

# Shariah compliant securitization challenges under Kuwait Law & Practice - a Case Study

**ALEX SALEH**

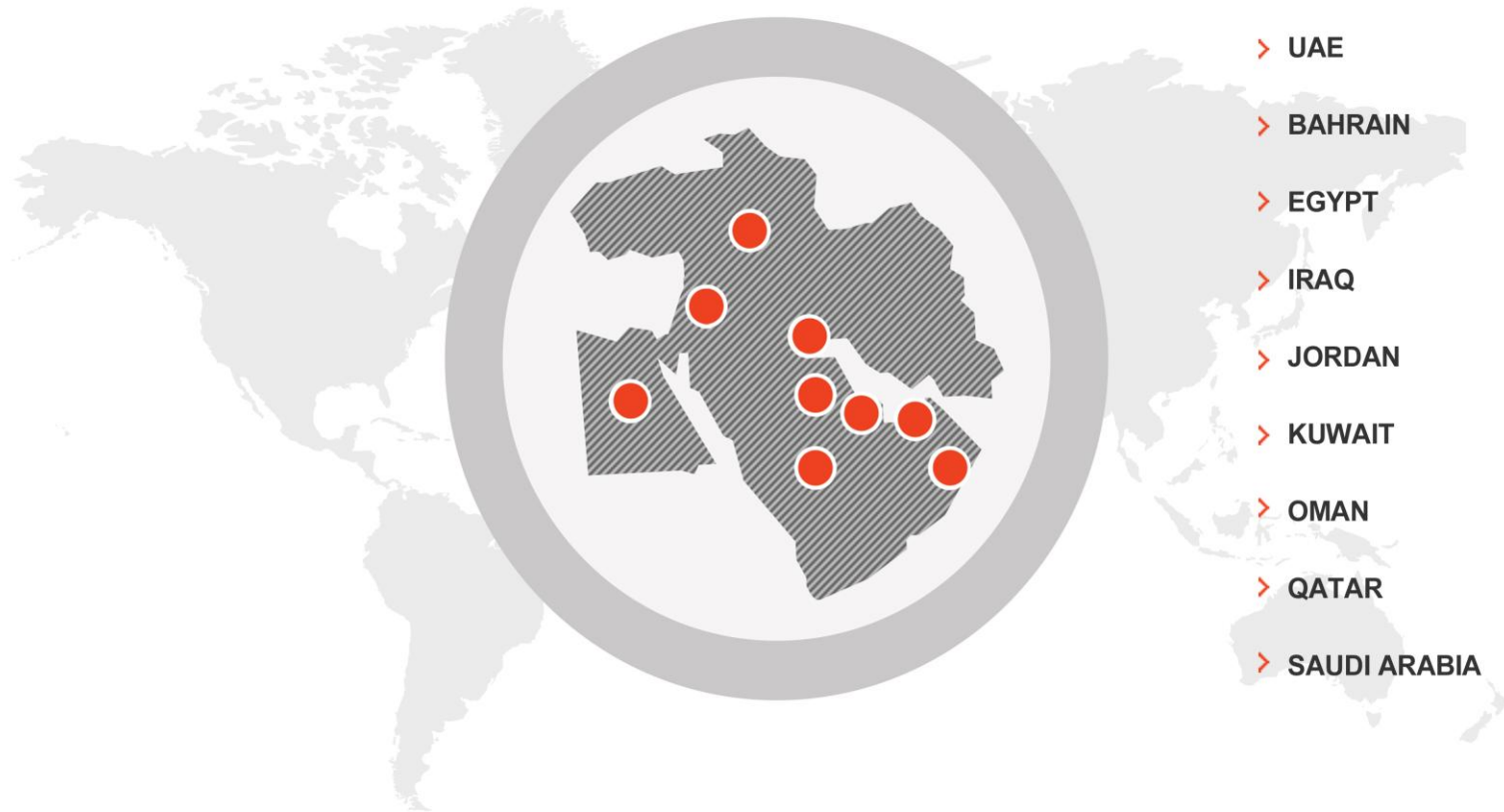
Partner & Head of Kuwait Office

19 October 2015



# OUR REGIONAL FOOTPRINT

التميمي و مشاركون  
AL TAMIMI & CO.



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 16 offices across 9 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 18 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

