Financing Commercial public infrastructure and equipment through "Sovereign Sukuk" and the Effectiveness of the Legal Guarantees Prescribed for Them in Algerian Legislation.

Sonia maazi *

University of Batna 1 (Algeria). Email : sonia.maazi@univ-batna.dz.
Laboratory Interdisciplinary Research and Studies in Law, Heritage, and History.

Received: 01/01/2026 *Accepted: 23/04/2026* *Published:06/06/2026*

Abstract :

Sovereign sukuk are a modern financing instrument adopted by Algeria to fund commercial infrastructure and/or equipment of state. A specific legal framework has been established for them .Accordingly, this article seeks to examine the legal guarantees prescribed for this instrument, with the aim of assessing their capacity to provide the necessary protection for those engaging with it.

The study finds that the legislator provided legal guarantees to reduce investment risks. However, these guarantees remain insufficient due to the absence of a Special Purpose Vehicle (SPV), weak post-issuance Sharia supervision, and unclear essential information in the Offering Prospectus. Additionally, investor protection is limited because sukuk rely solely on usufruct rights. The study therefore recommends strengthening the legislative framework to enhance the security of sovereign sukuk for both investors and the state.

Keywords: Sovereign sukuk, legal guarantees, public equipment and facilities, Finance Law.

* **Corresponding author**.

INTRODUCTION :

The development of the economy and its sectors in any country requires substantial and sustainable capital that is effectively directed toward financing production and investment projects, strengthening infrastructure, and facilitating innovation and technological advancement. Owing to its inability to finance medium- and long-term investments because of limited financial resources, the state found that the most appropriate approach was to turn to participatory financing methods by engaging investors who share with it the responsibility and financial support for the projects.

In light of the numerous advantages that sovereign sukuk have achieved internationally, Algeria has recognized the right of its public treasury to issue Islamic sovereign sukuk as an alternative to conventional bonds under the 2025 Finance Law and the decision issued by the Minister of Finance on 01 June 2025. This reflects a strategic vision aimed at protecting public funds and reinforcing the state's supervisory role over the flow of capital invested in public projects with commercial and developmental dimensions.

Although Algeria's experience in this domain is relatively new the state has taken legislative measures to establish a comprehensive legal and regulatory framework governing the issuance and trading of sovereign sukuk, while safeguarding the rights of all stakeholders. A series of legal guarantees have been introduced to strengthen investor confidence, attract both domestic and foreign capital, and foster a dynamic investment climate. This context leads us to examine the following question:

Research problem : How sufficient and effective are the legal guarantees provided under Algerian legislation for the issuance and management of sovereign sukuk?.

Study objectives:

This study aims to emphasize the role of sovereign sukuk as a contemporary financing tool that supports economic development and helps achieve the state's financial stability. It also seeks to evaluate how well the existing legal safeguards comply with international standards and best practices, with the goal of offering practical recommendations to enhance the national legislative framework ensuring the effective and secure utilization of sovereign sukuk for financing public projects.

Methodology of the study :

To achieve the objectives of this study, we adopted a descriptive inductive, analytical, and comparative methodology. We described the substance of sovereign sukuk and the legal framework governing them in Algeria, examined the related legal issues, and analyzed them through a legal approach based on statutory texts and legislative provisions concerning sovereign sukuk. This ultimately enabled us to compare Algerian legislation regulating instruments with international standards and comparative legislation.

Chapter I/ The Conceptual Framework of Sovereign Sukuk

Clarifying the conceptual framework of sovereign sukuk constitutes a fundamental starting point for understanding the nature of these modern financial instruments and their role in financing public projects[1]. The study of government sukuk requires identifying their essence, characteristics, and distinguishing features, Such clarification helps establish a clear knowledge of the legal and frameworks governing the issuance and trading of these sukuk.

First main title : Definition and characteristics of sovereign Sukuk :

In order to comprehend the legal nature of sovereign sukuk, it is essential to define them, outline their key characteristics, and differentiate them from the other securities.

First: Definition of sovereign Sukuk :

The examination of sovereign sukuk necessitates a multidimensional approach, encompassing an exploration of their linguistic roots and Jurisprudential specifications, leading ultimately to shape their legal meaning.

A- Linguistic Meaning of sovereign *sukuk* :

According to Al-Mukhtar Al-Sahih dictionary, the term « sukuk » is the plural of « sakk », which refers to « a document representing money or its equivalent. It denotes a pre-printed form used by a bank depositor to instruct the disbursement of the specified amount ».2 And It has been said that sakk is « a document that which is written about a deferred payment or the like"3.

