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Evaluating the Shariah Compliance of the Bank of England's Alternative Liquidity Facility (ALF) Through Its Sukuk-Based Investment Structure

Sukûk Temelli Yatırım Yapısı Çerçevesinde İngiltere Merkez Bankası Alternatif Likidite Aracı'nın (ALF) Fıkhî Uyumunun Değerlendirilmesi

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Evaluating the Shariah Compliance of the Bank of England's Alternative Liquidity Facility (ALF) Through Its Sukuk-Based Investment Structure

Abstract

This study aims to provide the first comprehensive Shariah appraisal of the Bank of England's Alternative Liquidity Facility (ALF), a landmark liquidity management tool introduced in 2021 for Islamic financial institutions operating in the United Kingdom. ALF represents a pioneering step by a Western central bank in addressing the structural liquidity challenges of Islamic banks, which traditionally lack access to interest-based liquidity facilities. By investing deposits in high-quality sukuk and providing returns from Shariah-compliant assets, ALF is designed to give Islamic banks a functionally equivalent alternative to conventional repo-based liquidity tools while maintaining adherence to Islamic jurisprudential principles. The research evaluates ALF's operational framework, examines its contractual underpinnings, and scrutinizes the Shariah legitimacy of its investment instruments, especially the sukuk issued by the Islamic Development Bank (Is DB), which constitute the backbone of ALF's portfolio. The study examines the short-term liquidity problem in Islamic banks, which are restricted from using repurchase agreements (repos), the dominant short-term liquidity management tool worldwide. Although Shariah-compliant alternatives exist in some Muslim-majority countries, significant gaps remain due to limited high-quality liquid assets and weak legal infrastructures. ALF thus emerges as a unique case study of how Islamic financial requirements can be accommodated within a conventional regulatory system without compromising Shariah compliance. Using a descriptive and analytical methodology, the study analyses the tripartite relationships within ALF's structure: the relationship between BEALF (the facility's dedicated company) and participating banks, the agency relationship between BEALF and the Bank of England, and the regulatory implications for early withdrawal and capital guarantees. The research classifies the relationship between BEALF and participating institutions as an investment agency (wakālah) contract in which BEALF invests client funds in sukuk on their behalf in return for a fixed fee. While broadly permissible, the study argues that such contracts should be binding in this context to ensure operational stability and protect third-party rights. A key focus of the study concerns ALF's capital guarantee mechanism and the right of early withdrawal. The facility guarantees invested capital but not profit, raising Shariah concerns since Islamic jurisprudence prohibits an investment manager from guaranteeing principal except in cases of negligence or misconduct. The study evaluates whether early withdrawal can be framed under the jurisprudential concept of takhāruj, an amicable exit mechanism that allows an investor to relinquish profit in exchange for recovering capital, provided no loss has occurred. This interpretation is supported by AAOIFI standards, though it requires careful implementation to avoid implicit capital guarantees. The study then turns to a critical Shariah evaluation of the sukuk underlying ALF's investments. It also provides a critical Shariah assessment of the IsDB sukuk underlying ALF, highlighting issues related to capital redemption at par, return stabilization, and SPV dependence. The research highlights that SPVs used for sukuk issuance, while legally separate, are treated as substantively connected to the issuer under Shariah, particularly when guarantees are involved. Thus, the supposed independence of the SPV does not resolve concerns about capital guarantees. The study also explores contemporary juristic opinions suggesting that investment managers may bear liability for capital loss if feasibility studies were misleading or if misconduct cannot be ruled out. This shifts the burden of proof toward the manager and aligns modern investment realities with the principles of Shariah, under which liability must be proportionate to actual negligence or breach. Overall, the study concludes that the ALF represents an important contemporary attempt to address Islamic liquidity-management needs within a central-banking framework. However, its structure continues to raise significant Shariah concerns, particularly in relation to capital guarantees, SPV dependence, and aspects of the sukuk design, all of which require further juristic and structural refinement. The study contributes both theoretically and practically by identifying how Islamic liquidity tools can be harmonized with contemporary central banking structures while adhering to foundational Shariah principles. The findings are valuable for regulators, Islamic banks, sukuk designers, and Shariah boards seeking to balance innovation with compliance.

Keywords: Islamic Law, Bank of England, Alternative Liquidity Facility (ALF), Wakālah, Sukuk, Hedging.

Sukûk Temelli Yatırım Yapısı Çerçevesinde İngiltere Merkez Bankası Alternatif Likidite Aracı'nın (ALF) Fikhî Uyumunun Değerlendirilmesi

Öz

Bu çalışma, Birleşik Krallık'ta faaliyet gösteren İslami finansal kuruluşlar için 2021 yılında yürürlüğe konulan İngiltere Merkez Bankası'nın Alternatif Likidite Aracı'nın (Alternative Liquidity Facility - ALF) ilk kapsamlı fikhî değerlendirmesini sunmayı amaçlamaktadır. ALF, faiz temelli likidite imkânlarına erişimi bulunmayan İslami bankaların yapısal likidite sorunlarını gidermeyi amaçlayan ve Batılı bir merkez bankası tarafından geliştirilen öncü bir araç niteliğindedir. Mevduatların yüksek kaliteli sukûklara yatırılması ve getirilerin fikhî açıdan uygun varlıklardan sağlanması yoluyla ALF, İslami bankalara geleneksel repo temelli likidite araçlarına işlevsel olarak denk bir alternatif sunmayı hedeflemektedir. Araştırma, ALF'nin operasyonel çerçevesini ve sözleşme altyapısını

