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Religious Normativity, Market Rationality, and the Legal Construction of Sukuk

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Abstract

Islamic finance is commonly analysed either as a faith-based capital-market segment or as contractual techniques designed to circumvent the prohibition of interest. This contribution proposes a theoretical-legal reading instead, asking under what conditions the conversion of *sharīʿa* principles into capital-market instruments preserves their normative substance and under what conditions it reduces them to a formal shell. Two concepts organise the answer: legal translation – the never neutral operation by which principles of revealed origin are rendered in the technical language of contracts, securities, and regulation, and dual formalism, the twofold degeneration occurring when religious certification is reduced to a documentary check while the receiving secular system admits the instrument as a mere contractual form. The study is doctrinal and comparative, not empirical: it works on the religious-legal sources as mediated by *fiqh* scholarship, on AAOIFI and IFSB standards, on State legislation, case law, and scholarship, comparing Malaysia, the Gulf Cooperation Council countries, the United Kingdom, Luxembourg, and Italy along eight dimensions. Taking *sukuk* as the paradigmatic case, the analysis finds that the asset-backed/asset-based divide is the principal stress point of the translation, where substantive fidelity – the first of four jointly required criteria, alongside functional adequacy, recognisability, and verifiability – is most severely tested: purchase undertakings at nominal value reintroduce the credit-risk profile of the conventional bond, and insolvency is the point at which the divergence between proprietary form and obligational substance becomes visible. The article derives policy implications and indicates directions for further research.

Keywords: Islamic finance, *sukuk*, *sharīʿa* compliance, legal translation, dual formalism, comparative law.

1. Introduction

Over the last two decades, Islamic finance has ceased to be an object of erudite curiosity, reserved for specialists in Islamic law, and has established itself as a structured segment of the capital markets. The most authoritative estimates place the total value of *sharīʿa*-compliant assets well above three and a half trillion US dollars (ICD & LSEG, 2024), distributed among banking activity, investment funds, cooperative insurance, and, above all, debt market instruments. In the face of such expansion, legal scholarship nevertheless continues to grapple with a basic difficulty: the temptation to describe Islamic finance as an essentially religious, if not folkloric, phenomenon or, at the opposite extreme, to reduce it to a mere technique for capturing a clientele defined on a confessional basis. Both readings, though prompted by opposite concerns, share one limit: they fail to grasp what makes the phenomenon theoretically interesting for the jurist.

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This contribution starts from a different premise. Islamic finance is not to be understood merely as a confessional variant of the global financial market, nor as a marginal sector destined to satisfy identity-related needs, but as a genuine legal laboratory, within which the tensions between religious normativity, economic rationality, contractual technique, and the need to adapt to state legal systems become visible, with a sharpness that secular legal orders tend rather to conceal. From this perspective, it can be described as a permanent exercise in legal translation: the operation, never neutral and never concluded, by which principles of revealed origin are converted into the technical language of contracts, securities, and market regulation, without either normative grammar being able to claim full sovereignty.

Adopting the notion of translation as an interpretive key is not a merely metaphorical choice. Every translation entails a loss and a gain: a residue that resists rendering and a surplus of meaning imposed by the target language. Similarly, the conversion of a religious prohibition into a contractual clause, or of an ethical principle into a listing requirement, leaves neither the principle nor the instrument unscathed: it transforms both. It is in this space of mutual transformation that the questions most relevant to the law are located, and it is here that Islamic finance offers the comparative lawyer a field of observation hardly to be found elsewhere with equal clarity.

Against this background, the contribution addresses one main research question: under what conditions does the translation of *sharīʿa* principles into market-ready financial instruments preserve the normative substance of those principles, and under what conditions does it reduce them to a formal shell? Three secondary questions are specified. First, which legal features – ownership structure, nature of recourse, allocation of risk – distinguish *sukuk* structures that preserve the substance from those that replicate, in economic terms, the conventional interest-bearing bond? Second, how do different jurisdictions organise the reception of the instrument, and does the balance between standardisation and interpretive pluralism vary across them? Third, what does the Italian case – a secular civil law system without any enabling framework – reveal about the conditions of a successful reception? The answer is organised around two concepts that constitute the original contribution of the article: legal translation, understood as the interpretive key just illustrated, and dual formalism, by which is meant the twofold and mutually reinforcing degeneration that occurs when religious certification is reduced to a documentary check and, symmetrically, the receiving secular legal system admits the instrument as a mere contractual form emptied of its substance. Both notions are conceptual instruments, not empirical findings: the article is doctrinal and comparative in nature, and no claim advanced in it rests on primary data.

Therefore, the gap the article addresses is twofold, and Section 2 reconstructs it in detail. The literature on *sukuk* – largely economic and technical-financial – has mapped structures and markets with precision but has rarely treated compliance as a problem of legal theory; the comparative literature on the circulation of legal models, for its part, has elaborated the notions of transplant, hybridisation, accommodation, and regulatory convergence, but has applied them only occasionally to the movement of norms from a religious to a secular normative order. The notion of legal translation enriches both strands because – unlike the transplant metaphor – it assumes neither the identity of the object transferred nor the passivity of the receiving context, and because it comes equipped with criteria of success and failure (§ 2.3) against which concrete structures can be assessed; the notion of dual formalism names the specific failure mode that neither strand has isolated. It should be stressed that the contribution of the article is conceptual, not merely comparative-descriptive: the jurisdictional comparison of Section 6 serves to test and refine the analytical framework, not to substitute for it.

Among the instruments of Islamic finance, *sukuk* offer the most instructive testing ground for grasping this dynamic. Commonly and improperly designated as 'Islamic bonds', they arise precisely from the need to construct an alternative to the conventional debt security that does not incorporate an interest rate and remains anchored to a real asset. Precisely because they sit at the point of maximum friction between the religious prohibition and the consolidated practice of the financial markets, *sukuk* make it possible to observe legal translation at its most delicate moment: the moment when fidelity to the principle and attractiveness to the investor risk diverging, and when doctrinal coherence is called upon to measure itself against the pressure of international standardisation.

The article proceeds as follows. The remainder of this paper is organised as follows: Section 2 reviews the literature and defines the criteria by which a legal translation may be judged successful or unsuccessful; Section 3 sets out the methodology; Section 4 reconstructs the analytical framework – the religious normativity of the economy, the prohibitions of *ribā, gharar,* and *maysir*, and the construction and governance of *sharīʿa*-compliant products; Section 5 applies the framework to *sukuk*, with particular attention to the asset-backed/asset-based divide and to insolvency; Section 6 conducts the comparative analysis; Section 7 discusses the results; Sections 8, 9, and 10 draw the policy implications, acknowledge the limitations of the study, and conclude. The thesis running through the entire itinerary is that *sharīʿa* compliance, far from being acquired once and for

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all, constitutes an unstable process, exposed to the risk of formalism, yet capable at the same time of critically questioning the presumed axiological neutrality of conventional finance.

