pledge on assets or creating a mortgage over real property.

17 *Musharakah* – profit sharing joint venture partnership agreement.

In view of the explanation in question 15, the parties may regulate their rights and obligations freely in their contracts, as long as the terms do not breach mandatory rules. According to article 625 of the TCO, all partners are authorised to manage the partnership solely unless otherwise is agreed. The appointment of a managing partner is considered as a ‘partnership decision’ and requires the unanimous vote of all partners unless otherwise agreed. If it is stated in the agreement that this decision is subject to simple majority, then the number of partners shall be taken into consideration. Agreements providing for simple majority voting according to capital ratio shall be null and void.

18 *Ijarah* – lease to own agreement.

Leasing operations by participation banks are defined as ‘providing and leasing of moveable and immoveable goods by participation banks’ in accordance with the Financial Leasing, Factoring and Financing Companies Law No. 6361. Accordingly IFIs may make available to the customer the use of asset and benefit from the asset in accordance with leasing terms. *Ijarah* contracts are not caught by the general consumer law. They are considered as commercial affairs and subject to the Financial Leasing, Factoring and Financing Companies Law No. 6361 and related legislation.

It is theoretically possible for banks to enter into an *ijarah* agreement by selling an asset above the market price and retaining ownership of the asset until the full amount is paid. However, it is almost impossible to see this in Turkish practice.

19 *Wadiah* – safekeeping agreement.

While neither personal current accounts nor participation accounts guarantee a previously declared rate of return to their holders, participation accounts do not even guarantee the return of the principal amounts on first demand. Participation banks can determine the ratio of profit and risk arising from maintenance of participation accounts as long as participation in the risks is not less than 50 per cent of participation in the profits. In cases of breach of fiduciary duty or misuse of funds, besides the regulation of the Banking Law relating to its punishment, article 561 et seq of the TCO shall be applied to the contractual relations between the depositor and the bank. Consequently, the banks are liable to the depositors in cases of breach of fiduciary duty or misuse of funds.

Products

20 *Sukuk* – Islamic securities. Have *sukuk* or other Islamic securities been structured and issued in your jurisdiction to comply with Islamic principles, such as the prohibition of interest?

As mentioned in questions 2 and 5, *sukuk* in the form of lease certificates are regulated mainly under article 61 of the Capital Markets Law No. 6362. Lease certificates are capital market instruments, whose qualities are determined by the CMB and issued by asset leasing companies, which are leasing companies are joint-stock corporations established exclusively for issuing lease certificates. No real rights may be established in favour of third persons on the assets and rights an asset leasing company holds except those permitted in its articles of association and it cannot lease or transfer these assets and rights against the interests of lease certificate holders. The issue and transfer of lease certificates are regulated by the CMB.

A new communiqué was adopted by the CMB on 7 June 2013, and introduced five different forms of *sukuk*, or in other words lease certificates, based on:

- ownership (*sukuk al-ijarah*);
- management agreement (*sukuk al-musaqah*);
- sale-purchase (*sukuk al-murabahah*);
- partnership (*sukuk al-musharakah*); and
- contractor agreement (*sukuk al-istisnah*).

This list, however, is not exhaustive. Other types of *sukuk* can be approved by the CMB, and in such a case provisions of the communiqué shall be

applied by analogy. Further, the Amendment of the Individual Pension Savings and Investment System Law and Certain Laws and Statutory Decrees added the article 7/A in the Public Finance and Debt Management Law No. 4749 enables the issuance of Treasury *sukuk al-ijarah* onshore or offshore where the underlying assets will be state-owned moveable or immoveable property.

21 What is the legal position of *sukuk* holders in an insolvency or a restructuring? Are *sukuk* instruments viewed as equity or debt instruments? Have there been any court decisions or legislation declaring whether *sukuk* holders are deemed to own the underlying assets?