incelemekte; özellikle ALF portföyünün belkemiğini oluşturan İslam Kalkınma Bankası (IsDB) sukûklarının fikhî meşruyetini eleştirel biçimde analiz etmektedir. Çalışma, İslami bankaların karşı karşıya olduğu likidite problemini ele almakta; repo gibi kısa vadeli likidite araçlarının kullanılmaması ve mevcut alternatiflerin sınırlı hukuki altyapısı nedeniyle oluşan boşluklara dikkat çekmektedir. Bu bağlamda ALF, fikhî ilkelere bağlı kalınarak İslami finansal gerekliliklerin geleneksel bir düzenleyici sistem içinde nasıl karşılanabileceğini gösteren özgün bir vaka çalışmasıdır. Tanımlayıcı ve analitik bir yöntem izleyen çalışma, ALF yapısı içindeki BEALF-katılımcı bankalar ilişkisini, Merkez Bankası ile vekâlet bağı ve erken çekilme ile sermaye garantisinin düzenleyici sonuçlarını incelemektedir. Araştırma, BEALF ile katılımcı kurumlar arasındaki ilişkinin, fonların sukûklara yatırımı amacıyla kurulan sabit ücretli bir yatırım vekâleti (wakâlah) sözleşmesi niteliği taşıdığı sonucuna varmaktadır. Bu sözleşme yapısı genel olarak fikhî açıdan caiz kabul edilmekle birlikte, yatırım vekâleti sözleşmelerinin bağlayıcı olup olmadığı hususunda klasik ve çağdaş fikhî literatüründe mevcut olan tartışmalara dikkat çekilmektedir. Çalışma, operasyonel istikrar ihtiyacı ve üçüncü taraf haklarının söz konusu olması nedeniyle, bu bağlamda sözleşmenin bağlayıcı kabul edilmesi gerektiği görüşünü desteklemektedir. Çalışmanın temel odak noktalarından biri, ALF'nin sermaye garanti mekanizması ile erken çekilme hakkıdır. ALF, yatırılan anaparayı garanti etmekte, ancak kârı garanti etmemektedir. Bu durum, İslam hukukunda yatırım yöneticisinin ihmal veya kusur hali dışında anaparayı garanti etmesinin yasak olması sebebiyle fikhî açıdan tartışmalı bir alan oluşturmaktadır. Araştırma, erken çekilme hakkının, yatırımcının herhangi bir zarar oluşmadığı durumlarda kârdan feragat ederek anapasını geri almasına imkân tanıyan tehârûc (uzlaşmalı çıkış) kavramı çerçevesinde yorumlanabileceğini ele almaktadır. Bu yaklaşım, AAOIFI standartları tarafından desteklenmekle birlikte, örtük sermaye garantilerine yol açmaması için titiz bir uygulama gerektirmektedir. Çalışma ayrıca, ALF yatırımlarının temelini oluşturan sukûkların fikhî açıdan eleştirel bir değerlendirmesini sunmaktadır. Güncel sukûk uygulamalarında görülen nominal değerden geri alım taahhütleri ve getiri istikrarı mekanizmaları, risk paylaşımı ilkesini zedeleyen fikhî sorunlar doğurmaktadır; ALF kapsamında kullanılan IsDB sukûkları da bu tartışmalı özelliklerin bir kısmını barındırmaktadır. Araştırma, sukûk ihraçlarında kullanılan özel amaçlı şirketlerin (VKŞ - SPV), her ne kadar hukuken ayrı bir kişiliğe sahip olsalar da özellikle garanti mekanizmaları söz konusu olduğunda fikhî açıdan ihraççıyla özde bağlantılı kabul edildiğini vurgulamaktadır. Bu nedenle SPV'nin görünürdeki bağımsızlığı, sermaye garantisine ilişkin fikhî sorunları ortadan kaldırmamaktadır. Çalışma son olarak, çağdaş fikhî yaklaşımlarda yatırım yöneticisinin, fizibilite çalışmalarının yanıtıcı olması veya kusurun bütünüyle dışlanamaması hâllerinde sermaye kaybindan sorumlu tutulabileceğine ilişkin görüşleri ele almaktadır. Bu yaklaşım, ispat yükünü yatırım yöneticisine kaydırmakta ve modern yatırım pratiklerini, sorumluluğun ancak fiilî ihmal veya sözleşmeye aykırılık ölçüsünde doğması ilkesine dayanan fikhî prensiplerle daha uyumlu hâle getirmektedir. Sonuç olarak bu çalışma, ALF'nin İslami likidite yönetimi ihtiyacına yönelik önemli ve güncel bir girişim olduğunu; ancak mevcut yapısının, özellikle sermaye garantileri, SPV'ye bağımlılık ve sukûk tasarımı bakımından, ciddi fikhî ve yapısal sorunlar içerdiğini ortaya koymaktadır. Bu nedenle söz konusu unsurların daha ileri düzeyde gözden geçirilmesi ve yeniden yapılandırılması gerekmektedir. Araştırma, İslami likidite araçlarının çağdaş merkez bankacılığıyla fikhî ilkelerden sapmadan nasıl uyumlaştırılabileceğini göstermesi bakımından önemli teorik ve pratik katkılar sunmaktadır.

Anahtar Kelimeler: İslam Hukuku, İngiltere Merkez Bankası, Alternatif Likidite Aracı (ALF), Vekâlet, Sukûk, Riskten Korunma.

Introduction

Managing short-term financial liquidity risk is one of the most critical challenges that financial institutions must address. Banks and other financial entities must always be ready and capable of providing sufficient funds to meet any withdrawal or substitution requests from depositors. Trust and a strong market presence are key characteristics of successful financial institutions, they are among the primary reasons depositors, borrowers, and investors choose their financial institutions. This confidence stems from the institutions' perceived ability to swiftly meet clients' needs. Conversely, a lack of necessary liquidity can lead to serious risks, including the forced sale of assets with potentially negative consequences, borrowing at high costs, loss of investor deposits, or even bankruptcy and closure of the financial institution.

On the other hand, excess liquidity and high liquidity ratios can lead to inflation and missed investment opportunities. Traditional financial institutions utilize a variety of tools to manage short-term liquidity risks, and the most prominent of which is the repurchase agreement, or "repo." However, Islamic financial institutions have faced significant challenges in this area, as their Shariah boards typically do not permit the use of conventional repo agreements. This has made it difficult for them to secure urgent liquidity, especially in the absence of suitable

alternatives. The scarcity of short-term investment instruments in Islamic financial institutions has also led short-term investors to refrain from depositing their funds in these institutions. In response, several Islamic countries have attempted to develop alternatives to conventional repo agreements.

In 2002, Malaysia's central bank issued guidelines on sale and repurchase agreements and shared them with local Islamic banking institutions. Subsequently, Islamic financial institutions in Indonesia, Bahrain, and the United Arab Emirates, and later in Türkiye adopted similar practices.¹ In 2021, the Bank of England introduced the Alternative Liquidity Facility (ALF), an important case study in Islamic liquidity management within a conventional central-banking framework.²

However, the introduction of ALF also raises important questions that motivate this research, such as whether its innovative structure truly resolves the liquidity management problem for Islamic banks without violating Shariah principles. In other words, does ALF effectively meet Islamic banks' liquidity needs in a Shariah-compliant manner, and what challenges or uncertainties does its model pose? These questions constitute the core problem that this study aims to investigate.

This study offers a dedicated Shariah analysis of the Bank of England's Alternative Liquidity Facility (ALF) and approaches it as a case study in Islamic financial engineering within central-banking frameworks. In this sense, the article examines how a modern central bank may seek to replicate the economic function of conventional liquidity tools through Shariah-sensitive contractual structures, and where such structuring succeeds or fails from a Fiqh perspective. The theoretical value of the study therefore lies in clarifying both the institutional possibilities and the juristic limits of Islamic liquidity design in contemporary central banking. Prior to ALF, discussions of Shariah-compliant liquidity management were largely confined to proposals and smaller-scale facilities in Muslim-majority markets. The establishment of ALF by a leading Western central bank provides a unique case study through which to analyze the extent to which Islamic financial principles can be accommodated within a conventional regulatory framework. In this respect, the study sheds light on the practical challenges and solutions involved in designing Shariah-compliant liquidity tools and facilitates both practical knowledge for policymakers and theoretical understanding for academics with regard to the integration of Islamic financial norms into central banking operations.

Existing scholarship on repo and Islamic liquidity management may be grouped into several strands. A first strand examines the fiqh characterization of conventional repo transactions and proposes Shariah alternatives to them. A second strand compares repo-like arrangements with classical nominate contracts in Islamic law. A third strand focuses on selected domestic applications of Islamic repo or comparable liquidity-management mechanisms, such as those developed in Malaysia or Türkiye. A fourth strand analyses particular central-bank or participation-bank arrangements within specific national settings. While these studies make important contributions to the broader discussion on Islamic liquidity management, they do not

¹ Zeynelabidin Hayat, *Ittifāqīyyat l'ādat al-Shirā' wa-Āliyyat l-jrā'ihā fi al-Mu`assasāt al-Māliyya al-Islāmiyya wa-Badā'ilihā al-Shar'iyya*, ed. Bahaeddin AlJasem (İstanbul: İlahiyât Yayınları, 2022).