2. Literature Review

2.1. Islamic finance and sukuk: doctrinal reconstruction and market analysis

The scholarship on Islamic finance has developed along two main lines. First, doctrinal scholarship has reconstructed the religious-legal foundations of the sector – the prohibitions of *ribā, gharar,* and *maysir*, the general theory of the *sharīʿa*-compliant contract, and the participatory schemes of *muḍāraba* and *mushāraka* – and their systematic implications for banking activity (Piccinelli, 1996; Usmani, 2002; Hamaui & Mauri, 2009; Atzori, 2010; D'Arienzo, 2012; Russo, 2014; Biancone, 2017; Cattelan, 2017; Cupri, 2021, 2022). Within this line, particular attention has been devoted to the conception of property rights that underlies Islamic economics – ownership as participation in a divinely ordered distribution rather than as exclusive appropriation (Cattelan, 2013) – a conception whose relevance for the legal qualification of *sukuk* will become apparent below. Second, technical-financial scholarship has analysed the instruments themselves: the structure and typologies of *sukuk*, their relationship with securitisation, and the standards governing their negotiability (Iqbal & Mirakhor, 2007; Jobst, 2007; Khaleq & Richardson, 2007; Al-Bashir & Al-Amine, 2012; Miglietta, 2012; Latham & Watkins, 2015; Russo, 2019; Cupri, 2023).

Alongside these, three more specific strands are relevant. The first concerns *sharīʿa* governance: the composition, functions, and independence of the supervisory boards, the risk that certification degenerates into a formality, and the harmonising role of the standard-setting bodies – the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) – whose output remains, as a rule, non-binding (DeLorenzo, 2007; Biancone, 2017; Cupri, 2022, 2025). The second concerns the encounter between Islamic finance and secular legal systems, examined both in general terms (Ercanbrack, 2015) and with reference to individual jurisdictions: the United Kingdom (Ainley et al., 2007; Cupri, 2025), Italy (Alvaro, 2014; Miglietta & Rampino, 2017; Cupri, 2025), and the European market more broadly (Russo, 2019). To the same strand belongs the institutional survey of the European Central Bank, which examined the compatibility of Islamic intermediation, and of *sukuk*, with the monetary and collateral framework of the euro area (di Mauro et al., 2013). The third concerns the most recent developments: the convergence with ESG criteria and the growth of green and sustainability *sukuk*, promoted by joint institutional initiatives (ICMA, IsDB & LSEG, 2024; LSEG, UKIFC & GEFI, 2024; UNDP, 2025; World Bank, 2025), the expansion of the market documented by industry and multilateral reports (ICD & LSEG, 2024; Fitch Ratings, 2025), the use of *sukuk* in infrastructure and public–private partnership schemes (Nsouli, 2025), and the first experiments with tokenised and smart *sukuk* (Mousavi et al., 2025).

2.2. Transplant, hybridisation, accommodation, convergence and translation

The comparative literature offers several concepts for describing the movement of legal models across systems, and the notion of legal translation must be positioned against these. The classical category is that of the legal transplant: the borrowing of a rule or institution from one system by another, whose very possibility presupposes that rules can travel relatively unaltered and that their relationship with the social context is loose (Watson, 1974). The critique of this assumption has produced the image of the legal irritant: the transferred rule is not implanted but sets off, in the receiving system, a chain of reactions that transforms both the rule and its new environment (Teubner, 1998). From a different angle, the notion of legal hybridisation describes the emergence of composite normative orders, of which the law of Islamic finance, suspended between *fiqh*, transnational standards, and State law, is a leading example (Ercanbrack, 2015). Accommodation, a category elaborated above all in the law and religion literature, designates instead the adjustments by which a secular system makes room for religiously motivated practices without incorporating the religious norm as such – the model followed, as will be seen, by the English legislation on alternative finance (Cupri, 2025). Finally, regulatory convergence indicates the progressive alignment of the content of rules across systems under the pressure of markets and standard-setters, independently of any formal borrowing.

Legal translation differs from each of these notions in a precise respect, and it is in this difference that the originality of the perspective adopted here lies. Unlike the transplant, translation assumes neither the identity of the object transferred nor the

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neutrality of the operation: as in interlinguistic translation, so in the conversion of a religious prohibition into a contractual clause, there is always a residue that resists rendering and a surplus of meaning imposed by the target language (Langer, 2004). Unlike hybridisation and convergence, which describe outcomes, translation describes an activity, and therefore has agents – the *sharīʿa* boards, the standard-setters, the legislators, and courts of the receiving systems – whose choices can be assessed. Unlike accommodation, which observes the process from the standpoint of the receiving order alone, translation keeps both normative grammars in view: what the operation does to the religious principle matters as much as what it does to the secular category. The concept was first elaborated in comparative legal scholarship to account for the selective and transformative circulation of legal ideas across systems (Langer, 2004); it is here extended – and this is the specific theoretical move of the article – to the circulation of norms between a religious and a secular legal order, a setting in which the asymmetry between the two grammars is at its greatest.

2.3. The research gap and the criteria of successful translation

The review just conducted brings the research gap into focus. The doctrinal and technical-financial literature on *sukuk* has described the structures; the comparative literature has elaborated the concepts; however, the two have rarely been made to work together, and the question of what distinguishes a successful from a failed conversion of a religious principle into a market instrument has remained largely implicit. Filling this gap requires explicitly stating the criteria by which the quality of a legal translation is assessed in the present article. Four are proposed. (i) Substantive fidelity: the operative core of the translated principle – here, effective risk sharing and the effective anchoring of the return to a real asset or activity – must survive in the economic substance of the instrument, not merely in its documentation. (ii) Functional adequacy: the instrument must perform, in the receiving market, the function for which it was constructed – raising finance, circulating on a secondary market – since a translation that preserves the principle but produces an unusable instrument has equally failed. (iii) Recognisability: the instrument must be capable of being received by the secular legal system within its own categories – property, contract, security, insolvency – without denaturation, that is, without the reception cancelling precisely the features that distinguish it. (iv) Verifiability: there must exist a governance mechanism – religious, regulatory, or both – capable of ascertaining that the first criterion continues to be satisfied over the life of the instrument, and that mechanism must not itself be reducible to a documentary formality. A translation fails when any of the four criteria is unmet; it fails in the specific mode here called dual formalism when criteria (i) and (iv) fail on the religious side while criterion (iii) is satisfied only in appearance on the secular side – when, in other words, both grammars retain the shell of the principle and neither retains its substance. These criteria guide the analysis of Sections 5 and 6 and are returned to in the Discussion.

3. Methodology

The study is doctrinal and comparative in nature. This doctrinal and comparative study does not present empirical findings: no dataset is constructed, no hypothesis is statistically tested, and the market figures referred to in the text perform a purely contextual function and are drawn exclusively from institutional and industry sources (ICD & LSEG, 2024; Fitch Ratings, 2025; World Bank, 2025). The doctrinal component reconstructs the content and rationale of the relevant rules – religious and secular – through the analysis of authoritative sources; the comparative component examines how different state legal systems receive the same instrument, following the functional orientation of the comparative method, which compares not nominal categories but the solutions given to the same practical problem (Sacco & Rossi, 2019).

The sources were selected and weighed according to an explicit hierarchy. At the first level stand the primary sources of Islamic law – the Qurʾānic prescriptions and the *Sunna* – considered, however, not directly but as mediated by the jurisprudence of the schools and by contemporary *fiqh* scholarship, since it is that mediation, and not the revealed text in isolation, that produces operative rules (Cupri, 2021). At the second level stand the resolutions and standards of the transnational bodies – the International Islamic Fiqh Academy, AAOIFI (Sharīʿa Standard No. 17 on investment *sukuk* and the resolutions of 2008), and IFSB – which constitute the closest approximation to a *lex mercatoria* of the sector, albeit as a rule non-binding. At the third level stand state legislation and case law: the United Kingdom Finance Acts, English decisions on *sharīʿa*-referencing clauses, the Italian Consolidated Banking and Finance Acts, and bill A.C. 4453/2017. At the fourth level stand the publications of supervisory and multilateral institutions (Ainley et al., 2007; Alvaro, 2014; di Mauro et al., 2013; UNDP, 2025; World Bank,

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2025), and at the fifth stand the academic literature, selected for authoritativeness and pertinence rather than exhaustiveness. Where a factual claim could not be supported by sources of the first four levels or by authoritative literature, it was removed or expressly qualified as a conjecture.

