



New Private Public Partnership Law - A Game Changer for Islamic Finance

ALEX SALEH
Partner & Head of Kuwait Office

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OUR REGIONAL FOOTPRINT

التميمي و شركاه
AL TAMIMI & CO.



- > **UAE**
 - Abu Dhabi
 - Dubai, DIFC
 - Dubai Internet City
 - Dubai, The MAZE Tower
 - Ras Al Khaimah
 - Sharjah
- > **BAHRAIN** (Manama)
- > **IRAQ**
 - Baghdad
 - Erbil
- > **JORDAN** (Amman)
- > **KSA** (Riyadh)
- > **KUWAIT** (Kuwait City)
- > **OMAN** (Muscat)
- > **QATAR** (Doha)



With a focus on the Middle East, we have a strong understanding of the business environment that our clients operate in. This, combined with our full range of capabilities, ensures that clients receive sound, strategic legal advice.

With lawyers in 14 offices across 8 countries in the region who are dedicated to working together interactively, we can respond knowledgeably and efficiently on any legal aspect across the region.

Our unified approach illustrates our ability to work together with our clients, address their issues and identify reasonable commercial solutions by building close relationships with them. We recognise the importance of being easily accessible, commercially aware and at the leading forefront of market developments.

We employ a diverse range of talented individuals from varied background and with differing perspectives. They are each familiar with international and local business customs and are capable of addressing issues in a collaborative manner. By having the ability to look at matters from every angle, we can apply our expertise confidently and decisively providing integrated solutions to legal and commercial issues in the Middle East.

Our specialist practice areas include:

- Banking & Finance
- Construction & Engineering
- Corporate Commercial (inc Capital Markets)
- Dispute Resolution
- Employment
- Hospitality
- Insurance
- Intellectual Property
- Legislation & Drafting
- Property
- Special Projects
- Technology, Media and Telecommunications
- Transport

ABOUT OUR KUWAIT OFFICE

Within the State of Kuwait, Al Tamimi & Company operates through a joint venture with registered licensed lawyer Yaqoub Yousef Al Munayae. The firm is the premier full service law firm in Kuwait and offers the highest quality legal services to local and international clients in Kuwait and the G.C.C.

The Kuwait office is headed by Partner Alex Saleh, where he is joined by Partner and Kuwait Joint Venture Partner Yaqoub Yousef Al Munayae and Partner Philip Kotsis, along with more than 20 qualified lawyers from both Western and Arab backgrounds. Al Tamimi is comprised of a highly accomplished transactional team and provides services in Arabic and English and boasts a top litigation team, headed by Yaqoub Yousef Al Munayae.

Areas of practice include:

- Banking & Finance
- Islamic Finance
- Construction & Engineering
- Corporate Commercial
- Dispute Resolution
- Family Business & Private Client
- Information Technology
- Intellectual Property
- Maritime, Aviation & Insurance
- Mergers & Acquisitions
- PPP Projects & Project Finance
- Property and Telecommunications

RECENT ACCOLADES

- Middle East Law Firm of the Year 2013 - Corporate Counsel Middle East Awards
- Islamic Finance Law Firm of the Year in Kuwait 2013 - Corporate International
- Debt Restructuring Law Firm of the Year in Kuwait 2013 - Corporate International
- Islamic Finance Law Firm of the Year in Kuwait 2013 - Global Legal Experts
- Debt Restructuring Law Firm of the Year in Kuwait 2013 - Global Legal Experts
- Sukuk Deal of the Year 2012 (Global) - YAAS KD 12.5 Million Sukuk Al Istithmar - Islamic Finance News
- Kuwait Deal of the Year 2012- YAAS KD 12.5 Million Sukuk Al Istithmar - Islamic Finance News
- Best Real Estate & Property Firm of the Year 2012 - Islamic Finance News
- Islamic Finance Law Firm of the Year in Kuwait 2012 - Corporate International Global Awards
- Debt Restructuring Law Firm of the Year in Kuwait 2012 - Corporate International Global Awards
- Dispute Resolution Law Firm of the Year KSA 2012 - Corporate International Global Awards
- Corporate Law Firm of the Year KSA 2012 - Corporate International Global Awards
- Middle East Law Firm of the Year 2012 - Legal Week Corporate Counsel ME Awards
- Commercial Team of the Year 2012 - Legal Week Corporate Counsel ME Awards
- Corporate Team of the Year 2012 - Legal Week Corporate Counsel ME Awards

➤ PPP Law:

- Law No. 7 of the Year 2008, Regarding the Organization of Build, Operate & Transfer and Similar Systems (“PPP”) and Amendment of Law No. 10 of Year 1980, Regarding the System of State Properties (the “Old PPP Law”);
- Law No. 256 of the Year 2008, Regarding the Issuance of the Executive Regulations of the PPP Law;
- Law No. 39 of the Year 2010, Regarding the Establishment of Kuwaiti Joint Stock Companies to Undertake the Building and Implementation of Electrical Power and Desalination Stations in Kuwait; and
- Decree No. 456 of 2010, Regarding the Issuance of the Executive Regulations for Law No. 39 for the Establishment of Kuwaiti Joint Stock Companies executing the Construction.