² Given the word limit of academic articles, we were unable to elaborate on the similar agreements issued by the central banks of Malaysia, Indonesia, Bahrain, the United Arab Emirates, and Türkiye. These instruments merit a dedicated article for each of them. Therefore, this paper will focus specifically on ALF.

provide a dedicated Shariah analysis of the Bank of England's Alternative Liquidity Facility (ALF) as a sukuk-based central-bank liquidity instrument.³ The present study differs from that literature by focusing specifically on the contractual design and Shariah implications of the ALF structure.

This study adopts a two-tier methodology: first, a descriptive institutional analysis of the legal structure and practical operation of the ALF; and second, a normative Fiqh evaluation of the juristic rules governing wakālah, sukuk, principal protection, nominal redemption, and takhāruj. The analysis is comparative in nature, drawing on the major Sunni schools of law and contemporary Shariah standards, especially AAOIFI, to assess whether the structure satisfies the substantive requirements of ownership, risk-sharing, and liability.

1. Alternative Liquidity Facility (ALF)

On December 2, 2021, the Bank of England launched a new tool for managing financial liquidity. This tool, developed to meet the liquidity needs of banks that do not engage in interest-based transactions, was named the Alternative Liquidity Facility (ALF). It is the first of its kind introduced by a Western central bank, enabling non-interest-based banks to meet the Basel III liquidity requirements. By the end of 2024, the size of the facility reached £200 million. In its first year (2022), the facility generated a return of £8.7 million for investors, although returns dropped to £1.2 million in 2023.⁴

The Alternative Liquidity Facility (ALF) is managed by the Bank of England Alternative Liquidity Facility (BEALF), a wholly owned entity of the Bank of England. It is designed to provide institutions that avoid interest-based transactions with access to the Bank of England's liquidity support framework. Eligible institutions can participate by depositing funds into a designated account, provided they are ineligible for interest-bearing operations with the Bank of England, have the operational capacity to engage in the facility, and are licensed in the UK. Investment operations are managed by the Bank of England on behalf of BEALF, with funds invested in Shariah-compliant securities classified as High-Quality Liquid Assets (HQLA) under Basel III—currently, Islamic Development Bank (IDB) sukuk issued by IDB Trust Services No. 2 SARL in Luxembourg. The Bank of England guarantees the facility's target size (up to £200 million by the end of 2024), covering any shortfall if participant contributions fall short, and provides liquidity support in case of early withdrawals. The investment term is one week, renewable each Thursday, and adjusted to the next working day if it coincides with a holiday. An annual non-refundable participation fee of £10,000 is charged per institution, payable in June and December, while the Bank of England covers all operational expenses of BEALF. Capital invested is guaranteed, though returns are not; instead, a projected profit rate is announced quarterly

³ For studies examining the fiqh characterization of repo and its alternatives, see Yūsuf 'Abd Allāh al-Shubaylī, "Adawāt Idārat Makhāṭir al-Suyūla al-Māliyya wa-Badā' il Ittifāqīyyat l'ādāt al-Shirā' fi al-Mu'assasāt al-Māliyya al-Islāmiyya", *Majallat Jāmi'at al-Shāriqah li-'Ulūm al-Sharī'ah wa-al-Qānūniyyah* 10/2 (2013); Sājid bin Aḥmad bin Muḥammad Bāṭil, *Ittifāqīyyat l'ādāt al-shirā' (al-Ribū wa al-Ribū al-'Aks)* (Riyad: Imām Muḥammad ibn Sa'ūd Islamic University, Master's thesis, 2013); Mehmet Turan, "Bey' bi'l-Vefā ve Bey'u'l-'İne ile Mukayeseli Olarak Günümüz Repo İşlemlerinin Fikhī Boyutu", *Hitit Üniversitesi İlahiyat Fakültesi Dergisi* 14/27 (2015), 117-146; Siti Nurah Haron et al., "A Comparative Study Between Islamic and Conventional Repo in Malaysia", *AZKA International Journal of Zakat & Social Finance* 4/2 (Special Issue 2023), 49-65; Fatih Kazancı, "Katılım Bankalarının TCMB ile Gerçekleştirdikleri Geri Satım Vaadli Alım (Repo) İşlemlerinin AAOIFI Standartlarına Göre Analizi", *Turkish Studies – Economy* 20/2 (2025), 787-803; Hayat, *Ittifāqīyyat l'ādāt al-Shirā'*.

⁴ Bank of England, "Alternative Liquidity Facility", News release, Access 20 October 2024; "Bank of England Alternative Liquidity Facility Limited Annual Report and Accounts, 1 March 2023- 29 February 2024", Access 12 January 2025; "The Bank of England's Alternative Liquidity Facility ALF Operating Procedures", Access 7 January 2025; "Quarterly Bulletin 2017 Q3, Topical article: Islamic banks and central banking", Access 25 September 2024.

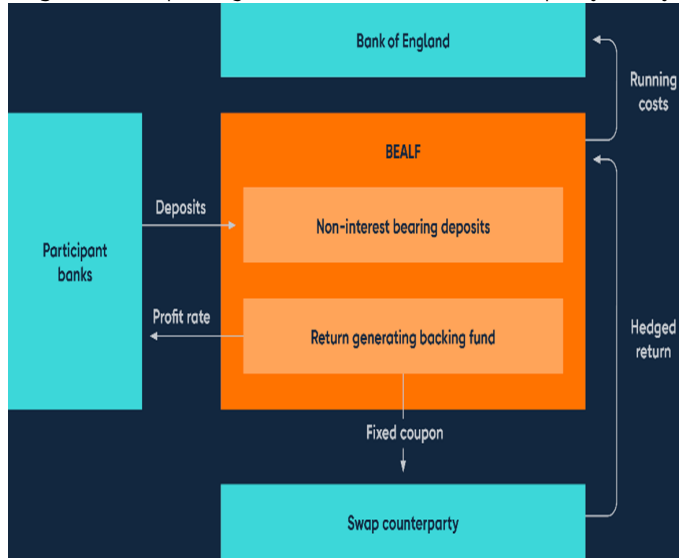
(on the first working day of February, May, August, and November). Participants receive a share of actual profits after deducting investment-related costs, including hedging and management fees. Early withdrawals are allowed, but participants forfeit any profit on the withdrawn portion. Since the sukuk are denominated in USD while contributions are in GBP, the Bank of England conducts currency swaps to hedge exchange rate risk. Participation in the facility is non-transferable without the unanimous approval of all involved parties.⁵

From the above, the operational mechanism of the ALF can be summarized as follows:

The Bank of England Alternative Liquidity Facility (BEALF) announces opportunities for qualified institutions to invest in the facility, usually via the Bank of England's official website. Interested and eligible institutions deposit funds into a designated account, subject to the maximum limit (which reached £200 million by the end of 2024). Before the investment period begins, BEALF announces the projected profit rate and collects the annual participation fee of £10,000 (payable in two parts). The Bank of England then invests the funds on BEALF's behalf into Shariah-compliant securities—currently the sukuk issued by the Islamic Development Bank.

Since the sukuk and their returns are denominated in US dollars while the funds are collected in British pounds, the Bank of England hedges the currency risk using currency swap contracts (SWAPs). After a one-week investment term, specifically on the following Thursday (or the next working day if Thursday is a holiday), BEALF distributes the actual profit generated, after deducting investment and hedging costs.

Diagram 1. The Operating Mechanism of the Alternative Liquidity Facility (ALF)



Source. Bank of England, "Alternative Liquidity Facility ALF, Operation of the ALF, Access 18 December 2024.

2. Fiqh Classification of the Alternative Liquidity Facility (ALF)

Upon examining the operational mechanism of this facility, we find that it involves three main parties: Bank of England Alternative Liquidity Facility (BEALF), Bank of England and the participating financial institutions (investors). Below is a fiqh-based classification of the legal relationships between these parties.

⁵ Bank of England, "Terms and Conditions for Participation in the Bank of England's Alternative Liquidity Facility", Access 10 February 2025; "The Bank of England's Alternative Liquidity Facility ALF Operating Procedures", Access 7 January 2025.

2.1. The Relationship between BEALF and the Participating Institutions

Based on the operational framework, the relationship between BEALF and the investing institutions can be classified as a wakālah (agency) for investment. This is because BEALF receives funds from these institutions to invest them on their behalf in exchange for a fixed fee, while the full profit (after deducting the agreed-upon fee and investment-related costs) belongs to the participating institutions. Thus, BEALF acts as an agent (wakīl), and the investing institutions are the principals (muwakkil)—making their relationship a compensated agency agreement.

The concept of compensated agency is permissible according to Islamic jurisprudence. However, scholars have differed on its legal characterization:⁶

The majority of jurists from the Ḥanafī, Mālikī, and Ḥanbalī schools classify it as a binding ijarah (lease/contract for service).⁷ The AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) states in its Shariah standards that investment agency contracts are binding in the context of institutional applications, whether with or without compensation. This is because such contracts are typically based on mutual commitment from both parties not to terminate the agreement within a specified period.⁸

On the other hand, Shāfi'ī jurists argue that unless the agency is explicitly framed using the terminology of ijarah, it remains a non-binding contract for both parties.⁹ Therefore, the disagreement is not about the permissibility of compensated agency or whether it constitutes ijarah, but rather whether such an ijarah is binding.

In this context, it seems more appropriate to adopt the opinion that the contract is binding, especially since allowing either party the right to unilaterally terminate the agreement could obstruct the execution of the investment transaction, thereby defeating the entire purpose of the contract. This view is also supported by scholars who stipulate that an agency becomes binding when it involves the rights of third parties.¹⁰

Based on this, the basic permissibility of the structure used in ALF can be established: According to the legal framework governing this facility, the participating institutions are allowed to withdraw any portion of their funds before the term ends, provided they forfeit any profits on the withdrawn amount. On the other hand, BEALF is not allowed to withdraw from the agreement after the investment process has begun (except in cases beyond its control).

⁶ Ahmed Cevdet Paşa et al., *Mecelle-i Ahkām-ı Adliyye*, critical ed. Najib Hawawini (Karachi: Noor Muhammad Karkhana Tijarat-e-Kutub, n.d.), 28; Burhān al-Dīn ibn Farḥūn al-Ya' marī, *Tabsirat al-Hukām fī Uṣūl al-Aqdiya wa-Manāhiḡ al-Ahkām* (Cairo: Maktabat al-Kulliyāt al-Azhariyya, 1406/1986), 1/184; Zakariyya al-Anṣārī, *Asnā al-Maṭālib fī Sharḡ Rawḡ al-Ṭālib* (Cairo: Dār al-Kitāb al-Islāmī, n.d.), 2/182; Muwaffaq al-Dīn ibn Qudāmāh al-Maqḡisī, *Umdat al-Fiqh*, Critical ed. Aḡmad Muḡammad 'Azūz (Cairo: al-Maktabah al-'Aṣriyyah, 1425/2004), 59.

⁷ Khair al-Dīn ibn Aḡmad al-Ramlī, *al-Fatāwā al-Khayriyyah li-Naf' al-Bariyyah 'alā Madhhab al-Imām al-A'zam Abī Ḥanīfah al-Nu' mān* (Cairo: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1300), 2/41; Muḡammad ibn Yūsuf al-Mawwāq, *al-Tāj wa-al-Iklīl li-Mukhtaṣar Khalīl* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 7/214; Ibn Qudāmāh, *al-Mughnī fī Fiqh al-Imām Aḡmad* (Beirut: Dār al-Fikr, 1405), 5/210; Wahbah al-Zuḡaylī, *al-Fiqh al-Islāmī wa-Adillatuh* (Damascus: Dār al-Fikr, n.d.), 4/2997.

⁸ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), "Mi' yār al-Wakālah bi-l-Istithmār (Standard 46)", in *Al-Ma' āyir al-Shar' iyyah (Shari'ah Standards)* (Manama: AAOIFI, 1437/2017), 1144.

⁹ Khaṭīb al-Shirbīnī, *Mughnī al-Muḡtāj ilā Ma' rifat Ma' ānī Alfāz al-Minhāj* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 3/257.

¹⁰ Muḡammad Amīn ibn 'Ābidīn, *Radd al-Muḡtār 'alā al-Durr al-Mukhtār* (Beirut: Dār al-Fikr, 2nd ed, 1412/1992), 5/536; Shihāb al-Dīn al-Qarāfi, *al-Dhakhīrah*, critical ed. Muḡammad Ḥajjī and Sa' id A' rāb (Beirut: Dār al-Gharb al-Islāmī, 1994), 8/120; Ḥaṭṭāb al-Ru' aynī, *Mawāhib al-Jalīl fī Sharḡ Mukhtaṣar Khalīl* (Beirut: Dār al-Fikr, 1412/1992), 5/187.

Hence, the contract can be considered binding in effect, and any attempt to terminate it is subject to specific conditions. Further details on this will follow in the discussion on the relationship between BEALF and the Bank of England, which is the next topic.

2.2. The Relationship Between BEALF and the Bank of England

The regulatory framework of the Alternative Liquidity Facility (ALF) stipulates that it is fully owned by the Bank of England. This company was established with the specific purpose of managing the Alternative Liquidity Facility on behalf of the Bank of England. The Bank acts on behalf of BEALF in conducting investment operations and in calculating the returns.

Accordingly, the relationship between the Bank and the company is classified as an *investment agency* relationship, in which BEALF serves as the principal, after having served as an agent for the participating institutions, and the Bank of England serves as the agent, entitled to a predetermined fee. This fee is paid after BEALF deducts its administrative expenses.

2.3. Granting Participating Institutions the Right of Early Withdrawal

The regulatory framework of the Alternative Liquidity Facility stipulates that the Bank of England guarantees the capital (but not the profit), thereby allowing participants to withdraw their funds at any time they wish. Since the Bank acts as a *wakīl* for the company, permitting a third-party guarantee of capital is not applicable in this context. And since the *wakīl* (the Bank) assumes the role of the principal (the company), it is considered an agent of the original principal, namely the participating institutions, in the investment process.