Sukuk are taken as the principal analytical case for three reasons. First, they sit at the point of maximum friction between religious prohibition and market practice: the debt market is the segment in which the prohibition of *ribā* bites hardest, so that *sukuk* constitute the most demanding test of the translation framework. Second, they are the most intensively standardised instrument of the sector – the object of a dedicated AAOIFI standard and of the best-documented doctrinal controversy, that of 2007–2008 – which makes the criteria of § 2.3 concretely applicable. Third, they are the instrument through which Islamic finance has most visibly crossed the boundary into secular systems, so that both thresholds of translation – from religious principle to market instrument, and from one legal order to another – can be observed on the same object. The jurisdictions compared are selected on a most-different logic, to maximise variation in the institutional organisation of the two variables central to the framework: the locus of religious interpretation and the mode of secular reception. Malaysia represents the centralised and institutionalised model; the Gulf Cooperation Council countries the market-dominant model with decentralised *sharīʿa* governance; the United Kingdom and Luxembourg the secular accommodation model, pursued through tax neutrality and a level playing field; Italy the secular system in which no enabling intervention has taken place. Throughout the comparison, 'GCC countries' is employed as an aggregated comparative category – the ideal type of market-dominant reception with decentralised sharīʿa governance – and not as a claim of legal or institutional identity among its members: relevant intra-GCC differences persist, among other respects, in the regulatory frameworks, in the arrangements of sharīʿa governance, in the status accorded to the AAOIFI corpus – binding in some States, persuasive in others – and in the insolvency regimes. The aggregation is an analytical choice proportionate to the design of the study and consistent with a comparative literature that treats the GCC as a regional grouping while documenting how legal and institutional differences within it shape the development of Islamic finance (di Mauro et al., 2013; Grassa & Gazdar, 2014); a country-by-country analysis of the GCC lies outside the scope of the present article. Italy is treated as the principal case study because it combines three features that make it uniquely informative for the framework: it is the largest European legal system without any enabling measure; its civil law tradition subordinates atypical contracts to a judicial test of the worthiness of the interests pursued (Article 1322(2) of the Civil Code), a doctrinal gateway structurally different from common law accommodation; and it offers a documented, and failed, legislative attempt (A.C. 4453/2017), which allows a reception that did not happen to be analysed with the same instruments as the receptions that did.

The comparison is conducted along eight dimensions, which operationalise the criteria of § 2.3 on the side of the receiving systems: (i) legal basis of the issuance; (ii) regulatory framework and supervision; (iii) tax neutrality; (iv) organisation of *sharīʿa* governance; (v) recognition of the true sale; (vi) treatment of the certificate holders in the originator's insolvency; (vii) investor protection and disclosure; (viii) cross-border recognition of the instrument and of the underlying religious qualification. The temporal scope of the analysis extends to the legislative, regulatory, and market developments documented in the cited sources, with a cut-off date of 30 June 2025; subsequent developments are not considered. As to conventions: the transliteration of Arabic terms follows a simplified scientific system, standardised throughout as *sharīʿa*, *ribā*, *gharar*, *maysir*, *sukuk* (sing. *sakk*), with Arabic technical terms in italics; translations from Italian-language sources are the authors' own.

4. Analytical Framework: The Religious Normativity of the Economy and the Construction of Sharīʿa-Compliant Instruments

4.1. Economic activity as legally qualified conduct

To understand the nature of sukuk, one must start from a preliminary observation, as elementary as it is easily overlooked: in Islamic law, economic activity does not constitute a morally neutral sphere, governed by an autonomous rationality separate from the normative order. Exchange, lending, investment, and the circulation of wealth are not merely economic facts but forms of conduct susceptible to legal-religious qualification. What Western legal culture tends to place in distinct domains – law, ethics, religion, and the economy – belongs to a normative continuum within which every financial transaction can be traced back to the categories of the lawful and unlawful, the recommended and the reprehensible (Cattelan, 2017).

The foundation of this approach lies in the sources: the Qurʾān and the *Sunna* of the Prophet provide the principles, while the centuries-long elaboration of the jurists (*fuqahāʾ*) has drawn from them an articulated body of rules and qualifications applicable to commercial practice. From this background derives a conception of money that differs markedly from the one embedded in conventional finance. Money is understood as a measure of value and a medium of exchange, not as an autonomously productive good: it does not, of itself, generate further wealth. It can become a source of income only when it is

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employed in a real activity, shares in the risk of an enterprise, or is converted into a good susceptible of use and enjoyment. Legitimate income, in other words, is the consideration for a risk assumed, for work performed, or for an asset made available, not the remuneration of the mere passage of time (Atzori, 2010; D'Arienzo, 2012).

From this premise follow two corollaries that govern the entire construction of Islamic financial products. The first is the anchoring requirement: no financial transaction may be entirely detached from a tangible asset or a productive project, on pain of the unlawfulness of the transaction itself. The second is the principle of risk sharing: whoever provides capital may not claim a guaranteed and predetermined return, indifferent to the outcome of the financed venture, but must some extent share in both profit and loss. Both corollaries express an idea of justice in exchange that is not merely moral, but properly legal, since it bears on the validity of acts.

However, it would be misleading to present all this as a monolithic system endowed with univocal solutions. Islamic law is, historically and structurally, a jurists' law: lacking a central authority that fixes its interpretation in a binding manner, it has developed through different legal schools (*madhāhib*), each with its own methods and its own solutions, and through the exercise of *ijtihād*, the interpretive effort of qualified jurists. This pluralism is not a contingent defect, but a constitutive feature, and contemporary Islamic finance inherits it in full: as will be argued below, it explains both the vitality and the uncertainties of the sector, and particularly the difficulty of arriving at a genuinely shared standardisation.

Finally, the specular misconception must be avoided: that of portraying Islamic finance as an ethical utopia, untouched by the logics of profit and competition. Practice shows, on the contrary, a sector fully immersed in global markets, traversed by competitive pressures, by profitability requirements, and by a constant drive towards product innovation. It is precisely in this immersion that the theoretically most relevant question is played out, the question this contribution intends to bring into focus: to what extent religious principles continue effectively to guide the construction of the instruments, and to what extent, instead, they end up operating as a formal shell intended to legitimise transactions whose economic substance does not differ from the conventional one. This is the main research question stated in Section 1, here grounded in the structure of the sector itself.

4.2. Ribā, gharar and maysir: risk, uncertainty and justice in exchange

The religious normativity of the economy translates, at the operational level, into a core of prohibitions that delimit the space of the lawful in negative terms. Three prohibitions are of central importance for the construction of financial instruments: the prohibition of *ribā*, that of *gharar*, and that of *maysir*. Their analysis here serves no merely descriptive purpose but is meant to bring out the underlying legal-economic logic because *sukuk* derive their raison d'être from that logic.

