Our global Shariah compliant Asset Finance practice
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The global Islamic Finance industry, which currently has over 700 active financial institutions participating in it across 61 countries, has grown exponentially over the past fifteen years and is expected to reach USD 2.6 trillion by the end of 2017.

It has evolved such that almost anything which can be offered on a conventional interest based basis can now also be offered on a Shariah compliant basis – and Asset Finance transactions are particularly suited to Shariah compliant structures.

Isn’t Shariah compliant Asset Finance only open to Muslims?

No. All types of Islamic Finance are open to all irrespective of belief. In actual fact very few Shariah compliant transactions are motivated by religious sensibilities. Other motivations include…

A desire to access more liquid funding sources and/or new investors

The ability to combine Islamic and conventional products to make transactions more ‘bankable/attractive

Better pricing

Diversification of financings and investments as part of prudent financial planning

Commercial terms which may be more favourable than those available from conventional financiers

Flexibility in structuring

No.
What are the key Shariah prohibitions applicable to Asset Finance transactions?

- **Gharar**
  - Uncertainty – the key terms of a contract must be certain

- **Maisir**
  - Speculation/gambling

- **Riba**
  - Often misunderstood to mean interest but actually any accretion of money

- **Unjust enrichment/unfair exploitation**
  - The parties to a contract must enter into it fairly

- **Unethical purpose**
  - Certain products and services are not deemed to comply with the Shariah, for example tobacco and weapons of war
What are the key Shariah compliant structures and products for Asset Finance transactions?

**Istisna’a**
Procurement financing

**Diminishing Musharaka**
A joint venture where the financing party’s interest is reduced over time as the customer buys out the financing party’s share

**Murabaha**
The sale of an asset by a financier to a customer on a deferred payment basis

**Ijara**
Leasing

**Tawarruq**
A reverse Murabaha where the asset purchased by the customer is on-sold by the customer to a third party
How is a Shariah compliant Asset Finance transaction different to a conventional Asset Finance transaction?

A Shariah compliant Asset Financing and the documentation involved is broadly similar to a conventional Asset Finance transaction. The key differences are:

- **Ownership liabilities**: In lease arrangements, the lessor (rather than the lessee) has the obligation to perform major maintenance and repairs, pay ownership taxes and maintain ownership insurances (e.g. hull or airframe insurance). A ‘service agency’ arrangement can be a solution.

- **Indemnification**: Viewed by some Shariah scholars as being fault allocation rather than risk allocation.

- **Conditions precedent**: Can be viewed as making the contract ‘uncertain’ (and therefore a conditional sale).

- **Agreed value**: The lessee is not obliged to pay ‘agreed value’ on a total loss.

- **Total loss**: Rent must cease to be payable on a total loss.

- **Default interest**: ‘Additional amounts’ to cover actual costs are permitted, but the remainder must be donated to charity.

- **Events of default**: Must be limited to events directly within the lessee’s control.
The largest Shariah compliant aviation deal to date was announced in 2015 by Saudi Arabian Airlines, Airbus, International Airfinance Corporation (an Airbus-backed Shariah compliant aircraft leasing fund), Quantum Investment Bank Ltd and Palma Capital Limited. Saudi Arabian Airlines is to take delivery of 30 A320-200 aircraft and 20 A330-300 aircraft, worth around USD 8 billion based on list prices, increasing the airline’s existing fleet by over 80%.
How can CMS help you in the world of Shariah compliant Asset Finance?

Our global Shariah compliant Asset Finance practice can assist you to navigate the nuances of Shariah compliant Asset Finance whether you are an established market participant or a new entrant.

We combine our knowledge of banking and finance principles with our experience of structuring Shariah compliant transactions to assist you in achieving your commercial objectives whilst remaining legally protected.

If you are unsure how Shariah compliant Asset Finance transactions differ from their conventional counterparts, we can explain the key differences to you in a manner which is easy to understand.

We have practical experience of guiding clients across the full range of Islamic products and services and are renowned for putting our clients’ needs first.

Our geographic reach helps our clients wherever their activities take them.

We have offices in all the key markets for Islamic Finance including the Middle East, North Africa, Europe and Asia which means you will have on-the-ground support whenever you need it.
What types of Shariah compliant Asset Financings have CMS worked on?

Our global Islamic Finance practice has experience of acting on behalf of clients in all areas of Shariah compliant Asset Finance. Some recent examples of the types of work that members of our team have worked on are set out below.

**Tawarruq**

— Acting for a major international bank on a proposed USD300m financing to a large shipping conglomerate structured using a Tawarruq. The proceeds of the Tawarruq were to be used to fund the acquisition of a number of pre-owned vessels and for working capital purposes.