As for the right of early withdrawal, it may initially be analysed either as a form of *takhāruj* or as a buy-back undertaking at nominal value. In the context of ALF, however, *takhāruj* is relevant only insofar as it may serve as a juristic framework for early withdrawal; a broader doctrinal treatment lies beyond the scope of the present study.¹¹ In this limited sense, early withdrawal may be accommodated within a Shariah framework, provided that the exiting participant relinquishes all or part of the profit and that repayment of capital is not guaranteed irrespective of the actual performance of the underlying assets. This understanding is broadly consistent with AAOIFI's treatment of exit from investment accounts as a form of settlement rather than a refund of the original deposit as such.¹²

However, such an arrangement remains subject to an essential condition: the invested assets must not have incurred any loss at the time of withdrawal. If the value of the underlying investment has fallen below its original level, repayment at nominal value would amount to an impermissible guarantee of capital. This follows from the established principle that Shariah-compliant investment is inherently exposed to the possibility of loss, and that the *wakīl*, being an *amīn*, is not liable unless negligence, misconduct, or breach of mandate is established. Such a guarantee cannot be justified by mutual consent, since agreement over a prohibited matter

¹¹ For more details, see: Muḥammad ibn Abī al-Ḥasan al-Shaybānī, *al-Aṣl*, critical ed. Mehmet Boynukalin (Beirut: Dār Ibn Ḥazm, 1433/2012), 11/50; Ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Durr al-Mukhtār*, 5/642; Mālik ibn Anas al-Aṣbahī, *al-Mudawwanah* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1415/1994), 3/388; Ibn Qudāmah, *al-Mughnī*, 4/357; Khattāb Khālid, "Aḥkām al-Takhāruj wa-Ṣuwaruh fī al-Fiqh al-Islāmī" *Majallat al-Ḥaqq* 28/6 (2017); Fayṣal Sarāwī- 'Azzūz Munāṣirah, "Al-Takhāruj wa-Taṭbīqātih al-Mu'āṣirah fī Ḍaw' al-Ma'āyir al-Shar'īyyah li-Hay'at AAOIFI" *Majallat al-Iḥyā'* 23/32 (2023), 589; 'Abd al-Sattār Abū Ghuddah - 'Izz al-Dīn Muḥammad Khūjah, *Qarārāt wa-tawṣīyyāt Nadawāt al-Barakah lil-Iqtisād al-Islāmī (1981-2001)* (Jeddah: Dallah Al-Baraka Group, 1422/2001), 178; Sarāwī-Munāṣirah, "Al-Takhāruj wa-Taṭbīqātih al-Mu'āṣirah fī Ḍaw' al-Ma'āyir al-Shar'īyyah li-Hay'at AAOIFI".

¹² AAOIFI, "Mi' yār Tawzī' al-Ribh fī al-Ḥisābāt al-Istithmāriyyah 'alā Asās al-Muḍārabah (No. 40)", 1001; "Mi' yār al-Wakālah bi-l-Istithmār (No 46)", 1124.

does not render it permissible. Nor can it be defended by analogy to exceptional cases in which liability may be imposed on a trustee,¹³ because imposing capital liability on a wakīl in an investment structure undermines the principles of *al-kharāj bi-al-ḍamān* and *al-ghurm bi-al-ghunm*, and risks transforming the arrangement into something resembling an interest-bearing loan.¹⁴

Accordingly, early withdrawal in the ALF structure may be acceptable only as a conditional exit mechanism, not as a standing guarantee of principal. If no loss has occurred, the participant may exit by relinquishing profit and recovering capital. But if loss has occurred, the participant must bear its share, and repayment at nominal value would not be justified. Where the existence of loss cannot immediately be determined, the amount payable may be adjusted provisionally until the financial position of the underlying assets becomes clear.

2.4. Liability of the Investment Manager Based on Feasibility Studies and Investment Promises

Some contemporary juristic opinions hold that an investment manager—whether acting as a *muḍārib*, *mushārik*, or *wakīl*—may, in limited circumstances, be held liable for capital loss where the investment was promoted on the basis of feasibility representations that later prove misleading, or where the surrounding facts give rise to serious doubt as to negligence, misconduct, or breach of mandate. In such cases, liability is not triggered merely by the occurrence of loss, but by indications of *taghrīr* (misleading conduct) or failure to act in accordance with the required standard of care.¹⁵ On this view, if the manager had previously affirmed the soundness and viability of the investment, and a loss is later claimed, the burden may shift to the manager to show that the loss resulted from causes beyond its control.

This reasoning has particular relevance in modern institutional finance, where investment decisions are commonly based on formal feasibility studies and where financial institutions often act on behalf of large numbers of depositors or beneficiaries. In that context, some jurists argue that the classical presumption of non-liability should not be applied mechanically where the circumstances strongly suggest misrepresentation, negligence, or failure to observe professional standards.

In the case of the ALF structure, however, this line of reasoning can support only a narrow and exceptional form of liability. It may justify holding the relevant investment manager or managing party responsible where loss is attributable to a misleading feasibility assessment, negligence in structuring or monitoring the assets, or breach of the agreed investment mandate. But it cannot

¹³ Kamāl al-Dīn ibn al-Humām, *Fath al-Qadīr* (Beirut: Dār Ihyā' al-Turāth al-'Arabī, n.d.), 7/103; Muḥammad ibn Aḥmad ibn 'Arafa al-Dusuqī, *Hashiyat al-Dusuqī 'ala al-Sharḥ al-Kabīr* (Beirut: Dār al-Fikr, n.d.), 3/520; Shams al-Dīn al-Ramlī, *Nihāyat al-Muḥtāj* (Beirut: Dār al-Fikr, 1984), 5/126; 'Alā' al-Dīn al-Mardāwī, *al-Inṣāf ma 'a al-Muqni' wa-al-Sharḥ al-Kabīr*, critical ed. 'Abd Allāh ibn 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥulū (Cairo: Ḥajar li-l-Ṭibā'ah wa-l-Nashr wa-l-Tawzī' wa-l-'Iḥāṭ, 1995), 15/88; 'Alā' al-Dīn 'Alī ibn Muḥammad al-Dimashqī (ed), *al-Ikhtiyārāt al-Fiqhiyah li-Shaykh al-Islām Ibn Taymīyyah* (Beirut: Dār al-Ma'rifa, 1397/1978), 1/489; Muḥammad ibn Mufliḥ al-Rāminī al-Ṣāliḥī, *al-Furū'*, critical ed. 'Abd Allāh ibn 'Abd al-Muḥsin al-Turkī (Beirut: Mu'assasat al-Risāla, 1424/2003), 7/129; Muḥammad ibn 'Alī al-Shawkānī, *al-Sayl al-Jarrār al-Mutadaffiq 'alā Ḥadā'iq al-Azhār* (Beirut: Dār Ibn Ḥazm, n.d.), 1/587.

¹⁴ Ibn al-Humām, *Fath al-Qadīr*, 9/221; Badr al-Dīn al-Zarkashī, *al-Manthūr fī al-Qawā'id*, critical ed. Taysīr Fā'iq Aḥmad Maḥmūd (Kuwait: Ministry of Endowments and Islamic Affairs, 1405), 2/119; Muḥammad ibn Amīr al-Ḥājj al-Ḥanbalī, *al-Taqrīr wa-al-Taḥbīr*, critical ed. 'Abd Allāh Maḥmūd Muḥammad 'Umar (Beirut: Dār al-Kutub al-'Ilmiyya, 1419/1999), 4/50. The prohibition of investment agents providing guarantees is also supported by the standards of the Accounting and Auditing Organization for Islamic Financial Institutions and by the resolutions of the Al-Baraka Symposiums. See: AAOFI, "Mi'yār al-Wakālah bi-l-Istithmār (Standard 46)", 1144; Abū Ghuddah-Khūjah, *Qarārāt wa-tawṣiyyāt Nadawāt al-Barakah lil-Iqtisād al-Islāmī (1981–2001)*, 219.