Regarding the term « sovereign », is a linguistic origin to the word « sada », which means issued by a sovereign state.[4]

B- Jurisprudential Meaning of Sovereign Sukuk :

Numerous jurists and scholars have addressed the definition of

sovereign sukuk. Some define them as « a modern financial instrument based on the idea of an administrative authority converting illiquid assets that are eligible for securitization, in a manner consistent with the principles of Islamic Sharia, into tradable financial securities (sukuk).».[5]

Meanwhile, some researchers have described them as « those issued by sovereign authorities, and are usually used for purposes of public policy in the country, such as providing public goods and services, financing infrastructure projects mobilizing savings and directing them toward specific projects, and in some cases, they can be used to finance budget deficits ».[6]

Among the aforementioned definitions, it can be stated that Islamic sovereign sukuk are : equal-value financial instruments compliant with Islamic Sharia principles, issued by the state representing assets that generate returns. These sukuk are sold to investors, granting the investor ownership rights or usufruct rights over state assets through profit-and-loss sharing arising from the exploitation of these assets. Meanwhile, the state gains financial liquidity, which it may deploy to finance public projects or cover general budget deficits.

They are termed "sovereign" because they are issued by a sovereign state, and the assets and guaranteeing cash flows underpinning them are sovereign in nature and owned by the state.

C- Legislative Meaning of Sovereign Sukuk :

Once the linguistic and jurisprudential dimensions of sovereign sukuk have been clarified, it becomes necessary to examine the manner in which national legislators have addressed this concept within legal and regulatory frameworks.

In article 2 of the Jordanian Law No. (30) of 2012, the Islamic finance sukuk are « documents of equal value representing joint shares in project ownership, issued in the name of their holders in exchange for the funds they provide to implement and operate the project, and to generate returns for a period specified in the issuance prospectus, in accordance with the principles and provisions of Islamic Sharia ».[7]

While, the Egyptian Sovereign Sukuk Law No. 138 of 2021 defines sovereign sukuk in Article 01 as: « Government securities of equal nominal value, tradable, and issued for a specified period not exceeding thirty years. They represent undivided shares in the usufruct rights of assets, in accordance with the provisions set forth in the issuance prospectus ».[8]

From the perspective of the French legislator, investment sukuk are defined as: « Securities whose returns and principal are linked to the performance of assets, granting their holders a joint ownership right over those assets, which may take the form of services, goods rights, or usufruct of such goods or rights ».[9]

The Algerian legislator did not depart from the approach adopted by his counterparts, He approved a definition of sovereign sukuk in article 179 of the 2025 finance law, Which stated: « the public treasury is permitted to issue bonds called "sovereign sukuk" representing usufruct rights to assets belonging to the state, intended for natural and legal persons to participate in financing commercial public infrastructure and/or equipment »[10.]

Based on the preceding legislative definitions, it can be said that the legislators of various states have adopted the same approach as the jurists by approving either general definitions that specify the meaning of Islamic sukuk regardless of the issuing entity—whether governmental or otherwise—as seen in the Jordanian, Moroccan, and Tunisian legislators; or specific definitions for Islamic sovereign sukuk issued by governmental entities, such as the Egyptian, Kuwaiti, and Algerian legislators, who have stipulated that the issuing entity for these sukuk must be governmental only, thereby prohibiting their issuance by commercial companies.

As evident from the aforementioned definitions, international legislations have differed in describing sukuk: some have described them as securities, like the Egyptian and Tunisian legislators, while others have described them as bonds, like the Algerian legislator. In our view, the most accurate description is as securities, since they possess the characteristics of securities. Considering them bonds is an inaccurate expression, as they differ from bonds issued by commercial companies and treasury bonds.

It can be said that the practical concept of sovereign sukuk is that the state, as the originator of the investment project, issues sovereign sukuk, and then investors purchase this sukuk by subscribing to them with the aim of sharing the profits and losses resulting from the investment in the project.

Second : Characteristics of sovereign sukuk :

An analysis of the aforementioned legal texts reveals that sovereign sukuk embody distinct characteristics setting them apart from other types of securities, which will be elaborated upon below.