**Murabaha**

— Advising a Bahraini bank on the financing of an LNG tanker. The financing was structured as a true asset Murabaha and involved the purchase of the LNG tanker by the financier (acting through the customer as its agent) and the onward sale of the LNG tanker by the financier to the customer on a deferred payment basis.

**Ijara**

— Advising an international airline on the financing of two Airbus A380 aircraft using an Ijara structure. The financier acquired the aircraft through a novel trust arrangement directly from Airbus before on-leasing them to the airline.

**Ijara**

— Acting for a Shariah compliant bank on the financing of two Boeing 767-300ER aircraft. This was an interesting transaction as the airline were not directly involved in the financing. Instead beneficial title to both aircraft was purchased by the Shariah compliant bank and then leased to a third party who itself sub-leased to the airline its beneficial title to the aircraft. Legal title remained at all times with the airline.
Asset Finance transactions are well suited to Shariah compliant structures, particularly an Ijara (lease), because they satisfy the requirement that the subject matter is a valuable, identifiable and quantifiable asset with utility. The taking of security (to guard against breach of contract) is approved and encouraged in Islam.
Why choose us?

A defining feature of the exponential growth of Islamic Finance in the past 40 years has been its constant evolution both to meet market demand and also to compete with conventional banking and finance.

In order to leverage off the opportunities which Islamic Finance presents, it is imperative that clients appoint legal counsel who are not only able to advise them of what is legally possible but who understand their business and can offer them insights into the Islamic Finance market, and the Asset Finance market, which they may not otherwise have. CMS’ client centric approach combined with our deep knowledge of Islamic Finance and Asset Finance means we are uniquely placed to be able to offer such insights.

CMS’ Asset Finance practice, comprised of lawyers in over 20 countries, has two main areas of focus: aviation finance and shipping and offshore marine finance.

In the aircraft finance sector, the CMS team assists a variety of key players in the aviation industry, including banks, finance and operating lessors, airlines, buyers and sellers of aircraft and maintenance organisations, around the world.

In the shipping and offshore marine finance sector, the CMS team has extensive experience advising across the maritime industry in respect of many different types of vessel, from FPSOs to offshore support vessels and from ferries to fishing boats, acting both borrower side and financer side, including for commercial lenders and export credit agencies.

‘Your World First’

— Your world comes first. You are always our number one priority.
— We understand the details of your business and the environment you work in.
— We build on deep local roots, forming an international organisation.
— We work together in cross-border teams to give you the full picture.

Sector knowledge

— We were one of the first international firms to organise our business along sector group lines.
— Our eight sector groups provide you with integrated services combined with leading edge industry sector capability.
— We bring together individuals from all practice areas to focus on a particular sector, allowing us to pinpoint the commercial issues and risks on a transaction.

Above and beyond

— We go above and beyond for our clients and endeavour to ensure that their expectations are always exceeded.
— We speak on your behalf when new laws are made and act proactively to alert you to issues which your business may face in the future.
— We provide services that add real value, such as Law Now 2.0 – our market leading online knowledge portal that covers 75 areas of law.
Who can you contact to help you?

The global Islamic Finance practice at CMS is led by Shakeel Adli. Shakeel has over ten years of experience in Islamic Finance, is well versed in all Shariah compliant Asset Finance structures and products and can guide you through the nuances of Islamic Finance wherever you may be based.

We encourage you to get in touch with Shakeel (or your normal CMS contact if you prefer) to discover what we can do for you.

Shakeel Adli
Partner, Head of Islamic Finance
T +971 4374 2816
M +971 55 861 3241
E shakeel.adli@cms-cmck.com

I am passionate about Islamic Finance and advising clients on Shariah compliant Asset Finance transactions. No matter how small or large the matter, please do not hesitate to contact me should you need assistance.

CMS also has considerable experience of other Shariah compliant transactions and products including Corporate Lending, Real Estate Finance, Project Finance, Trade Finance, Product Development/General Advisory and Sukuk/Debt Capital Markets Instruments. For more information, please see our brochure entitled ‘Our global Islamic Finance practice’.
CMS facts and figures

32 new partners in 2015, taking the total to over 880

> 6,000 staff
> 3,400 lawyers
> 880 partners

Operating in 59 cities across 38 countries

Top rankings in 2016
M&A League Tables (by deal count)
#1 Europe
(Bloomberg, Thomson Reuters)

Acritas Sharplegal
Top 20 Global Brand Ranking
#3 Global
(Bloomberg up to USD 500m)

EUR 1.01bn turnover for 2015

19 practice and sector groups working across offices

Ranked 3rd most global law firm in the Am Law 2016 Global Top 100
Where to find us
CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term “firm” are used to refer to some or all of the member firms or their offices.

CMS locations: