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# Legal Considerations Affecting the “Export” of Islamic Asset- backed Products

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# Reconciliation of *shari'ah* and local law

- **underlying reference assets and the transaction structure need to satisfy both commercial and *shari'ah* law**
  - asset control and bankruptcy resolution
    - security interest (property law)
    - investor protection and enforceability of asset claims (insolvency law)
  - but contractual certainty essential to Islam
  - actual issue is the inseparability of investor returns and asset performance (full recourse) and invalidation of commercial interest
- **Islamic jurisprudence neither definite nor bound by precedent and no universal recognition and enforceability of rulings**
- **regulatory standards of *shari'ah* compliance vary considerably**
  - AAOIFI recommendations: asset ownership, investment guarantees, and the *shari'ah* advisory and approval process
  - standardization would enhance the valuation and efficient pricing of *sukuk* and improve secondary market liquidity

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# Structuring ABS in Non-Islamic Jurisdictions and Outlook

## Cost-benefit trade-off

- potentially broader **investor base**
- asset-based nature and **administrative considerations** (asset identification, organizational structure)
- **diversification** of domestic capital markets and attract Islamic investors
- political externalities and **nuanced regulation**
  - assessment of the role of non-regulated *shari'ah* boards and how they affect the financial and operational viability of an authorized financial institution or SPV

## Outlook

- what aspects of **market reform** will be most difficult to implement? What lessons can be learned from seasoned and new issuers and regulatory and standard-setting bodies?
- **success of current standard setting** aimed encouraging future growth of will depend on how easily these new structures are accepted and understood