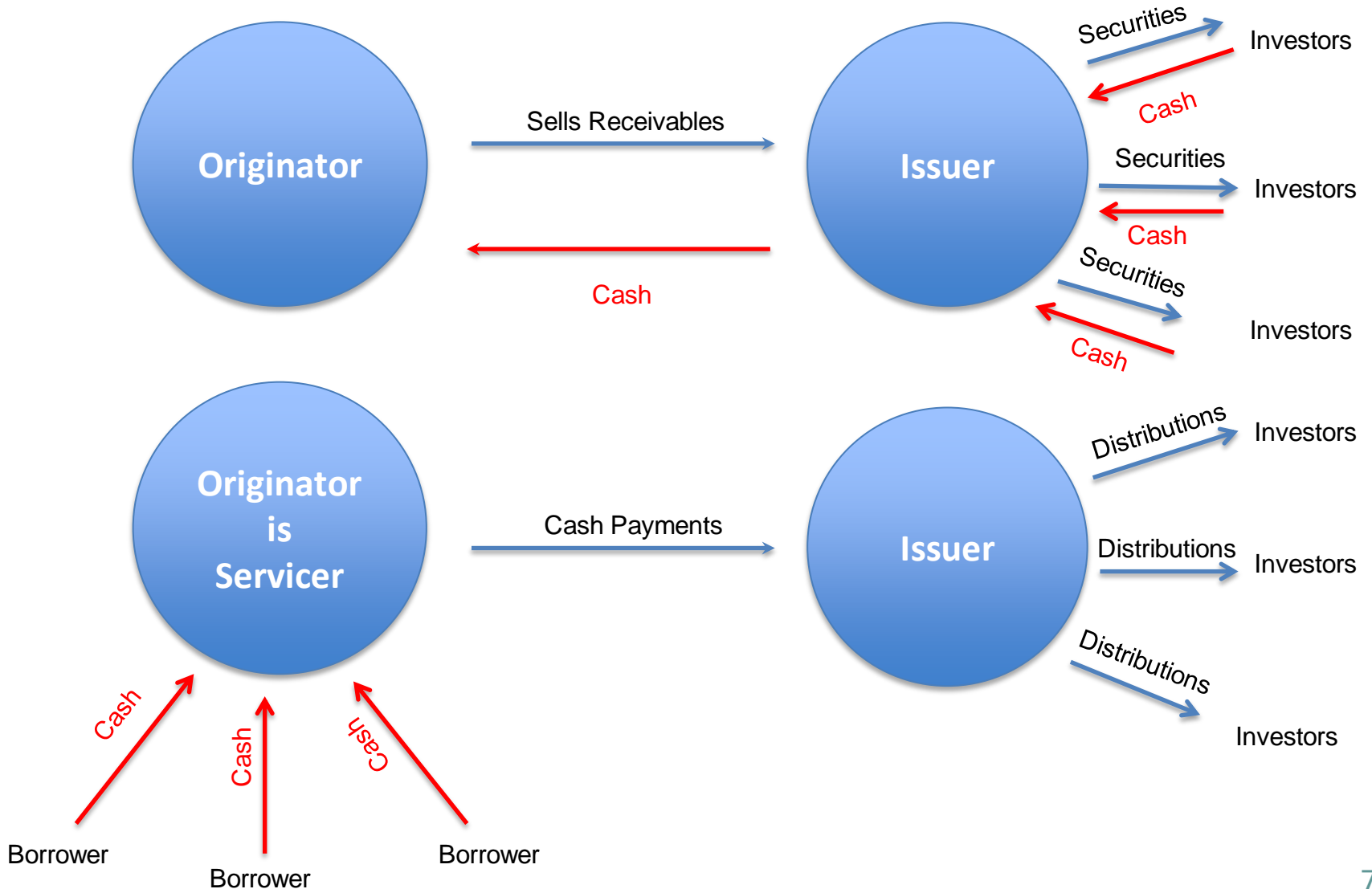
# WHAT IS SECURITIZATION

- Financial practice of pooling contractual debt and selling related cash flows to third parties as securities.
- Investors are repaid from principal and interest/profit cash flows from underlying debt.
- Securities backed by receivables are asset-backed securities (ABS).

# STANDARD STRUCTURES - CONVENTIONAL

- Originator owns the receivables - looking to sell for cash flow purposes.
- Originator pools receivables and sells to a special purpose vehicle “SPV” or Issuer.
- The Issuer issues tradable securities to fund the purchase.
- A Servicer collects payments and monitors the receivables.
- Servicer is often the Originator.