¹⁵ Ali Haydar, *Durar al-Hukam Sharḥ Majallat al-Aḥkam* (Beirut: Dār al-Jil, 1991), 1/312; Dusuqī, *Hashiyat al-Dasuqī 'ala al-Sharḥ al-Kabīr*, 3/537.

serve as a general Shariah basis for principal protection or for redeeming the sukuk at nominal value regardless of the actual performance of the underlying assets. Any liability in the ALF context must therefore remain evidence-based, case-specific, and proportionate to the actual harm caused. Accordingly, while contemporary juristic discussions may explain a limited avenue of responsibility within the ALF structure, they do not remove the central Shariah objection to any mechanism that effectively guarantees the sukuk principal irrespective of genuine asset performance.

2.5. Shariah Analysis of Currency Swap Arrangements in the ALF Structure

As previously noted, the Bank of England invests the funds mobilized under this facility in sukuk issued by the Islamic Development Bank. Since these sukuk are denominated in US dollars, whereas the funds collected under the facility are in pound sterling, the Bank of England resorts to hedging against currency fluctuations through currency swap arrangements. A currency swap, or what may more accurately be termed an exchange swap, is a type of derivative contract concluded over the counter. In substance, it consists of a spot exchange contract conditional upon a reverse forward exchange contract. Under this arrangement, the two parties agree that one will purchase from the other a specified amount of one currency in exchange for a specified amount of another currency at the prevailing spot rate, with immediate delivery of both counter-values. At the same time, the parties agree, within the same arrangement, to execute a reverse forward exchange at a rate fixed in the contract itself.¹⁶

The majority of contemporary scholars have held such contracts to be impermissible, and this is also the position reflected in the resolutions of fiqh academies and in the Shariah standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). Their prohibition is based on two main grounds: first, that these contracts incorporate a prohibited forward currency exchange; and second, that they amount to the combination of two sales in one transaction. By contrast, some contemporary scholars have assimilated them to forward exchange contracts and have permitted them in cases of need, provided that no exchange of interest-based currency differentials takes place between the two currencies involved.¹⁷

Upon closer examination, however, the evidence advanced by those who prohibit these contracts on the basis of the Prophetic prohibition of “two sales in one sale” appears open to question. The majority of jurists understood this prohibition to refer to cases such as selling an item for one hundred in cash or two hundred on deferred payment without the parties determining which price is binding before separation, or selling one of two items for a single price without specifying which item is intended.¹⁸ The underlying rationale for the prohibition in such cases is uncertainty regarding the price or the subject matter, and the resulting instability

¹⁶ The World Bank Treasury, “70 Years Connecting Marktes to Development” (Access 23 November 2020).

¹⁷ Wahbah al-Zuhaylī, *al-Mu'āmalāt al-Māliyya al-Mu'āshira* (Damascus: Dār al-Fikr, 2006), 168; Aḥmad Muḥyī al-Dīn Aḥmad, “al-Muḍāraba fī al-'Umla wa-al-Wasā' il al-Mashrū' a li-Tajannub Aḍrāriḥā al-Iqtisādiyya,” *Majallat Majma' al-Fiqh al-Islāmī al-Duwalī bi-Jiddah* 11/1 (1998), 458; Resolution no. 65 on Financial Markets, *Majallat Majma' al-Fiqh al-Islāmī al-Duwalī bi-Jiddah* 7/1 (1992), 716; Resolution no. 93 on Currency Trading, *Majallat Majma' al-Fiqh al-Islāmī al-Duwalī bi-Jiddah* 11/1 (1998), 613; First Resolution on the Exchange of Currencies and the Ruling on Deferring Possession, *Qarārāt al-Majma' al-Fiqhī al-Islāmī bi-Makkah* 13 (Mecca, 1992), 311; “al-Mutājara fī al-'Umlāt,” in *al-Ma'āyir al-Shar'iyya* of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), 59; Abdullah Durmuş, *Fikhī Açıdan Günümüz Para Mübadelesi İşlemleri* (İstanbul: Marmara Üniversitesi, Sosyal Bilimler Enstitüsü, Doktora Tezi, 2008), 101.

¹⁸ 'Alī b. 'Abd al-Salām al-Tusūlī, *al-Buḥja sharḥ al-Tuḥfa*, critical ed. Muḥammad 'Abd al-Qādir Shāhīn (Beirut: Dār al-Kutub al-'Ilmiyya, 1998), 2/12; 'Abd al-Karīm al-Rāfi'ī, *Fath al-'Azīz bi-sharḥ al-Wajīz* (Beirut: Dār al-Fikr, n.d.); Ibn Qudāma, *al-Mughnī*, 4/33.

of the contract. These features are not present in the same manner in currency swap arrangements. The second argument advanced for prohibition is that such contracts include a prohibited forward exchange. The stronger view is that forward exchange contracts are, as a matter of principle, impermissible because of the *gharar* they entail, although they may be tolerated in cases of need or where they are structured as a non-binding bilateral promise. Yet this does not justify treating currency swaps as equivalent to ordinary forward exchange contracts, because the two are materially different.

Currency swaps involve the semblance—and indeed, in substance the reality—of reciprocal loans, even though they are framed as exchange contracts. As explained above, they are composed of two elements: a spot exchange contract and a forward exchange contract stipulated within the first. A careful analysis of these two contracts and the manner in which they operate shows that one party effectively advances a sum in one currency to the other, in return for the latter advancing to it a sum in another currency under the guise of a spot exchange. Since one of the parties may, upon the execution of the forward leg, receive more than it initially advanced—where the rate fixed for the forward exchange differs from the spot rate, as is commonly the case—the arrangement in effect becomes an interest-bearing loan, which is prohibited under Shariah.¹⁹

3. The Investment under Alternative Liquidity Management Instrument and their Related Shariah Issues

Bank of England invests the funds of the alternative liquidity instrument in Sukuk issued by the Islamic Development Bank, as they are classified as high-quality liquid assets (HQLA) and thus meet the Basel III standards. These Sukuk, which have high credit ratings from global rating agencies such as Moody's, Standard & Poor's, and Fitch (AAA), include a commitment from the Islamic Development Bank to redeem them at their nominal value, along with a guarantee of the expected return.

In general, Sukuk are considered an Islamic alternative to interest-bearing bonds, but contemporary scholars differ regarding the permissibility of many issues related to the mechanism of issuing, trading, and extinguishing Sukuk. For example, the Chairman of the Shariah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) stated that 85% of the issued Sukuk violate Islamic law.²⁰

Among the most important issues that may raise debate over the permissibility of the Islamic Development Bank's Sukuk are the bank's commitment to redeem them at their nominal value, its guarantee of the expected return, and other guarantees, which are presented as follows:

3.1. The Commitment of the Sukuk Manager or Its Administrator to Redeem Sukuk Assets at Nominal Value

As mentioned earlier, it is not permissible for the investment manager or any related party to guarantee the investors' capital, any part of it, or any part of the profit. Accordingly, most

¹⁹ This is the ruling on currency swap contracts in general. It should be noted, however, that some observers maintain that the currency swap arrangements employed by the Bank of England within the framework of the Alternative Liquidity Facility are structured on the basis of the ISDA-IIFM Tahawwut Master Agreement, which was developed jointly by the International Swaps and Derivatives Association (ISDA) and the International Islamic Financial Market (IIFM). This agreement is structured around two promises, two currency exchange contracts, and two *tawarruq* transactions. A detailed examination of this arrangement falls beyond the scope of the present study and would be more appropriately treated in an independent study of its own.

²⁰ 'Abd al-Bārī Mash' al, "al-ṣukūk al-Islāmiyyah: Ru'yah Maqāsidiyyah," *Nadwat al-ṣukūk al-Islāmiyyah: 'Urūd wa-Taqwīm*, (Jeddah: Jāmi'at al-Malik 'Abd al-'Azīz, 2010), 31.

contemporary fatwas prohibit any undertaking by the Sukuk issuer, its manager, or any entity genuinely related to them—such as a special purpose vehicle established by either of them—to redeem the Sukuk at face value by repurchasing the assets at the original sale price. This is because such a repurchase undertaking effectively guarantees the capital of all Sukuk holders, thereby turning the Sukuk into an interest-bearing loan.²¹ This prohibition is consistent with the recommendations of the Sukuk Seminar in Jeddah and the resolution of the Islamic Fiqh Academy in Jeddah.²²

Some contemporary scholars have nevertheless permitted such an undertaking on several grounds: the need for Sukuk as an alternative to conventional bonds; the distinction between a binding repurchase promise and a capital guarantee; certain reports permitting the buyer to promise resale at the original price;²³ and the general permissibility of contractual conditions.²⁴ However, these arguments are not persuasive, because the practical effect of the undertaking is still to guarantee the capital, regardless of the actual condition or value of the Sukuk assets, and thus to introduce an element of Riba.

It has also been argued that, in Ijara Sukuk, such repurchase may be allowed by analogy to bay' al-wafa'.²⁵ Yet this analogy is weak, since bay' al-wafa' concerns a special type of sale rather than an investment process, whereas Sukuk represent an investment relationship in which capital cannot be guaranteed except by an independent third party, and neither the issuer nor the manager qualifies as such.

Therefore, it is not permissible for the Sukuk issuer or manager to undertake redemption at nominal value. This is also in line with the AAOIFI Investment Sukuk standard, which states that the prospectus should not include any clause by which the Sukuk issuer guarantees the nominal value of the Sukuk, except in cases of misconduct or negligence, nor any specific amount of profit.²⁶

²¹ Ma'bad 'Alī al-Jārḥī- 'Abd al-'Azīm Abū Zayd, "Aswāq al-sukūk al-'ilāmiyyah wa-kayfiyyat al-irtiqā' bihā" *Nadwat al-Şukūk al-Islāmiyyah: 'Urūd wa-Taqwīm* (Jeddah: Jāmi'at al-Malik 'Abd al-'Azīz, 2010), 315; Abdullah Durmuş, "Modern Bir Finansal Araç Olarak Sukūk ve Fikhî Açından Tahlili", *İslam Hukuku Araştırmaları Dergisi* 16 (2010), 163.

²² Abū Ghuddah-Khūjah, *Qarārāt wa-tawşiyāt Nadawāt al-Barakah lil-Iqtisād al-Islāmī (1981-2001)*; *Majallat Majma' al-Fiqh al-Islāmī al-Duwalī* 20 (2012), qarār no. 188 (3/20), "Istikmāl Mawḏū' al-Şukūk al-Islāmiyyah".

²³ Among the narrations is what was reported from Ibn Mas'ud, who bought a female slave from his wife and stipulated that if she sold her, she would receive the price at which he purchased her. Ibn Mas'ud asked Umar ibn al-Khattab about this, and Umar did not prevent the sale. Also, it is reported from Aḥmad ibn Ḥanbal that was asked about a man who bought a female slave from another man and said, "If you wish to sell her, I have the right to buy her back at the price I paid" he said, "There is no harm in that"; see: Ibn Qudāmah, *Al-Mughni*, 4/228; Taqī al-Din Ibn Taymiyyah, *al-Fatawa al-Kubra*, critical ed. Hasanein Muhammad Makhloof (Beirut: Dār al-Ma'arifah, 1386), 4/76.

²⁴ The permissibility of this view has been reported from a number of contemporary scholars, including Abdul Sattar Abu Ghuda and Hussein Hamed Hassan, which can be inferred from the words of Sami Hamoud, who permits the inclusion of loss by the mudarib through a condition; see: Abu Zayd, "The Critical Shariah Issues of Sukuk", *Journal of Islamic Economics* 1/1 (2021); Muḥammad 'Alī al-Qarrī, "Aḥkām ḍamān al-Şukūk wa-'awā' idihā" *Nadwat al-Şukūk al-Islāmiyyah: 'Urūd wa-Taqwīm* (Jeddah: Jāmi'at al-Malik 'Abd al-'Azīz, 2010), 239; Ḥāmid Ḥasan Mīrah, "Şukūk manāfi' al-a'yān al-mawşūfah fī al-dhimmah wa-Şukūk manāfi' al-a'yān al-mu'ajjarah liman bā' ahā ta'jiran muntahiyān bi-al-tamlīk", *Majallat Majma' al-Fiqh al-Islāmī al-Duwalī*, 20 (2012), 993; Sa'id Muḥammad Bouhrawah et al. "Taqwīm naqdī li-l-qaḍāyā al-shar'iyyah al-muta'alliqa bi-Şukūk al-ijārah", *Majallat Majma' al-Fiqh al-Islāmī al-Duwalī* 20 (2012), 827; Sāmī Ḥammūd, *Taṭwīr al-a'māl al-maşrifīyyah bimā yattafiq ma' al-sharī'ah al-islāmiyyah* ('Ammān: Maṭba'at al-Sharq wa-Maktabatuhā, 1982), 400.

²⁵ Ibn 'Ābidīn verified that the fatwa permitting the Wafā' sale is an unreliable fatwa, and that it cannot be attributed to the Hanafī school, or to any other schools. See: Ibn Abidin, *Radd al-Muhtar 'ala al-Durr al-Mukhtar*, 4/246; Elif Berktaş Yüksel, "Sahipliğe Dayalı Kira Sertifikaları ve Bunların Saf İnançlı İşlem Niteliği", *Hacettepe Hukuk Fakültesi Dergisi* 10/1 (2020), 163; Mahmut Samar, "Fikhî Açından Altın Tahvili ve Altına Dayalı Kira Sertifikası İhracı", *İslam Hukuku Araştırmaları Dergisi* 33 (2019), 320.

²⁶ AAOIFI, "Mi'yār Şukūk al-Istithmār (17)", 478.

3.2. Guaranteeing the Return on Ijārah Sukuk

Some have leaned toward justifying the inclusion of a guaranteed return in Ijārah Sukuk for their holders, on the basis that profit is assured if rent payment is guaranteed. The guarantee of rent payment is considered a fixed right for the sukuk holders, as they are the owners and lessors, and it is their legitimate right to receive full and undiminished rent for what they lease, regardless of who the lessee is—whether it is the sukuk issuer or a third-party.

However, the truth is that guaranteeing rent payment or committing to it does not necessarily entail a guaranteed return on the sukuk that would make such a guarantee permissible on that basis. The reason is that if the structure of the Ijārah Sukuk is sound, it necessitates that the sukuk holders own the underlying assets and bear the consequences and responsibilities of such ownership. This means they are liable for the risks associated with the leased assets. The burdens of ownership, including expenses and maintenance, may impact the rent or part thereof—as is well-known in any lease contract. Therefore, how can it be sound to claim that ensuring the payment of rent equates to guaranteeing the expected return for sukuk holders, thereby legitimizing such a guarantee?!