A. Sukuk are government securities :

Sukuk are classified as securities, which are defined as : « sukuk issued

by companies or states, such as stocks and bonds, that are tradable on the stock exchange » [11]. This implies that government sukuk are medium- and long-term investment instruments issued by states to raise capital.

B. Equivalence of the nominal value of the sukuk :

At equal nominal values, the instruments are issued representing the amounts initially paid to acquire them. This structure ensures that in the case of profits, distribution is straightforward, and in the case of losses, each holder's share can be easily calculated. Such a mechanism is a defining feature of sovereign sukuk.[12] This also facilitates the process of determining their price in the stock exchange and simplifies the voting procedures in the general assembly of sukuk holders. In addition, it eases the redemption process by the beneficiary entity and the payment of their value to the owners.[13]

C. Sukuk are based on the principle of profit and loss sharing :

The investor (Sakkholder) shares the revenue of the state's generated from its assets, and is not considered a creditor but a partner . Consequently, the returns earned by the Sukuk holder are linked to the actual performance of the project. If the project generates profits, Sukuk holders share in these profits in proportion to their holdings. Conversely, if the project incurs losses, they also bear these losses in the same proportion.

D. Compliance of sovereign sukuk issuance with Islamic Sharia :

Compliance with the principles of Islamic Sharia constitutes a fundamental requirement for the validity of sovereign sukuk transactions. Nevertheless, many comparative jurisdictions, such as Turkey, the United Kingdom, Luxembourg, and Hong Kong, have not explicitly stipulated in their legislative frameworks governing sovereign sukuk the necessity of conformity with Sharia principles,[14] This is the same approach adopted by the Algerian legislator when analyzing the text of article 179 of the 2025 finance law, which reveals that the legislator did not add the term 'Islamic,' but merely referred to 'sovereign sukuk.'

However, the explanatory memorandum to the draft bill 2025 finance law of states that it constitutes a first building block for a comprehensive legal framework regulating the issuance of sovereign sukuk. It aims to provide key instruments for the Islamic finance industry, which offers attractive solutions and alternatives to meet the state's needs for financing projects, as well as to enable islamic banks and takaful insurance institutions to invest their

liquidity.

In addition, Article 06 of the ministerial decision issued on 1 June 2025, which sets out the procedures for the issuance of sovereign sukuk by the Public Treasury, stated that: « The invitation to subscribe to sovereign sukuk shall be issued by a decision of the Minister of Finance, after obtaining a certificate of compliance with Sharia principles from the supreme islamic council »[15].

Furthermore, Article 04 of the aforementioned decision stipulates that the Public Treasury is obliged to apply Islamic financing modes such as ijara, musharaka, mudaraba, istisna', and wakala, all of which are consistent with Sharia principles.

Some scholars have emphasized that referring to them simply as "sukuk," without adding the term "Islamic," is sufficient, since sukuk were originally designed to meet the requirements of Islamic Sharia and are structurally based on various Islamic financing modes founded on ownership and profit-and-loss sharing

Therefore, The foundation of sovereign sukuk on the principles of Islamic Sharia means that they encourage investments and projects that are socially and ethically aligned with Sharia rules and principles. Consequently, they eliminate any potential association of such projects and investments with activities prohibited under Sharia, such as the production of alcoholic beverages, tobacco, gambling, and weapons and the contract must not contain any form of gharar.

E. tradability of sukuk :

The tradability of the sukuk is considered one of its most important characteristics, as it grants the holder the freedom to transfer ownership of sakk to other parties. It also facilitates the holder's to obtain liquidity withou requiring approval or consent from the issuer or any governmental authority.[16]

It is worth noting that some sukuk are tradable, such as mudarabah sukuk, musharakah sukuk, and ijara sukuk, while there are types that are non-tradable, such as murabaha sukuk, salam sukuk, and istisna sukuk[17].

F. Indivisibility of the sukuk :

Based on the fact that represent common ownership in state assets, if two or more persons share ownership of a sukuk due to inheritance, gift, or bequest, such joint ownership cannot be divided or partitioned. Therefore, the sukuk holders must appoint a single representative to act on their behalf

in claiming the rights associated with the sukuk from the issuer[18].

Second main title : Distinguishing sovereign sukuk from similar instruments and the types of these sukuk :

Despite the apparent similarity between sovereign sukuk and other traditional financial securities, particularly bonds, sovereign sukuk differ from them in terms of legal nature, basis of returns degree of linkage to tangible underlying assets, and risk exposure.