➤ Article 13 Prohibits:

- Disposal or grant of any lien, mortgage or other real rights to the subject land and the constructions and building upon it;
- Any asset reverting to the State of Kuwait following the end of the BOT term; and
- Attachment of any real rights over the same.

➤ Lenders' Perspective (both conventional and Shariah-compliant):

- Article 13 restricts lenders from being able to take security over all tangible and substantial assets, including the land that the project is built on, any buildings (including offices, plants, and other fixed structures), any assets, including movable assets, that are integral the project (such as turbines, equipment, or any other fixtures), and any other direct or “real rights” in the assets.

- First PPP Power and Desalination Infrastructure Project in Kuwait.
- Al Tamimi acted as legal counsel for lenders.
- Permissible security package in AZN and as codified under the New PPP Law:
 - Shares in project company (following 3-year statutory lock up period)
 - Proceeds and revenue streams
 - Assignment of project contracts (following minimum 3-years approval)

SECURITY UNDER THE OLD AND NEW PPP LAW

Security	Old PPP Law	New PPP Law
Share Pledge over Investor's shares in Project Company	Silent However, permissible under Commercial Companies Law	Permissible prior to the 2 year lock out period after the approval of the Supreme Committee
Assignment of contractual proceeds	Silent However, common in Kuwait and easily effectuated by contract between parties (e.g., Direct Lender Agreement)	Permissible
Immovable Assets	Prohibited	No change
Movable Assets	Possible through possessory mortgage. However, movable assets considered integral to utilization of an immovable asset shall be considered an immovable asset itself	Permissible to mortgage and establish guarantees on any assets

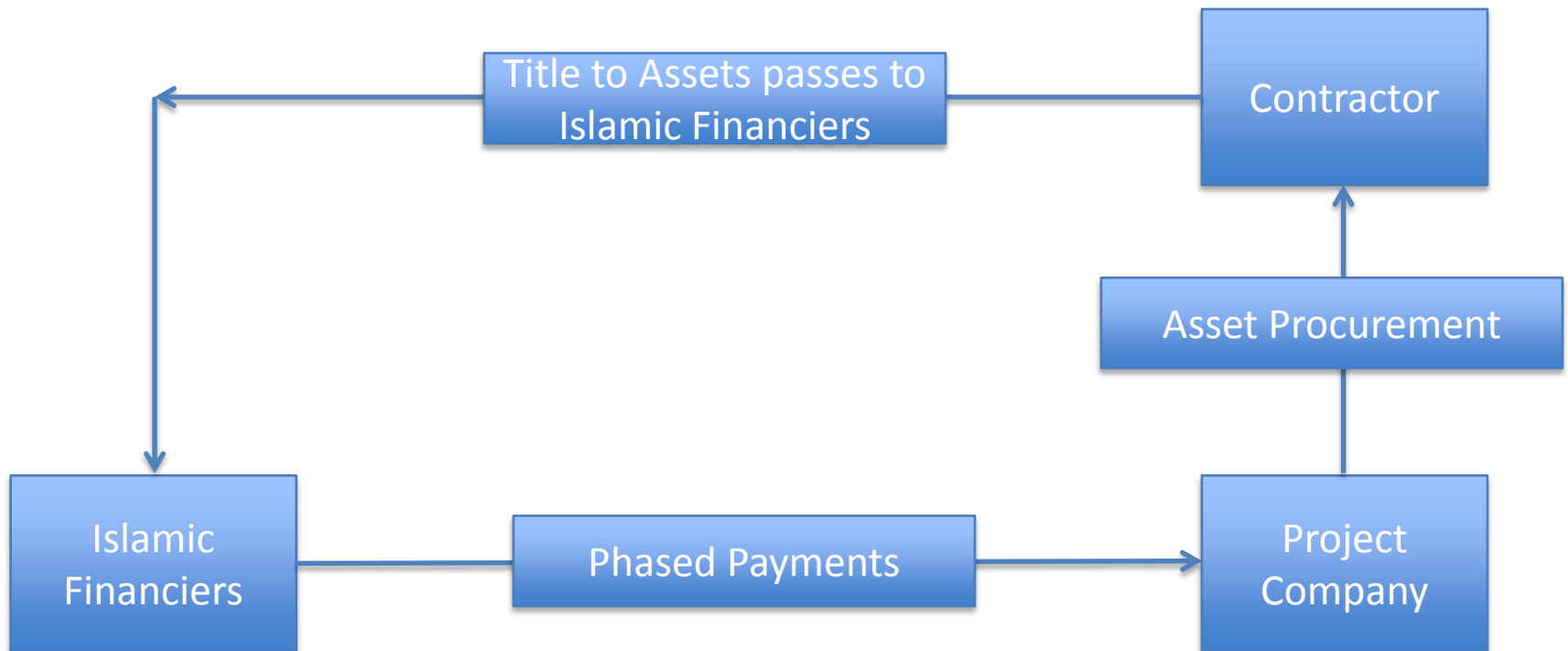
➤ Article (23):