Ribā – a term whose triliteral root *r-b-w* conveys the idea of 'increase' and 'growth', and which the customary translation renders as 'usury' or 'interest' without fully capturing its scope – designates any predetermined increment accruing to the capital lent by the mere fact of deferment in time. Its foundation is Qurʾānic, recalled in several passages of the revealed text – notably Qurʾān II:275, III:130 and XXX:39 (Cupri, 2023). What is at stake is not merely an excessive rate, as the Western notion of usury would suggest, but any fixed and guaranteed surcharge agreed in return for a loan of money or fungible goods. The prohibition is absolute in scope: its violation does not affect a single clause but sweeps away the validity of the entire transaction. This is a datum of great systematic importance because it means that compliance does not admit of degrees and that the presence of an interest rate, in whatever guise, suffices to render the instrument unlawful.

The rationality of the prohibition, beyond its revealed origin, can be reconstructed in terms intelligible to a secular jurist. *Ribā* is considered inequitable because it severs the remuneration of capital from the assumption of risk and real productivity: the financier receives a certain return regardless of the outcome of the venture, while the entire risk falls on the financed party. To this is added the idea that interest rests on the exploitation of need and tends to concentrate wealth in the hands of those who already hold it. In positive terms, the prohibition pushes towards a model in which the relationship between the parties is inspired by the sharing of risk and losses: whoever provides capital shares in the fortunes of the enterprise, and the return is the fruit, not the premise, of the financed activity.

The prohibition of *gharar* concerns excessive uncertainty and informational asymmetry in contracts. It does not strike at every alea – ordinary commercial risk is not only admitted, but constitutive of lawful investment – but at the radical indeterminacy of the object, of the price, or of the essential terms, and at situations in which one party finds itself structurally disadvantaged vis-à-vis the other as regards the relevant information. From this principle derive the reservations of *sharīʿa*

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scholarship towards numerous derivative instruments and towards purely speculative transactions, in which risk is not the consequence of a productive activity but the very object, artificially constructed, of the exchange.

Finally, Maysir prohibits gambling and speculation akin to gaming: the acquisition of wealth entrusted to pure chance, detached from work and productive contribution. The dividing line between legitimate entrepreneurial risk and unlawful gambling is, evidently, shifting and subject to interpretation; however, the direction of the principle is clear, and it converges with the two preceding ones in outlining an idea of finance in which the return must have a real and economically sustainable cause.

Considered jointly, the three prohibitions do not outline a system hostile to the market, but rather a system that allocates risk differently and subordinates the legitimacy of the return to its rootedness in the real economy. This point deserves emphasis because the thesis of the present contribution rests upon it. However, a critical caveat must be added: the distinction between *ribā* and lawful profit is not a natural datum, but a doctrinal construction, and the boundary between the one and the other is itself a matter of controversy. Murābaḥa, the sale with a declared mark-up and deferred payment, is the most debated example: in economic terms, a credit sale with a surcharge may come very close to a remunerated loan, to the point that part of the scholarship has read into it a risk of circumvention of the prohibition (Hamaui & Mauri, 2009). It is here that the tension between legal-religious form and economic substance surfaces for the first time, and that the problem destined to become central in the analysis of *sukuk announces itself.*

4.3. The construction of compliant products and sharīʿa governance

Islamic finance does not possess a positive law of its own, endowed with a legislator and an apparatus of formal sources analogous to state legal systems. It operates, rather, by way of construction: it assembles contractual institutions typical of classical *fiqh* into new architectures capable of performing modern economic functions without falling foul of the prohibitions just described. Understanding this process is essential because *sukuk* are the most sophisticated products of such engineering.

The institutions employed belong to the repertoire of pre-modern Islamic contract law. The *ijāra* is a lease contract that confers the enjoyment of an asset in return for rent; the *muḍāraba* is a partnership contract in which one party contributes capital, and the other contributes work and management, with profits shared according to agreed quotas and losses charged, as a rule, to the capital provider alone; the *mushāraka* is a partnership in which several parties contribute capital and share profits and losses in proportion to their contributions; the *murābaḥa* is the aforementioned mark-up sale; the *istiṣnāʿ* is the contract for work, by which the production of a future asset is commissioned; and the *wakāla* is an agency contract. None of these institutions was conceived for capital-market finance. Their refunctionalisation – their use as building blocks of complex financial instruments – is precisely the operation of translation under discussion, and it immediately reveals its non-mechanical nature: a contract devised for the lease of a single asset, once inserted into a securitisation transaction addressed to institutional investors, does not remain identical to itself.

On the technical level, Islamic finance imports from conventional finance instruments of legal engineering – first and foremost, the special purpose vehicle and securitisation – and adapts them to its own needs. The special purpose vehicle makes it possible to isolate a pool of assets and issue certificates against them, destined for the market. This is a neutral technique; however, its use in a *sharīʿa*-compliant context imposes precise constraints on the nature of the assets that may be transferred and on the underlying contractual relationships, as will be seen in relation to *sukuk*.

However, the most distinctive feature of governance concerns the control of compliance. In Islamic finance, adherence to the *sharīʿa* is not guaranteed by a centralised authority but is entrusted to committees of religious scholars – the Sharīʿa Supervisory Boards – established within each financial institution. These experts, trained in Islamic law and, ideally, in the financial disciplines as well, examine the contracts and the underlying activities to ascertain that they do not violate religious principles. Their function, it should be stressed, is not exhausted in a formal approval downstream; they intervene actively in the product design phase, suggesting modifications and adjustments so that the instrument may prove compliant. The religious jurist thus becomes, in a proper sense, a co-author of the financial structure (Piccinelli, 1996).

This model presents obvious advantages of flexibility but raises critical issues that should not be passed over in silence. The absence of a supranational authority and the plurality of legal schools generate interpretive divergences: a structure approved in one country may be deemed non-compliant in another, and even different boards may reach different outcomes on the same product. To this are added critical profiles to which the specialist literature has drawn attention (DeLorenzo, 2007; Biancone,

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2017): the concentration of a limited number of prestigious scholars on multiple boards, with the attendant risk of a circularity of opinions; the potential conflict of interest inherent in the fact that the scholar is remunerated by the institution whose products he is called upon to certify; and the possibility, finally, of selecting the most favourable board. All these elements affect the actual value of the certification of compliance and as will be argued, make concrete the risk of its sliding towards a documentary formality. The very notion of '*sharīʿa* compliance risk' – the risk that a product held out as compliant is subsequently found not to be, with consequences for its validity, reputation, and value – has been coined precisely to name this vulnerability (DeLorenzo, 2007).

Precisely to stem interpretive fragmentation, standard-setting bodies of international standing have arisen. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) elaborates accounting and *sharīʿa* standards, while the Islamic Financial Services Board (IFSB) deals with prudential supervision. Both produce guidelines aimed at harmonising practices and offering shared criteria. However, one datum remains decisive: adherence to such standards is, as a rule, voluntary and non-binding, unless a State legal system renders it mandatory by incorporating it into its own law, as has occurred in some Gulf and Middle Eastern States, whose supervisory frameworks have given the AAOIFI standards binding force (Cupri, 2022). This results in structural tension – between the need for harmonisation demanded by global markets and the constitutive pluralism of Islamic law – which runs through the entire sector and which *sukuk* bring into sharpest relief.