Moreover, there are various types of sovereign sukuk issued by the state for investors, differing in their legal and Shariah characteristics as well as their issuance methods. Accordingly, it is necessary to examine the points of distinction between sovereign sukuk and other similar financial instruments to highlight their unique features and importance within the contemporary financial system, before proceeding to present the different types of these sukuk.

First : Distinguishing sovereign sukuk from similar instruments :

There are many financial instruments similar to sukuk, either in terms of structure or economic function, but they differ in certain Shariah or legal aspects. The most notable of these instruments are: private-sector sukuk , sovereign bonds .

A. Distinguishing sovereign sukuk from private-sector sukuk :

The term "private sector sukuk" refers to sukuk issued by corporate sukuk to provide the necessary financial resources for covering fixed capital and working capital needs.[19] This sukuk are similar to sovereign sukuk in their legal and Sharia-based essence, as both are founded on adherence to the principles of Islamic Sharia and their returns are linked to the actual performance of the financed activity rather than to fixed interest. Nevertheless, despite this similarity, they differ not in essence but in terms of the issuing authority and the nature of the guarantees. Sovereign Sukuk are issued by the state, represented by the Public Treasury or the Ministry of Finance, and primarily aim to finance public projects or cover public finance needs. In contrast, private sector Sukuk are issued by private companies and institutions, intended to finance investment or expansion activities and achieve primarily commercial objectives. The basis for this distinction can be traced back to the difference between public and private funds [20]. Additionally, sovereign Sukuk are considered lower risk than those issued by the private sector [21]because they are backed by state revenues and assets,

whereas private sector Sukuk depend on the issuing company's ability to generate profits and its exposure to operational and commercial market risks.

B. Distinguishing sovereign sukuk from sovereign bonds :

Sovereign sukuk intersect with sovereign bonds in that both are financial securities and financing instruments tradable in financial markets, and both are issued by the state to raise funds for projects or to cover budget deficits. However, government bonds rely on interest (riba), which renders them non-compliant with islamic sharia whereas sovereign sukuk conform to Sharia principles such as the prohibition of riba, avoidance of gharar, exclusion of activities forbidden by Islamic law, linkage to real assets, and profit-and-loss sharing.

Moreover, government bonds are debt instruments issued by governments to meet their financial needs, forming an essential part of the global financial system and reflecting the government's commitment to repay principal and interest to bondholders at specified maturity dates.[22] By contrast, sovereign sukuk are not instruments of public debt but participatory tools between the investor and the state.

Furthermore, government bonds constitute long-term credit owed by the issuing authority and entitle the holder to receive a fixed interest, whereas a sukuk represents a share in the project's assets, entitling its holder to bear profit or loss. In addition, the sukuk holder has the right to participate in the management of the project and share in its profits, whereas this right is not granted to the bondholder.[23]

Second: types of sovereign sukuk :

The legal structures under which sovereign sukuk are issued vary, as they may be structured in different forms depending on the nature of the project and the asset being securitized. They also differ with respect to the rights granted to the sukuk holder, depending on the legal framework and Sharia-compliant structure adopted. This makes the study of these types essential for understanding the nature of sovereign sukuk.

A. Classification of Sovereign Sukuk According to the -Based Contracts on Which They Are Structured:

Compliance with the specific type of underlying contract is a prerequisite for issuance of sukuk; the absence of these structures renders the entire process impossible[24] , These Sharia-compliant contracts serve to regulate the rights and obligations of both the issuer and the investor. They further detail the investment areas for the proceeds, the duration, expected

returns and their distribution methods, as well as maturity, tradability, and redemption terms.

The Algerian legislator has defined the types of sovereign sukuk according to their underlying contract in Article 4 of the decision issued on 01 June 2025, as follows[25] :

1- Ijara Sukuk:

Ijara sukuk are widely popular in most countries, particularly in terms of issuance volume. Some scholars consider them the oldest sukuk structure compared to other issued sukuk structures. Their popularity stems from their simplicity, broad acceptance, and ease of understanding by traditional innovators, sukuk investors, and international credit rating agencies[26].

Pursuant to the text of Article 04 of the aforementioned decision the Holders of this type of Sukuk possess shares in the leased tangible assets or in the usufruct rights of these assets, and they benefit from returns based on rental payments.