- Allows a bank to take a mortgage on the assets of the actual project
- Codifies principles applied in Az-Zour project, such as assignment of contractual proceeds.
- Codifies principles applied in Az-Zour project, such as pledge against shares prior to the 2 year lock-out period.
- Allows the pledge contract to include clauses which allow the creditor mortgagee to own the pledged shares or request the selling of the same in the event the investor breaches the financing terms.

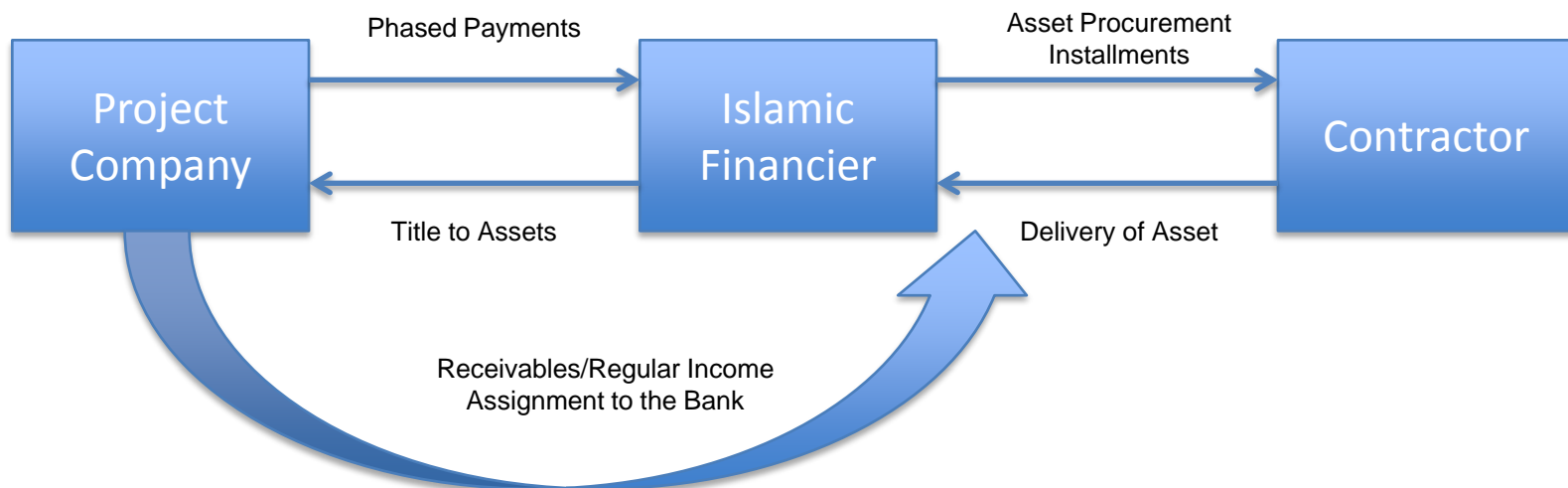
➤ Istisna'a (Analogous to Construction Loan)

- Contract for sale whereby one party undertakes to manufacture a specific asset according to agreed specifications, delivery and price.
- In a parallel Istisna'a structure the borrower undertakes under an Istisna'a contract to procure the construction of the relevant plant and equipment from the manufacturer.
- The borrower enters into a construction contract with the contractor incorporating a pass through of the terms of the Istisna'a contract.
- The Islamic financiers make phased payments to the borrower, akin to draws under any conventional finance facility.