The framework can now be applied to the instrument in which its tensions condense. If the prohibitions of § 4.2 define the substance to be preserved, and the governance arrangements of § 4.3 the mechanism by which preservation is verified, *sukuk* – constructed out of the contractual repertoire just described and addressed to the market segment where the prohibition of *ribā* is most directly at stake – is the place where the quality of the translation can be measured against the criteria of § 2.3.

5. Sukuk as the Paradigmatic Case: Structure, Ownership and Insolvency

5.1. Legal nature: participation certificates, not debt securities

The term *sukuk* is the plural of the Arabic *sakk*, meaning 'certificate' or 'document'. Its semantic scope refers to the issuance of certificates that embody participation in the ownership of an underlying asset capable of generating profits, to be distributed according to the rules of the *sharīʿa*-compliant market. Scholars concur in regarding as improper the widespread expression 'Islamic bond': the conventional bond employs remuneration linked to the interest rate, and that is precisely what the *sakk* must avoid. To designate the *sukuk* as an investment certificate, and not as a bond, is therefore not a terminological subtlety, but the recognition of a difference in legal nature.

The definitions elaborated by the standard-setting bodies confirm this reading. According to Sharīʿa Standard No. 17 of the AAOIFI (AAOIFI, 2015), the *sakk* is a certificate that, after subscription, represents shares of participation and rights of equal value in a real asset, in usufructs and services, or in the equity of a given project or of a specific investment. In similar terms, the IFSB defines *sukuk* as certificates expressing a right of undivided ownership in a tangible asset. From such definitions, a systematic consequence of great importance follows: *sukuk* are not debt instruments in the proper sense of conventional finance, but participation certificates, which confer on the holder an undivided ownership share in a pool of tangible assets (Cupri, 2023).

The definition of the AAOIFI deserves closer analysis than it usually receives, because it distinguishes five different possible underlyings – tangible assets, usufructs, services, the assets of a given project, and the assets of a special investment activity – and the distinction is anything but ornamental (AAOIFI, 2015). Certificates representing ownership of tangible assets or of usufructs confer a right *in* something and may, as will be seen, circulate freely; certificates whose underlying consists of services or of a mixed pool are subject to conditions relating to the composition of that pool; certificates that would represent nothing but money or receivables cannot be validly traded except at par. Practice has tested the breadth of these categories: issues have been structured on intangible underlyings such as rights to airtime on telecommunications networks, precisely in order to give access to originators whose value resides in licences rather than in tangible assets (Latham & Watkins, 2015). Equally material is the distinction, internal to the notion of ownership, between legal title and beneficial ownership: the classical *fiqh* attributes the legal consequences of ownership – entitlement to the fruits, exposure to the risk of loss – to the substantive owner, and it is therefore on the location of beneficial ownership, not on the registration of title, that the *sharīʿa* qualification of the structure ultimately turns (Cattelan, 2013; Cupri, 2023). The point may be restated in the categories of Western private law: what the certificate must confer, for the translation to be faithful, is a real right or its functional equivalent, not a mere contractual right against the issuer; the entire pathology examined in § 5.3 consists in the silent substitution of the second for the first.

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The link between the financial transaction and the assets that form its object satisfies the cardinal principle according to which no market transaction must be detached from a tangible asset or a productive project. Therefore, the profits of the issue depend on the underlying asset, and the flows deriving from it are distributed pro-rata, periodically, to the holders of the certificates. A close relationship is thus established between asset, return, and owner, which places *sukuk* among asset-anchored instruments, anchored, that is, to real assets, in a sense refined in § 5.3, where the technical distinction between asset-backed and asset-based structures is introduced. Consistently, in the event of transfer, the holder does not transfer the certificate in isolation but assigns together with it the share of the assets that the certificate represents: the *sukuk* never circulates severed from its real substratum.

5.2. Structures, typologies and negotiability

At the operational level, a sukuk issue displays significant analogies with securitisation (Jobst, 2007). The party in need of funds (the originator) transfers certain assets to a specially incorporated special purpose vehicle; the latter, having become the owner of the assets, issues the certificates on the market, all of equal nominal value, and places them with the interested investors; the funds raised are employed in transactions compliant with the sharīʿa. This is, in substance, an originate-to-distribute model; but it differs from its conventional version in one respect that is not secondary: in Islamic practice, preference is given to participatory mechanisms, in which the risk is not simply shifted from the originator to the investors, but is shared to some extent, in keeping with the logic illustrated in the preceding paragraphs.

The AAOIFI standards enumerate fourteen types of sukuk, but only some of them find actual application in practice (Hamaui & Mauri, 2009). The most widespread type is sukuk al-ijāra: the originator transfers an asset to the special purpose vehicle and simultaneously takes it back on lease, undertaking to pay periodic rentals; the subscribers of the certificates, which represent ownership of the asset, are remunerated through the pro-rata distribution of those rentals for the entire duration of the lease. The structure is directly shaped by the underlying contract: upon termination of the ijāra, whether by natural expiry or for any other cause, the value of the certificates must be paid out to the investors (Russo, 2019). Sukuk al-muḍāraba is employed instead for the financing of a specific business project: the special purpose vehicle and the originator enter a muḍāraba contract, and the investors share in the flows generated by the project as established ex ante. The sukuk al-mushāraka follows a similar scheme, founded on a partnership contract between the special purpose vehicle and the originator, often accompanied by a clause which, at maturity or in the event of insolvency, provides for the transfer of the share at a predetermined price: a clause to which it will be necessary to return.

A decisive profile is that of negotiability on the secondary market. For the certificate to be freely negotiable, it must represent a right in a real asset, and not a claim or liability. The position of the sharīʿa bodies is clear-cut: under the resolutions of the International Islamic Fiqh Academy and the AAOIFI standards, it is lawful to securitise assets, usufructs, and services, but it is not lawful to securitise debts in order to render them negotiable (Al-Bashir & Al-Amine, 2012). A constraint of considerable scope follows: the typical instruments of conventional securitisation – mortgages, consumer credit, and loans – cannot be securitised and traded on the sharīʿa-compliant market. The non-tradability of debt, striking at the very root of securitisation, profoundly conditions the liquidity of the secondary market for sukuk and constitutes one of the factors holding back its development. Not by chance, the specialist debate identifies precisely in the relaunch of a compliant securitisation the main avenue of growth for the sector (Al-Bashir & Al-Amine, 2012), while other scholars attribute the weakness of the secondary market to the scarcity of medium- and long-term instruments (Iqbal, 2007). Institutional observation converges on the same diagnosis from the side of practice: most sukuk, once subscribed, are held to maturity, either because their structure, representing, in substance, a receivable, precludes trading otherwise than at par, or because holders doubt that comparable compliant instruments can be found on the market, so that a persistent supply-side constraint coexists with a strong demand for compliant securities (di Mauro et al., 2013).

The rule just stated is the surface of a more articulated body of sharīʿa norms governing negotiability, which deserve to be set out because they define the perimeter within which a secondary market can lawfully exist. First, certificates whose underlying consists of receivables or money may not be traded above or below par, since their sale would amount to a trade in debt (bayʿ al-dayn) caught by the prohibition of ribā: for this reason, the certificates based on salam, istiṣnāʿ, and murābaḥa, whose underlying, once the contract is performed, is a claim to money, have been held non-negotiable on the secondary market by the International Islamic Fiqh Academy (Miglietta, 2012; Russo, 2019; Cupri, 2023). Second, where the underlying is a

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mixed pool, negotiability depends on its composition: practice and scholarship require that tangible assets represent a minimum proportion of the pool, commonly indicated at around thirty per cent and rising, in the practice of the Middle East and the Gulf, up to seventy per cent (Latham & Watkins, 2015). Third, the permissibility of trading debt-based certificates at market value is one of the best-documented points of divergence between the Gulf scholarship and part of the Malaysian scholarship, a divergence that fragments the global market along interpretive lines (Ercanbrack, 2015). The composition of the underlying pool is thus not an accounting detail: it determines the tradability of the instrument and the possibility of the secondary market, whose weakness the literature laments (Iqbal, 2007).