The state may utilize ijara sukuk to finance governmental expenditures and major projects across various sectors such as education, health, and transportation. In addition, usufruct ijara sukuk may be employed to support housing programs and real estate development initiatives.[27]

2- Musharaka Sukuk :

In this structure, the Sukuk holder owns a share in the issued capital in exchange for sharing the project's profits and losses, which are distributed among investors according to their respective capital shares. The State resorts to this type of Sukuk to finance energy and infrastructure projects.

3- Mudarabah sukuk :

Its concept is based on the existence of a relationship between two parties : the first is the financier(investor), and the second is the managing mudarib(the state). The investor provides the capital, while the state contributes a share of work which consists of undertakes the management of the project with profits shared between the investor and the state according to a predetermined ratio.

Financial losses are borne by the investor, whereas the mudarib (the state) bears the loss of its effort and work only.This type of sukuk is issued by the state to finance energy and infrastructure projects.

4- Istisna Sukuk:

Istisna'a Sukuk is used to finance industrial, construction, or

infrastructure projects, where investors fund a specific manufacturing or construction process. The issuing entity (the State) commits to delivering the project or asset upon completion, after which Sukuk holders receive returns from its sale or operation. Thus, the investor benefits from the margin between the manufacturing cost and the sale price[28].

5- Wakalah Sukuk :

In this type of instrument the investors delegate the state to act as their agent, investing their funds in specified projects in return for a predetermined fee. In this arrangement, the state manages the funds on behalf of the investors and receives the agreed-upon agency fee stipulated in the contract. Unlike Mudaraba and Musharaka sukuk, in Wakala sukuk the state is merely a manager who does not contribute to the capital, but its role is limited to management only.

B- Classification of Sovereign Sukuk according to the right recognized for the sukuk holder:

The holder of a sukuk, whether subscribing at issuance or acquiring it through trading, enjoys either the right of ownership of state assets or the right of usufruct over such assets, depending on the type of sukuk and its legal structure. This requires clarifying these two types.

1- Sovereign sukuk guaranteeing the right of assets ownership:

The state may grant the holder of the sukuk the right to ownership of its assets, which is called Asset-Backed, in which investors enjoy full ownership of the underlying assets[29] . Under this structure, the investor possesses a form of security or privilege in acquiring the assets, thereby placing them in a better position than unsecured creditors. Granting Sukuk holders the right of ownership requires that the financing process includes a 'true sale' of the asset to the investors, along with the availability of judicial procedures that safeguard their rights. Accordingly, this type of Sukuk requires that the underlying assets be legally registered in the name of the Sukuk holders, as such registration allows them to dispose of their owned assets. Consequently, the State must perform an actual transfer of its assets to the company (SPV) appointed by the Sukuk holders to manage the Sukuk.

1- Sovereign sukuk guaranteeing the right of assets usufruct :

This type is referred to « asset-based sukuk », in which The state do not transfer ownership of its assets to investors but rather grant them only the right of usufruct. whereby the sukuk holder acquires ownership of the returns

and profits generated from the investment without owning the underlying assets themselves[30]. This Type was adopted by the algerian legislator under article 179 of the 2025 finance law, as algerian sovereign sukuk grant the investor the right to benefit from the revenues and profits of commercial public infrastructure and equipment .

The right of usufruct refers to the full exploitation of the assets during the sukuk's tenure[31]. A key feature of asset-based sukuk is that the legal ownership of the assets is not registered in the name of the sukuk holders but remains with the state, thereby preventing sukuk holders from .

Chapter II/Legal guarantees for issuing sovereign sukuk in Algerian legislation

In the 2025 Finance law, the algerian legislator introduced article 179, which explicitly adopted sovereign sukuk. In application of this article, the minister of finance issued a ministerial decision on 01 June, 2025, outlining the modalities for issuing sovereign sukuk by the Public treasury. these two texts are considered the basic legal framework regulating sovereign sukuk . in addition, the algerian legal system contains legislative and regulatory texts can be applied to sovereign sukuk, thereby providing a legal environment that ensures the protection of sovereign sukuk contractors.

Given that sovereign Sukuk are linked to state assets and long-term projects, the legislator has provided a set of legal guarantees to ensure the Sharia and legal integrity of this financial instrument and to help reduce ambiguity and potential disputes. A group of mechanisms and means has been established to protect rights, ensure the proper fulfillment of obligations, and prevent abuse or breach. These serve as a legal safety net for both Sukuk-holding and the issuing State.

Accordingly, this chapter will address the legal guarantees prior to subscription in sovereign Sukuk (First main title) and the legal guarantees after the issuance and subscription of the Sukuk (Second main title).