Sukuk instruments are viewed as special debt instruments. According to article 61(3) and (4) of the Capital Markets Law No. 6362 until lease certificates have been redeemed, the assets and rights in the portfolio of the asset leasing company cannot be pledged other than for the purpose of collateral, be put up as collateral, be attached, be included in the bankruptcy estate or be subject to any cautionary injunction even when the management or audit of the issuer is transferred to public institutions. If the issuer cannot fulfil its obligations arising from lease certificates in due time, its management or audit is transferred to public institutions, its permission to operate is cancelled or it goes bankrupt, the income generated from the assets in its portfolio shall be used primarily to pay lease certificate holders. In this case, the board may take all kinds of measures to protect the rights of lease certificate holders.

There have not been any legal disputes arising from *sukuk* or any other Islamic finance instruments to date and therefore no related court decisions or legislation declarations.

22 *Takaful* – Islamic insurance. Are there any conventional cooperative or mutual insurance vehicles that are, or could be adapted to be, *shariah*-compliant?

The insurance industry in Turkey has been expanding rapidly in recent years, supported by the implementation in 2007 of new laws designed to bring the country’s insurance sector up to par with international standards and by the entry of more international insurers into the market. Kuwait Finance House with Kuveyt Türk Participation Bank and others launched in December 2009 a general (non-life) insurance company, Neova Sigorta. As explained in questions 10 and 11, interest-free insurance is being performed within the scope of insurance regulations, without any reference to interest-free insurance or *takaful* in companies’ founding charters. On the one hand, the recent entrance of Ziraat and on the other hand the two new state-owned Islamic banks Halkbank and Vakıf, expecting entrance by the end of 2015, may encourage new entrants to the *takaful* market. Türkiye Finans Participation Bank and Vakıf Pension Cooperation brought in a new product in the area of life insurance on February 2015, where it adopts a model on sharing profits with policyholders.

23 Which lines of insurance are currently covered in the *takaful* market? Is *takaful* typically ceded to conventional reinsurers or is *retakaful* common in practice?

Neova Sigorta is a joint venture of five companies offering an Islamic insurance model. The company started offering traffic insurance, which is compulsory in Turkey, and continued with other insurance packages including travel health insurance, personal accident insurance, home package insurance, earthquake insurance, comprehensive fire insurance, marine insurance, workplace package policies, engineering insurance and employer’s liability insurance. The new product of *takaful* cooperation of Türkiye Finans and Vakıf Pension will provide service in the area of life insurance as explained in question 22.

Miscellaneous

24 What are the principal regulatory obstacles facing the Islamic finance industry in your jurisdiction?

Islamic finance is developing slowly and the main reason for this slow pace is that Islamic banking remains a sensitive issue. Currently, there is, however, a political will to develop Islamic banking and were it not for the secularist tradition of the country, adoption of relevant regulations would proceed faster.

25 In what circumstances may *shariah* law become the governing law for a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *shariah* or the conflict of *shariah* and local law relevant to the finance sector?

MÖHUK, at article 24(1), permits, in principle, the freedom of contract, which enables contracting parties also to choose the governing law. The parties' choice of applicable law may govern the whole or a part of their contract. If there is a valid and binding choice of foreign law clause in an agreement, Turkish courts must apply foreign law to the contract. Consequently *shariah* law may become the governing law for a contract or a dispute in such circumstances. However, some relevant collateral agreements may be subject to deviating choice of law principles (eg, liens in property are subject to the principle of *lex rei sitae*). To our knowledge, there have been no cases in Turkey on jurisdictional issues, the applicability of *shariah* or the conflict of *shariah* and local law relevant to the finance sector.

26 Are there any special considerations for the takeover of an Islamic financial institution, outside the requirements of the general merger control regime?

There are no special considerations for the takeover of an Islamic financial institution, which will be subject to the general merger control regime requirements.

27 Are there any notable features of the Islamic finance regime and markets for Islamic finance products in your jurisdiction not covered above?

Turkey is currently incorporating the Islamic finance regime and developing new, comprehensive and suitable regulations for this purpose. It is still in the process of creating a more favourable regulatory framework for Islamic finance and encouraging Islamic finance product diversification.

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