Regarding its genesis, the instrument has ancient roots – forms of certificates circulated in Islamic territories as early as the medieval period – but the sukuk in the modern sense is recent. A significant step dates to 1988, when the International Islamic Fiqh Academy, an organ of the Organisation of Islamic Cooperation meeting in Jeddah, accepted that a combination of assets could be represented by a written financial instrument, negotiable at the market price, on condition that the assets represented were tangible in nature (Iqbal & Mirakhor, 2007). It was then during the 1990s that numerous Islamic banks, prompted by the demand of a clientele eager to manage liquidity in conformity with religious principles, began to structure sukuk issues in a systematic manner, raising from the outset the technically central problem of their negotiability. The documented milestones confirm this chronology: the first modern issue is commonly identified in the ringgit-denominated certificates placed by Shell MDS in Malaysia in 1990; the first international dollar-denominated issue followed only in 2001, with the sukuk of the Malaysian plantation company Kumpulan Guthrie; and in the same year, the Bahrain Monetary Agency carried out the first issuance promoted by a government-related entity (Latham & Watkins, 2015).

5.3. Asset-backed and asset-based structures: title, recourse and risk

However, at this point, the analysis must become more stringent because it is here that legal translation risks turning into its opposite. The distinction between asset-backed *sukuk* and asset-based *sukuk* is, in this respect, decisive. In the asset-backed model, investors hold an effective proprietary right in the underlying asset: in the event of the originator's insolvency, they may satisfy their claims on that asset, and their return genuinely depends on the performance of the activity. In the asset-based model, which the specialist literature describes as prevalent in practice (Al-Bashir & Al-Amine, 2012; Latham & Watkins, 2015), the asset performs an essentially structural function, while the investor's position rests on contractual commitments, notably on promises of repurchase (purchase undertakings) that oblige the originator to repurchase the certificates at a predetermined value, normally equal to the nominal value. The economic effect is considerable: through such clauses, the capital guarantee and the credit-risk profile proper to the conventional bond are, in fact, reintroduced, that is, exactly what the instrument had been conceived to avoid.

The distinction deserves to be decomposed into its legal elements because it condenses four different oppositions that the market vocabulary tends to flatten into one. The first opposes legal title and beneficial ownership: in the asset-backed structure, the transfer to the special purpose vehicle is a true sale, which carries the asset out of the originator's patrimony with all the consequences of ownership; in the asset-based structure, the vehicle frequently acquires little more than a registered title, or a set of contractual rights over the asset, while beneficial ownership – exposure to loss and entitlement to residual value – remains in substance with the originator (Miglietta, 2012; Cupri, 2023). The second opposes property rights and contractual rights: the certificate holder of an asset-backed issue holds a right in the asset, enforceable as such; the holder of an asset-based issue holds rights against the originator, arising from the purchase undertaking and ancillary commitments. The third opposes recourse to the assets and recourse to the obligor: in the first model, the investor's satisfaction comes from the asset and its fruits; in the second, it comes from the solvency of the originator, exactly as in an unsecured bond. The fourth opposes participation risk and credit risk: the former is the risk, constitutive of lawful investment, that the venture underperforms; the latter is the risk that a debtor defaults on a fixed obligation – the very risk profile the prohibition of *ribā* is directed against. A structure may be described in the language of ownership; however, once these four pairs are examined, it is found to allocate risk entirely in the second mode: it is this configuration, and not the use of one contract type rather than another, that marks the failure of the translation under criterion (i) of § 2.3.

It is no surprise, then, that the issue has become the object of an open discussion within *sharīʿa* jurisprudence itself. Towards the end of the first decade of the 2000s, authoritative bodies and scholars observed that a very high share of the *sukuk* then in circulation could not be regarded as compliant with the *sharīʿa* in a substantive sense: in a paper delivered to the AAOIFI, the chairman of its own Sharīʿa Board estimated that the great majority of outstanding issues reproduced the economics of

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conventional debt (Usmani, 2007), and the Board responded in February 2008 with resolutions restating the substantive requirements of the instrument (AAOIFI, 2008), precisely because the promises of repurchase at nominal value betrayed their participatory nature. The 2008 resolutions urged a return to structures in which the risk of the activity genuinely rests on the investor, and laid down rules of immediate relevance here: the certificates must represent real ownership, with all its legal consequences, in existing assets lawfully transferred; the manager of the issue may not extend loans to the certificate holders to cover shortfalls in the expected return, although reserves may be constituted for that purpose; the manager – whether *muḍārib, partner,* or agent – may not undertake to repurchase the assets at nominal value, but only at market or fair value; repurchase at nominal value remains admissible only for the lessee in an *ijāra* structure, whose obligation to pay the rent is independent of the performance of a venture (AAOIFI, 2008). Institutional readings of the resolutions stress the same point from the side of ownership: to be tradable, the certificates must confer on their holders ownership of actual assets – preferably legal, and not merely beneficial – together with the rights and liabilities that ownership entails (di Mauro et al., 2013). The market consequences were immediate and well documented: the popularity of the *muḍāraba* and *mushāraka* structures declined disproportionately, issuance practice consolidated around *ijāra*, murābaḥa, and hybrid *wakāla* schemes, and corporate issuance in the Gulf contracted sharply in 2008 before recovering with the wider market (Latham & Watkins, 2015). This is the moment at which the tension between form and substance, hitherto described in theoretical terms, emerged in practice with the greatest sharpness: a *sukuk* may punctiliously respect the required contractual form – the nominate contracts, the special purpose vehicle, the underlying asset – and yet replicate, at the level of economic substance, the interest-bearing bond it was meant to supersede. It is in this gap that the quality of the legal translation is measured, and that the case of *sukuk* reveals its paradigmatic value: the instrument is neither a disguise of the bond nor its pure negation, but the unstable site in which religious compliance is continually exposed to the risk of being reduced to formal technique.

5.4. Insolvency, true sale and investor protection

The point at which the four oppositions of § 5.3 cease to be conceptual and become decisive is the insolvency of the originator, and it is therefore around insolvency that the regime of investor protection must be reconstructed. The pivot is the notion of true sale: the transfer of the assets to the special purpose vehicle must be effective – opposable to the originator's creditors and to its insolvency office-holder – so that the assets leave the originator's patrimony and cease to be available for the satisfaction of its general creditors (Jobst, 2007; Miglietta, 2012). Where the sale is true, the vehicle is bankruptcy-remote in the proper sense: the originator's insolvency does not reach the assets, the certificate holders continue to be satisfied out of the assets and its fruits, and their remedy is the enforcement of their right in the pool. This is the configuration that the *sharīʿa* qualification of the instrument presupposes, since ownership without exposure to the owner's typical vulnerabilities is not ownership in the sense required by the 2008 resolutions (AAOIFI, 2008).