First main title : Legal Guarantees established before subscribing to sovereign sukuk :

In order to encourage investment in sovereign sukuk, the algerian legislator has provided special protection for both investors and the state by establishing a set of legal safeguards imposed by legal, Shariah, and financial considerations. These guarantees are shown below :

First : The Treasury's exclusive right to issue sukuk :

In article 179 of the 2025 finance law, and article 01 of the 01 June 2025 decision, algerian legislators tipulate that the sole entity authorized to issue sovereign sukuk in Algeria is the Public Treasury. while article 03 of the same decision allows the Treasury to delegate another authority to issue sovereign sukuk on its behalf.

The reason for the Treasury's exclusive authority to issue sukuk lies in the fact that the assets underlying the sukuk are state-owned. Thus, the legislator restricted the issuance power to the official body responsible for managing and overseeing state funds, namely the Public Treasury.

By granting exclusive issuance authority to the Public Treasury, the state ensures that sukuk issuance is subject to strict centralized oversight, thereby reducing risks of mismanagement and guaranteeing that the funds raised are used in accordance with the objectives set forth in the law and the state budget. Furthermore, investors are assured that these instruments are backed by the state.

Despite the advantages achieved by the Public Treasury's monopoly over the issuance of sovereign sukuk Some jurists argue that there should not be a direct ownership relationship between the issuer and the primary debtor (the state) in the absence of a valid reason preventing the establishment of an independent entity[32].

Therefore, it would have been preferable for protecting investors' rights if Algeria had established a special purpose company (SPV) following the example of other comparable countries. This company plays a pivotal role in the issuance and management of sovereign sukuk, serving two functions: as an issuance agent on behalf of investors, representing their interests—such as receiving returns from the originator and distributing them to investors—and as an issuance agent on behalf of the obligor originator (the state). Thus, the sukuk assets are isolated from risks, protecting sukuk holders' rights and enhancing their confidence.

Second : Regulating the conditions related to the project or activity to be financed :

According to article 179 of the 2025 algerian finance law and article 01 of the aforementioned Ministerial decision, the legislator has restricted the issuance of sovereign sukuk to a specific purpose: these sukuk are allocated to financing public infrastructure and/or state-owned commercial equipment. This means it is dedicated for financing public investment projects of an

economic and social nature[33], which generate profits distributed between the bondholders and the state.

Public facilities and infrastructure include airports, ports highways, bridges, railways, urban development projects, energy and hydrocarbons projects, industrial activities, telecommunications, the financial and banking sector, the tourism sector, and other revenue-generating and profit-yielding projects.

Through the allocation of Sukuk for project financing, the State aims to bridge the government's financing gap or utilize them as instruments for executing economic policy[34]. This is one of the objectives through which the State seeks to invest the proceeds in high-income and profitable projects[35]. Thus, the burden of economic development is transferred across generations, it would be unjust for a single generation to bear all the costs of their construction, as this contradicts the principles of fairness.[36].

Contrary to the Algerian legislator Which allocated sovereign sukuk to finance public projects, several other countries have directed these instruments towards covering budget deficits, as is the case in Sudan and Bahrain. From our perspective, the algerian legislator is more correct in this regard, as this approach aligns with the Shariah nature of sukuk and ensures greater protection for both investors and the state by maintaining compliance with Islamic principles. Sukuk require the existence of real assets upon which they are based, as well as participation in profit and loss and the generation of returns derived from the project itself. This is achieved in the financing of commercial projects. Conversely, when sukuk are allocated to cover budget deficits, such deficits are generally not backed by specific assets or projects, and the returns become dependent on the state's repayment capacity rather than the performance of a productive project. In this way, sukuk become similar to interest-bearing bonds. Moreover, some researchers argue that this practice could lead to increased spending without corresponding revenues, thereby pushing domestic public debt beyond globally recognized safety thresholds[37].

Third : Regulating the conditions for investors holding sukuk :

The investor holding the sukuk in algeria is any natural or legal person, meaning that can acquire these sovereign sukuk : the general public—whether citizens or foreigners ; foreign or national legal entities such as monetary ; local or international financial institutions ; quasi-financial

institutions, insurance companies, the social security fund, or postal institutions ; Traditional banks or Islamic banks, , governments, etc.