Istisna'a Structure



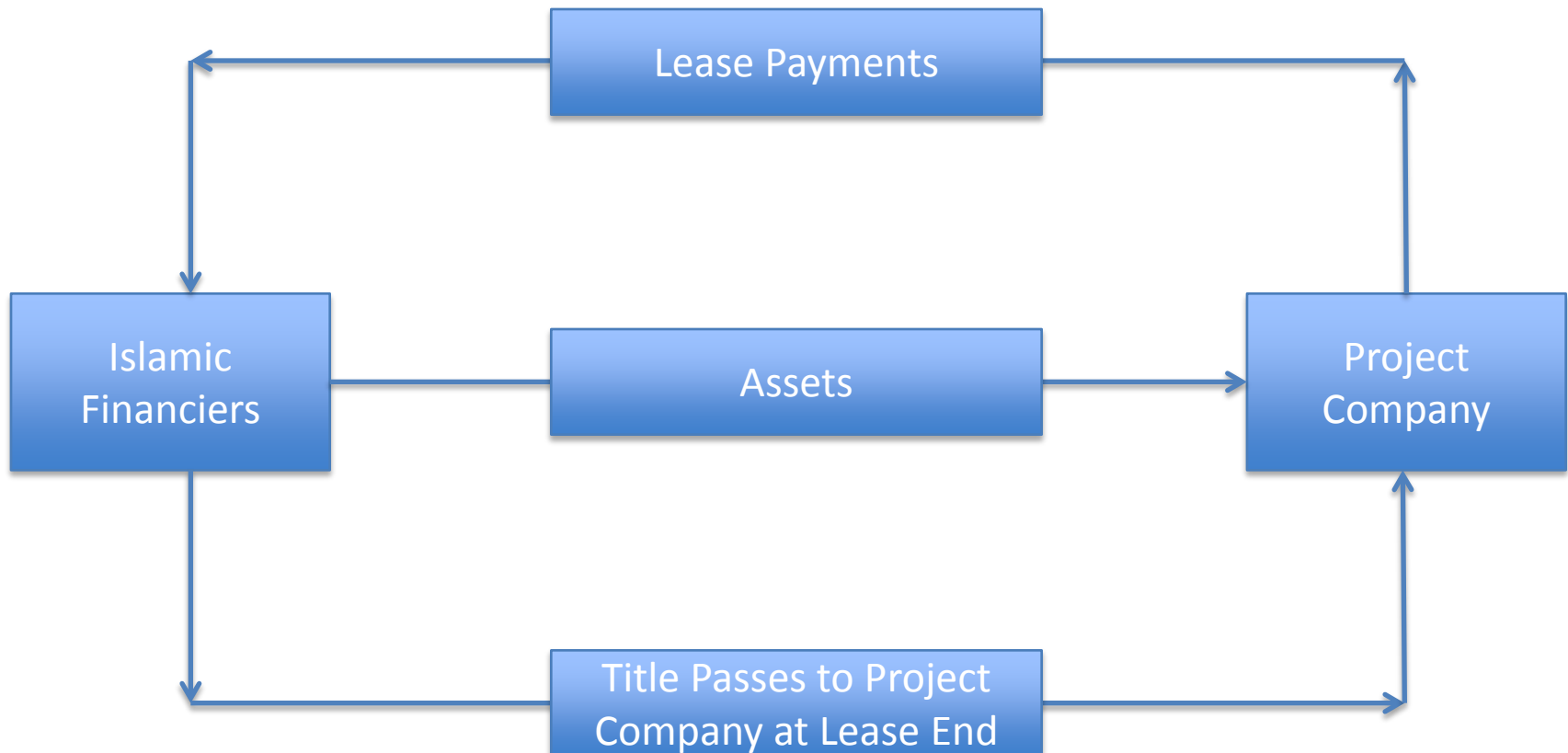
Parallel Istisna'a - Government Projects



➤ Ijara (can be used upon completion of EPC - Istisna'a stage):

- A lease contract where a lessor purchases an asset and rents it to the lessee for a specific period of time at an agreed rental
- The leased asset must be a legal right to use and derive profit or benefit from the asset
- An Ijara must be transparent, detailed and the terms agreed upon prior to execution in order to be Shari'a compliant
- The lessor must maintain legal and beneficial ownership of the asset and bear responsibility for risks associated with ownership of the asset.
- In Islamic finance, the form of Ijara used typically includes a promise by the Islamic financier as lessor to transfer ownership of the leased asset to the borrower, as lessee, either at the end of the lease period or in stages during the term of the Ijara.

NEW PPP LAW – ISLAMIC FINANCE OPPORTUNITIES



Questions



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KUWAIT TEAM

Team Member and Designation	Team Member and Designation
Alex Saleh - Partner & Head of Kuwait Office	Abdullah Ibn Masud - Associate
Yaqoub Al-Munayae - Partner	Sonia Salah - Associate
Philip Kotsis - Partner	Esier Kim - Associate
Osama Ghazy - Senior Associate	Sadallah Ali - Associate
Omar Handoush - Senior Associate	Tarek Abu Mariam - Associate
Paul Saba - Senior Associate	Omar Al-Qahtani - Associate
Ahmed Rezeik - Senior Associate	Ramy El Damrdash - Associate
Abdelazim Hamad - Senior Associate	El Hassan Abdelrazek - Associate
Hamzah Al Shammaa- Associate	