By contrast, the structure is asset-based, and insolvency exposes its real nature. The transfer to the vehicle not being a true sale, the assets remain in substance within the originator's patrimony; the certificate holders cannot enforce against them and are left with the purchase undertaking, that is, with an unsecured contractual claim against the insolvent originator, ranking alongside – and not ahead of – its general unsecured creditors (Al-Bashir & Al-Amine, 2012; Cupri, 2023). The remedies available to investors are correspondingly obligational: proof of the claim in the insolvency, enforcement of the undertaking where the applicable law permits, and, at most, the acceleration mechanisms built into the documentation. The economic consequence is the one anticipated: the investor's position is that of a bondholder, exposed to the credit risk of the originator, and the language of ownership in which the documentation is drafted performs a qualificatory rather than a substantive function. Practitioner analysis describes the mechanics without euphemism: the transfer to the vehicle may be a nominal rather than a true sale – an assignment of rights unaccompanied by the registration formalities that would render it opposable – and even where title does pass, the documentation is typically so drawn that the certificate holders' only recourse in a default scenario is the contractual claim against the originator for the exercise price under the purchase undertaking, a position expressly assimilated to that of holders of conventional unsecured bonds; genuinely asset-backed structures, in which the investors have actual recourse to the assets, remain comparatively rare (Latham & Watkins, 2015). Insolvency is thus the stress test of the translation: the moment at which a secular court must decide whether the proprietary form corresponds to a proprietary substance, and at which the divergence between the two – tolerated, and even unnoticed, while payments flow – produces its effects.

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The stress test is complicated by the questions of applicable law and dispute resolution, which international practice of *sukuk* renders unavoidable. Issues addressed to international investors are typically governed by the law of a financial centre – most often English law – while the religious qualification of the structure belongs to another normative grammar altogether; and the English courts, when confronted with clauses referring to the *sharīʿa*, have declined to apply the religious norms directly, holding that a contract can be governed only by the law of a State and treating the religious reference as too indeterminate to be enforced as such. The leading decisions – *Islamic Investment Company of the Gulf (Bahamas) Ltd v Symphony Gems NV* (2002) and, above all, *Beximco Pharmaceuticals Ltd v Shamil Bank of Bahrain* (2004) – have been criticised by part of the Islamic law scholarship as a disapplication of the religious norm notwithstanding the express will of the parties, but they have also, precisely by confining the religious qualification outside the courtroom, stabilised the expectations of the market (Cupri, 2025). The practical consequence for investor protection is considerable: the *sharīʿa* conformity of the instrument is not justiciable before the secular court, so that a certificate holder cannot found a remedy on the supervening non-compliance of the structure, and the entire weight of the religious qualification comes to rest on the *ex ante* certification – on the very mechanism whose fragility § 4.3 has described. Two further features of English practice complete the picture. The first is that the ownership the certificates proclaim has never been tested: no English decision, and no legislation, has declared whether *sukuk* holders are deemed to own the underlying assets, and in the insolvency of the issuer their position is treated as that of conventional bondholders, holders of a debt claim for the outstanding face amount of their certificates (Dewar & Hussain, 2020). The second is that the opportunistic invocation of the religious qualification finds no secular remedy either: in *Dana Gas PJSC v Dana Gas Sukuk Ltd* (2017) the originator sought to have its own *muḍāraba sukuk* declared unenforceable on the ground, among others, that the guarantee of the face amount embedded in the structure made them non-compliant, and the English court ruled against it on all grounds – the religious qualification can found neither an investor's remedy nor an issuer's escape (Dewar & Hussain, 2020). What the secular order does protect is the representation of compliance: where certificates are offered under a prospectus untrue or misleading as to their *sharīʿa* conformity, the persons responsible are liable in damages to acquirers, including purchasers on the secondary market, under the general regime of prospectus liability (Dewar & Hussain, 2020). The asymmetry gives dual formalism a further, procedural face: the receiving system declines to verify the religious qualification but sanctions its misdescription – it polices the label, not the substance. Arbitration offers a partial corrective, since it allows the parties to choose religious rules as applicable to the substance of the dispute within the limits set by the mandatory law of the seat, as section 46 of the English Arbitration Act 1996 expressly contemplates, and the practice of the sector has in fact developed in that direction (Cupri, 2025); but it presupposes an arbitration agreement and does not bind the insolvency office-holder of the originator.

Thus, the treatment of insolvency and investor protection completes the analytical picture and gives the concept of dual formalism its precise content on the instrument side. The allocation of risk – participation risk to the investor in the faithful structure, and credit risk dressed as participation in the degenerate one – is determined by the conjunction of three legal variables: the reality of the sale, the content of the undertakings, and the law governing their enforcement. Where the three are aligned with the proprietary form, the translation satisfies criteria (i) and (iii) of § 2.3 simultaneously: the religious substance survives, and the secular system can receive the instrument within its own categories without fiction. Where they are not, the certification continues to attest an ownership that insolvency will reveal to be nominal – the religious side of the formalism – while the receiving system enforces the structure as the network of obligations it substantially is, bracketing the proprietary language as decorative – the secular side. Neither grammar, at that point, retains more than the shell of the principle.

6. Comparative Analysis

6.1. Criteria and overview

The comparative analysis applies to the five regulatory environments compared here, the eight dimensions defined in Section 3, which operationalise, on the side of the receiving systems, the criteria of successful translation of § 2.3. The purpose is not an exhaustive country survey, which the article's format would not allow, but a structured comparison capable of showing that the outcome of the translation varies systematically with the institutional arrangements of two variables: the locus of religious interpretation and the mode of secular reception. Table 1 summarises the comparison; the following subsections develop it.

Table 1. The reception of *sukuk* across the compared jurisdictions along the eight dimensions of Section 3

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Dimension	Malaysia	GCC countries	United Kingdom	Luxembourg	Italy
Legal basis	Dedicated statutory framework (Islamic Financial Services Act 2013)	General company and securities law; AAOIFI standards binding in some States	General law; alternative finance provisions, Finance Acts 2003, 2009	General law; administrative tax guidance	General law only; no enabling measure
Regulatory framework	Central bank integrates prudential and religious oversight	Financial regulators; religious oversight at institution level	Ordinary authorisation ('no obstacles, but no special favours')	Ordinary supervision; listing and domiciliation practice	TUB/TUF categories, untested in practice
Tax neutrality	Ensured	Generally provided for, with intra-GCC variation	Ensured (SDLT and alternative finance reliefs)	Achieved in practice through administrative guidance (2010 tax circular)	Absent; double-taxation risk; A.C. 4453/2017 lapsed
Sharīʿa governance	Centralised (Sharīʿa Advisory Council; rulings binding)	Institution-level boards; AAOIFI corpus where mandated	Institution-level, not regulated by the State	Institution-level, not regulated	No provision; compatibility argued in scholarship
True sale	Recognised within the statutory framework	Dependent on documentation and forum	Recognised under general law	Recognised under general law	Achievable under general law; untested for *sukuk*
Insolvency treatment	Framed within the dedicated statute	Uncertain; asset-based structures prevalent	General insolvency law; obligational recourse enforced	General insolvency law	Untested
Investor protection	Disclosure plus binding rulings reduce qualification risk	Prospectus practice; qualification risk with the investor	Disclosure-based; religious conformity non-justiciable	Disclosure-based	General rules only
Cross-border recognition	Extensive in practice; harmonised regional practice	Routinely achieved for issuance; interpretive divergence persists	Extensive (English law as market standard)	Extensive (established listing and domiciliation hub)	None in practice

Source: Authors' elaboration based on the sources cited in Sections 5 and 6.