Consequently, there are no restrictions on investors, anyone can purchase the sukuk. However, this poses a significant risk, as hostile individuals or those with non-investment motives could acquire the sukuk. Despite this, the legislator has ensured avoidance of this issue by granting the sukuk holder only the right to usufruct from the assets not ownership rights.

Fourth : Regulating the conditions related to the assets underlying the sukuk :

Under article 04 of the ministerial decision issued on 01 june 2025, the Algerian legislator requires that the underlying assets of the Sukuk must be tangible assets, projects, property rights, or usufruct rights. The Tangible assets refer to real estate, land, buildings, ships, aircraft factories, and equipment. While it is meant by projects all existing or future ventures that generate financial returns, such as the construction of an airport, a power plant, or a highway. In contrast, it is meant by Intellectual property rights" the authority granted to the owner of an idea over the subject matter of the innovation, whether it is an invention, a trademark, or an industrial design. They encompass any discovery of new information possessing technical and commercial value, characterized by its intangible nature. These rights are inherently attached to their holder and are ultimately embodied in a tangible form[38].

The legislator also authorized assets to be 'usufruct rights,' which represent the State's right to utilize a specific asset without being its owner—such as the State's right to lease a building or operate a specific project for a defined period.

Based on the above, it can be said that the legislator diversified the assets underlying sovereign Sukuk which ensures that sukuk are based on real assets capable of financial and economic valuation.This approach further serves to mitigate risks compared to financial instruments that are not backed by assets.

Fifth :Regulating the preliminary procedures for issuing sukuk :

Determining the legally required procedures prior to announcing the opening of the sukuk subscription process constitutes an essential stage, as it provides a guarantee for protecting investors' rights, achieving transparency in the issuance process, ensuring the legitimacy of the sukuk and their compliance with legal and Sharia provisions.

According to article 06 of the ministerial decision issued on 01 June 2025, the state must undertake two sequential procedures before calling for subscription in sovereign sukuk: first, obtaining a Sharia compliance certificate from the competent authorities; and second issuing a decision from the minister of finance containing mandatory data stipulated by the legislator.

A- Obtaining the certificate of compliance of the sukuk with the principles of Islamic Sharia.

The oversight of sovereign sukuk compliance with Islamic Sharia has been assigned to the "High Islamic Council," which is a supreme consultative body affiliated with the Ministry of Religious Affairs, supervised by prominent scholars and religious figures[39]. The legislator stipulated that the state must obtain a Sharia compliance certificate from this Council.

The volume of investment in sukuk in any country relies on the trust of issuers and investors that this instrument complies with ethical standards and Islamic Sharia principles more than their pursuit of maximum profits[40]. However, the legislator is criticized for not requiring the publication of a summary of the Council's opinion, which may open the door to questioning the independence or seriousness of Sharia oversight. Moreover, the Council's role has been limited to pre-issuance oversight only, whereas it should have included ongoing post-issuance monitoring to ensure that actual practices do not deviate from the approved Sharia structure at issuance, especially since some violations only emerge during implementation.

B- Issuance of a decision by the minister of finance to announce the invitation for subscription to sovereign sukuk.

The Algerian legislator required that the call for subscription to sovereign sukuk be announced through a decision issued by the minister of finance. This does not mean that the sukuk have already been issued; rather, it is merely a preliminary step in the issuance process. The actual issuance takes place after the completion of the subscription process and the registration of the sukuk.

Furthermore, the legislator stipulated that the decision to be issued by the Minister must include a set of mandatory data, enumerated in Article 07 of the ministerial decision dated 01 June 2025, These are :

- The total issuance amount, the number of sovereign Sukuk, their nominal value, and the modalities for subscription and maturity.
- The opening and closing dates of the subscription period.

- The expected yield (return).
- The participants in the issuance process and the role of each party.
- The conditions for the transfer (assignment) and repurchase of sovereign Sukuk.

It is observed from these data that the legislator did not specify the duration of usufruct rights, cases of force majeure, the powers of the sukuk holder, mechanisms for dispute resolution, and the methods of post-issuance monitoring of implementation after the sukuk are offered. Despite this shortcoming, the requirement to publish the call for subscription to sukuk through a decision issued by the minister of finance ensures a high level of transparency and investor protection since ministerial decisions are published in the Official journal. This means that the call for subscription becomes an official decision issued by the state, thereby acquiring binding legal force. It also allows investors to access all details of the issuance in a clear manner.