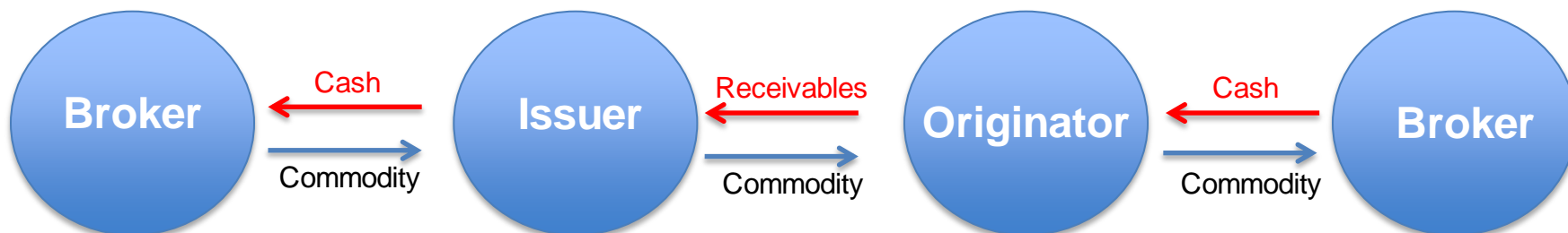
# STANDARD STRUCTURE - CONVENTIONAL





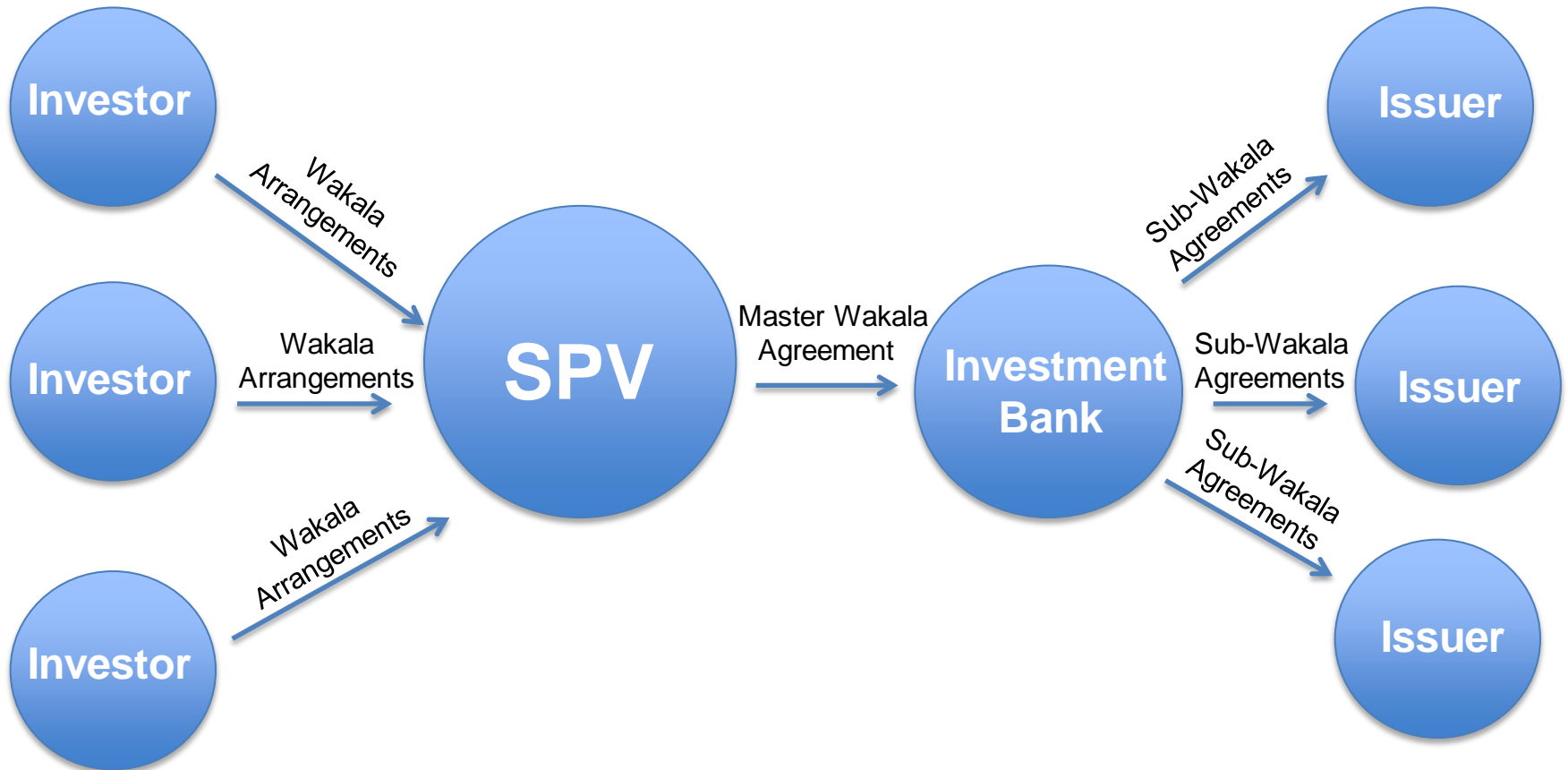
- Ability to sell debt under Shariah;
- Ability to legally assign debt under Kuwait law;
- Ability to establish a special purpose vehicle (SPV);
- Ability to have a foreign SPV be assignee or pledgee; and
- Ability to sell to investors on Shariah-compliant basis.

- Under Shariah - sale of debt can only be done at par value.
- Solution - use of a Murabaha Structure to acquire obligations.
- Murabaha Structure:



- Under Kuwait law, need to:
  - (i) serve debtor or have him sign off on assignment; and
  - (ii) need date-stamping for priority over other assignees.
  
- May not want to change payee.
  
- Multiple small debtors.

- Although the Kuwait Companies Law (Law No. 25 of 2012) contemplates SPVs, still not a practice.
- Generally, use Cayman Islands or more frequently now, DIFC.
- SPV needs to appoint Security Agent.



# Questions



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