CHAPTER FOUR

ŞUKÜK, STRUCTURES AND CASE STUDIES
(Ijārah Şukūk)

Definition of Ijārah

Ijārah means giving something on rent. The term is often used in two different situations; firstly to employ the services of a person on wages as consideration for his services. Secondly, it means to transfer the usufruct of a particular property to another person in exchange for rent. Each kind of ijārah has its own sets of rules and both are thoroughly discussed in the classical literature of Islamic law. However, in relation to the application of ijārah in modern Islamic finance in general and the issuance of şukūk in particular, the second type of ijārah is of more relevance.¹

This second type of ijārah is similar to some extent to conventional leases as it is permissible to pay rent for the use of a real asset. This can either be operating leases where the lessor is given back the equipment when the lease ends, or full payout financial leases, where the lease payment covers 100% of the value of the equipment or property and title may pass to the lessee at the end of the lease.²

Financial lease in its conventional form, evolved out of the society’s changing needs over a period of time, gaining prominence in the 1960s and becoming more popular in the following decade. As the IT sector boomed in the 1990s, leasing computer hardware and other IT accessories was found to be more convenient than owning them in an environment of rapid technological change.³

¹ See, Mohammed Taqi Usmani, Introduction to Islamic Finance, Karachi Pakistan, p. 158.
The AAOIFI Sharī‘ah Standard on *ijārah* and *ijārah muntahiyah bī al-tamlīk* defines the two concepts as follows:

*Ijārah* means leasing of property pursuant to a contract under which a specified permissible benefit in the form of a usufruct is obtained for a specified period of time for a specified permissible consideration. Meanwhile, *ijārah muntahiyah bī al-tamlīk* is defined as a form of leasing contract which includes a promise by the lessor to transfer the ownership of the leased property to the lessee, either at the end of the *ijārah* period or by stages during the term of contract, such transfer of ownership being executed through one of the means specified in the standards. These means are:

- A promise to sell for a token or other consideration, or by accelerating the payment of the remaining amount of rental, or by paying the market value of the leased property.
- A promise to give it as a gift (for no consideration).
- A promise to give it as a gift contingent upon the payment of the remaining instalments.

The use of *ijārah* or leasing in the structuring of “Islamic bonds” was the dominant form of contract used in early ṣukūk structures. Both concept of *ijārah*, namely the simple *ijārah* or that of *ijārah muntahiyah bī al-tamlīk* which is lease with option or lease to own have been used in ṣukūk structures.

Several *ijārah* structures have been developed by the industry so far. These include the sale and lease back structure, the head lease and sub-lease structure and the hybrid structure whereby the ṣukūk assets include *murābahah* or *istiṣnā‘* for instance, with the *ijārah* constituting the major part.

**THE CONCEPT OF SALE AND LEASE BACK**

The *ijārah ṣukūk* structure is generally applied through the concept of sale and lease back. It is a concept whereby the originator of the ṣukūk will sell a certain asset to the issuer and then lease it back from him for

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4 AAOIFI Shariah Standard on Ijarah and Ijarah Muntahia Bittamlık standard no. 9 2/1.
5 AAOIFI Shariah Standard on Ijarah and Ijarah Muntahia Bittamlık standard no. 9 (8/1).