Second main title : Legal guarantees established after the subscription to sovereign sukuk :

Once investors subscribe to the Sukuk, they become Sukuk holders with legally defined rights protected by legal guarantees. The most significant legal guarantees provided by the Algerian State to Sukuk participants are :

First : Establishment of the usufruct right for the sukuk holder (investor) :

Comparative legislations vary in defining the nature of the relationship between Sukuk holders and the underlying assets. Some have recognized it as an ownership relationship, such as the Jordanian legislator, while others have established it based on usufruct rights, such as the Algerian and Egyptian legislators.

The right of usufruct is regulated in articles 844 to 854 of the Civil Code[41]. It is one of the rights that are acquired through contract, pre-emption, prescription, or by operation of law. It grants its holder the right to full exploitation of the assets for the duration of the instrument.

Establishing a sovereign sukuk on a right of ownership means that the investor is the actual owner of the assets and bears full responsibility for the asset, has the right to manage it. By contrast, basing a sovereign sukuk on a right of usufruct means that sukuk holders do not acquire true ownership of the asset, but he is granted only the right of use and exploitation for a specified period of time contract expressly provides otherwise.

However, given that the assets underlying sukuk in Algeria are state-

owned and that Algerian law prohibits the disposal of national public property, establishing sukuk on a right of usufruct also provides several important guarantees for investors. Such sukuk are often supported by strong guarantees from the public treasury to compensate for the investor's lack of ownership of the asset, and they also enable investors to participate in major sovereign projects (such as infrastructure, highways, and ports) that cannot be privately owned but generate substantial and stable returns.

Second : Tax incentives for investors :

sovereign sukuk has exempted by the Algerian legislator from taxes for a period of five years, with a maturity equal to or exceeding five (5) years, This exemption includes the Global Income Tax and the Corporate Profits Tax. In addition, transactions related to sovereign sukuk with a maturity equal to or exceeding five (5) years are exempt from registration duties and real estate publicity fees for a period of five (5) years[42]. This enhances the attractiveness of sukuk and reduces legal and financial risks for investors.

CONCLUSION :

The introduction of sovereign Sukuk in Algerian legislation represents a qualitative leap toward diversifying national economic financing sources and easing pressure on the general budget.

The Algerian legislator has adopted a legal approach to regulate the legal guarantees for participants in these Sukuk. Through the study of these guarantees, we concluded the following :

-The legislator has surrounded the sovereign Sukuk process with numerous legal safeguards, starting from the selection of underlying assets, through the Sharia supervision of the High Islamic Council and extending to guaranteeing the investor's right to information, tax incentives, and the sharing of financial returns.

- Sukuk issuance has been restricted to the Public Treasury as the sole entity, ensuring strict centralized control and protecting state assets from risks. The legislation also confirmed the establishment of usufruct rights for the investor, achieving mutual interest, maintaining national sovereignty over strategic assets, and balancing the interests of the State and investors by allocating revenues to profitable public projects of an economic and social nature.

However, the legal framework reveals certain gaps due to the novelty of the Algerian experience. The most prominent is the absence of a Special

Purpose Vehicle (SPV) to issue and manage Sukuk on behalf of the State and act as an agent for investors. Additionally, the High Islamic Council's supervision does not extend to the post-issuance stage, and there is no specific legal framework defining the duties of the parties involved in the securitization process or their relationship with regulatory authorities. Furthermore, there is an inconsistency in applying conventional laws—such as the Civil and Commercial Codes—to Islamic finance, all of which may hinder the attraction of investments.

Recommendations

To enhance the effectiveness of legal guarantees for sovereign Sukuk we propose the following:

- Establishing a standalone legal system dedicated exclusively to Islamic Sukuk.
- Amending complementary laws, such as the Commercial Code and the Civil Code, to align with the specificities of Islamic finance.
- Extending the scope of Sukuk to include agricultural projects, in accordance with global trends and national food security goals.
- Amending legal texts to oblige the High Islamic Council to conduct periodic Sharia audits after issuance.
- Explicitly mandating the Public Treasury to publish periodic financial and technical reports regarding "Sukuk-linked projects," enabling investors to assess risks and returns based on real-time data.
- Publishing the Sharia justifications relied upon by the High Islamic Council in granting "Compliance Certificates" to eliminate skepticism and build trust.
- Establishing specialized committees for Islamic financial arbitration to expedite the resolution of potential disputes between Sukuk holders and the State.
- Creating a legally independent SPV to issue Sukuk on behalf of the Public Treasury.

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