3.3. The Issuer's Commitment to Lending Holders to Cover any Shortfall in the Expected Return

Most sukuk structures include a commitment from the sukuk manager (or issuer) to lend the sukuk holders an amount that would raise the actual profit to match the expected return, in cases where the actual return falls short. Since sukuk, when structured in a genuinely Sharia-compliant manner, do not offer any guarantees to their holders—whether of principal or return—it is quite possible and even likely that the actual profit realized may be less than the expected return. In such a case, is it permissible for the sukuk issuer to commit to covering the shortfall through a loan, with the expectation that this loan will be repaid from future profits or upon the eventual sale of the sukuk assets at maturity?

Contemporary scholars have differed on the permissibility of this commitment. Many have ruled it impermissible,²⁷ arguing that such a commitment results in the combination of two contracts: a loan with either a *muḍārabah* (profit-sharing contract) or a *mushāraka* (partnership contract), depending on the underlying contract governing the relationship between the sukuk holders and the issuer. Since both *muḍārabah* and *mushāraka* are commutative contracts, and the Prophet Muhammad ﷺ prohibited combining a commutative contract with a loan, this combination is problematic.²⁸ On the other hand, some scholars have permitted this kind of commitment if the sukuk are genuine investment sukuk representing actual—not merely formal—ownership of the sukuk assets, and on the condition that no guarantees are embedded within the sukuk structure. The reasoning is that if the sukuk reflect a true investment relationship involving actual profit and loss, with no guarantees, and real ownership of the

²⁷ Fayṣal ibn Ṣāliḥ al-Shimmārī, *Ṣukūk al-Muḍārabah* (Riyadh: Dār Al-Maiman, 1435), 337; Mash' al, "al-Ṣukūk al-Islāmiyyah: Ru'yah Maqāṣidiyyah," 31; Muḥammad Taqī al-'Uthmānī, "al-Ṣukūk wa-Taṭbīqātihā al-Mu'aṣirah", *Majallat Majma' al-Fiqh al-Islāmī al-Dawli bi-Jidda* 20 (2012), 760.

²⁸ The hadith prohibiting combining a loan and a sale (salf wa bay') was reported by Abu Dawūd, al-Tirmidhi, and al-Nasa'i. al-Tirmidhi classified it as "ḥasan saḥīḥ", and Shu'ayb al-Arna'ūt graded it as "ḥasan"; see: Abu Dāwūd, *al-Sunan*, "Kitāb al-Buyū", 70 (ḥadīth no. 3504); Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, "Abwāb al-Buyū", 12 (ḥadīth no. 1234); Aḥmad ibn Shu'ayb al-Nasā'ī, *al-Sunan al-Ṣuḡhrā*, critical ed. Markaz al-Buḥūth wa-Taḥqīqat al-Ma'lūmāt bi-Dār al-Ta'sīs (Cairo: Dār al-Ta'sīs, 2012), "Kitāb al-Buyū", 55 (ḥadīth no. 4654). For the report titled "Nahy al-Nabī ṣalla Allāh 'alayhi wa-sallam 'an bi'atayn fī bay'ah," see Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, "Bāb mā jā'a fī al-Nahy 'an bi'atayn fī bay'ah" (ḥadīth no. 1231); Nasā'ī, *al-Sunan al-Ṣuḡhrā*, "Bāb bi'atayn fī bay'ah," 67 (ḥadīth no. 4675). See also Shimmārī, "Ṣukūk al-Muḍārabah", 335.

underlying assets, then it may be permissible to allow the sukuk manager to commit to lending in times of shortfall, in exchange for sukuk holders agreeing to forgo any profit above the expected return. This view relies on the notion that the rationale behind the prohibition of combining an exchange contract with a loan is to prevent collusion leading to a disguised interest benefit for the lender—such as selling the borrower an item worth fifty for sixty, or buying from him an item worth fifty for forty—but such a rationale is not present in this case.²⁹

However, it is also evident that the repayment of such a loan becomes practically impossible when guarantees are present. A fixed return for sukuk holders, combined with a clause requiring them to forgo excess profits to the benefit of the sukuk manager—as is often the case in actual sukuk structures—renders the repayment of the loan from future profits infeasible. Likewise, redeeming the sukuk at par (face value) makes it impossible to repay the loan from the proceeds of selling the sukuk assets.

3.4. The Independence of the Special Purpose Vehicle (SPV) from the Sukuk Issuer and Its Manager

It cannot be claimed that the Special Purpose Vehicle (SPV) is independent from the sukuk issuer or its manager, because it is the issuer who establishes the SPV, controls its operations, and retains the exclusive authority to manage or dissolve it at will. The fact that the SPV is a separate legal entity from its parent entity holds no significant weight from a Shariah perspective in this context. Just as is the case with a subsidiary company wholly owned by a parent company or with sister companies, the owner is the same in Shariah consideration, and similarly the SPV is treated with its founder as one legal party.

Accordingly, it is not valid to consider the Islamic Development Bank, in its guarantee of the nominal value of the sukuk under study, as an independent party separate from the sukuk issuer—namely, the SPV. Although the SPV may legally be a separate legal entity from the issuer, it is in fact subordinate to it, acts on its behalf, and serves its interests.

Conclusion

This study has examined the Bank of England's Alternative Liquidity Facility (ALF) as a sukuk-based liquidity tool designed for Islamic banks within a conventional central-banking framework. By analysing its contractual structure and operational design in light of classical Fiqh principles and contemporary Shariah standards, the study has shown both the institutional significance of the ALF and the juristic difficulties that continue to surround its present form.

The analysis indicates that ALF is important not only as a practical liquidity instrument, but also as a case study in Islamic financial engineering within central-banking frameworks. In this respect, it demonstrates that modern liquidity-support mechanisms may, in principle, be adapted for Islamic institutions without simply reproducing conventional interest-based forms. At the same time, the study makes clear that functional equivalence alone is not sufficient for Shariah legitimacy. What ultimately matters are whether the structure preserves the substantive requirements of ownership, risk exposure, and liability, rather than reproducing conventional economic outcomes through formal legal restructuring alone.

From the perspective of Shariah assessment, the principal concerns remain concentrated in the sukuk investment layer. The most significant of these relate to capital protection, nominal

²⁹ Jārḥī-Abū Zayd, "Aswāq al-ṣukūk al-islāmiyyah wa-kayfiyyat al-irtiqā' bihā", 283.

redemption at par, and the effective reduction of genuine investment risk. These are not merely technical or secondary issues; rather, they affect the substantive legal character of the structure itself. Likewise, reliance on formal structural devices such as the SPV arrangement does not by itself remove these concerns where the underlying allocation of ownership, risk, and liability remains substantively unchanged.

At the same time, not every element of the ALF structure gives rise to the same degree of concern. The mechanism of early withdrawal may be accommodated within a Shariah framework insofar as it resembles a form of *takhāruj* and does not involve an ex-ante guarantee of capital irrespective of actual asset performance. This suggests that certain elements of the facility may be aligned with accepted Shariah principles, even though the structure as a whole remains subject to substantial reservations in its present form.

The broader implication of the study, therefore, is that Islamic financial engineering in central banking is both possible and normatively constrained. The case of ALF shows that the future development of Islamic liquidity tools depends not merely on regulatory function or legal form, but on preserving the real nexus between ownership, risk, and return. The facility should accordingly be regarded as a significant and innovative institutional initiative, but one whose present configuration continues to raise substantial Shariah concerns.

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