The comparative and regulatory dimensions of the phenomenon do not constitute a descriptive appendix but provide the terrain on which the explanatory value of the thesis defended here can be assessed. If Islamic finance is an exercise in legal translation, then its geographical diffusion should display differentiated outcomes depending on the normative contexts of arrival; and that is exactly what is observed. While retaining their roots in the historical poles of the Gulf and Southeast Asia, *sukuk* have experienced a progressive expansion towards Africa, Central Asia, and mature Western markets, to the point of representing today a significant component of emerging market debt; industry forecasts place the total value of *sukuk* outstanding at around the threshold of one trillion US dollars (Fitch Ratings, 2025). Translation, in short, works; but it works in different ways and not in every context in the same way.

6.2. Malaysia and the Gulf Cooperation Council

The case of Malaysia is instructive. Malaysian leadership rests on an integrated institutional framework that combines the role of religious authorities with that of financial regulators, reducing interpretive uncertainty and fostering standardisation: a model of centralised and institutionalised translation, in which the State stabilises religious interpretation and renders it predictable for market participants – an arrangement consolidated by statute, culminating in the Islamic Financial Services Act 2013, which confers binding force on the rulings of the central bank's Sharīʿa Advisory Council. In the practitioner literature,

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the establishment of a centralised supervisory board, charged with ensuring that every domestic issue complies with nationally accepted principles, is read precisely as the Malaysian answer to the interpretive volatility that elsewhere remains unresolved (Latham & Watkins, 2015). The arrangement of the Gulf Cooperation Council countries is different: there, the market, though dominant in terms of volumes, coexists with greater interpretive fragmentation and contractual structures that are not always homogeneous. There, the locus of interpretation remains the institution-level board, tempered by the adoption of the AAOIFI standards, to which some States have given binding force (Cupri, 2022); the result is a market that leads the world by volumes while tolerating a degree of interpretive heterogeneity that the Malaysian model has removed by authority.

The determinants of diffusion cannot be traced back to the religious variable alone. In the Gulf, a decisive role is played by the surpluses generated by hydrocarbon rents, which feed substantial sovereign wealth funds and a structural demand for *sharīʿa*-compliant instruments of high credit quality (Latham & Watkins, 2015; Saturna Capital, 2024; Baker Institute, 2025). Hence, a relationship between the oil price cycle and the *sukuk* market: in phases of high prices, accumulated liquidity drives the demand for quality securities, while in phases of low prices, the need grows to issue *sukuk* to finance public deficits. To this demand is added that of emerging economies, for which *sukuk*, rooted in real assets and capable of being integrated with public-private partnership schemes (Nsouli, 2025), constitute an instrument of infrastructure financing capable of mitigating the risk perceived by international investors.

6.3. Secular accommodation: the United Kingdom, Luxembourg and the new frontiers

The diffusion of sukuk in Western countries poses a problem of legal reception that deserves an autonomous analysis because a second threshold of translation manifests itself there. When an instrument born within a religious normative horizon enters a secular legal system, it encounters a system that does not recognise religious qualification as a source of validity: the state legal order does not ask about conformity with the sharīʿa, but about the reducibility of the instrument to its own civil law, tax, and supervisory categories. The sukuk thus tends to be received as an atypical contract, and its regime depends on the capacity of the legal system to bring it within known types without denaturing it. Concrete and recurring questions then arise: the double transfer of the assets to the special purpose vehicle and back again may generate double taxation, which, in the absence of tax neutrality measures, renders the instrument uncompetitive; the classification of the certificates for the purposes of prudential supervision is uncertain; and the treatment of the periodic flows oscillates between qualification as rent and qualification as financial income.

The United Kingdom offers the most fully documented model of secular accommodation, against which the Italian case will be measured. The English strategy has consisted not in incorporating the religious norm, but in removing, one by one, the fiscal and regulatory obstacles that made compliant structures uneconomic: the Finance Act 2003 eliminated the double charge to stamp duty land tax on the two transfers inherent in alternative property finance; the Finance Acts 2005 and 2006 extended the neutrality to the returns of muḍāraba-type arrangements – treated for tax purposes as a lending relationship – and to diminishing mushāraka and ijāra-based schemes; the regime of the alternative finance arrangements, since consolidated in the Income Tax Act 2007 and the Corporation Tax Act 2009, was then extended to sukuk under the label of alternative finance investment bonds, so that periodic distributions – economically similar to interest and yet, unlike interest, not otherwise deductible – are deductible for the issuer and taxed in the hands of the holder as interest, on conditions that include listing on a recognised stock exchange, while the Finance Act 2009 completed the design by relieving sukuk from stamp duty land tax and classifying them as exempt loan capital for stamp duty purposes (Dewar & Hussain, 2020); and the supervisory authority authorised, between 2004 and 2007, the first wholly Islamic banks on the ordinary criteria applied to any other applicant, according to the declared principle of ‘no obstacles, but no special favours’ (Ainley et al., 2007; Alvaro, 2014; Cupri, 2025). On this legislative ground, the United Kingdom became, in 2014, the first Western country to issue a sovereign sukuk, consolidating London’s role as a listing venue, while Luxembourg – which in the same year carried out the first sovereign issuance in the euro area – has established itself as the preferred platform for the domiciliation and listing of the certificates (World Bank, 2025). The two primacies had, however, been prepared at lower levels: the Luxembourg Stock Exchange had admitted the first sukuk listed in Europe as early as 2002 and the securitisation law of 22 March 2004 had supplied the vehicle regime within which compliant structures were subsequently implemented, while the €100 million ijāra issue of the German Land of Saxony-Anhalt in 2004 – the first by a Western public-sector issuer, fully redeemed in 2009 – preceded the sovereign issuances by a decade (di Mauro et al., 2013). On the tax side, the same functional strategy was pursued by administrative rather than legislative means: a circular of the Luxembourg direct tax administration, issued in January 2010, set out the treatment of murābaḥa and sukuk, assimilating the periodic distributions to interest for tax purposes and thereby securing, for issuance through Luxembourg vehicles, the

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neutrality that the United Kingdom had obtained by statute. The English issuance merits the detail the sources permit: a £200 million sukuk al-ijāra, remunerated out of the rental income of government-owned properties in place of interest and oversubscribed more than tenfold, followed in 2015 by the first sukuk guaranteed by an export credit agency; on the London Stock Exchange more than seventy sukuk listings have since raised in excess of fifty billion US dollars, and the domestic market counts some twenty institutions offering Islamic products, five of them fully sharīʿa-compliant banks – more than in any other Western country (Dewar & Hussain, 2020). Two features of the model deserve emphasis for the purposes of the framework. First, the accommodation is strictly functional: the legislation identifies the economic essence of the transaction and taxes it accordingly, without ever naming the religion, so that the religious qualification remains entirely outside the secular norm. Second, and consistently, the courts have kept it outside the courtroom as well (§ 5.4): the certainty the model produces is certainty about the secular shell, not about the religious substance, which remains entrusted to the market's own certification.

A third feature completes the model and shows the technique of accommodation at its most refined: the treatment of profit-sharing deposits. Statutory deposit protection presupposes an entitlement to repayment in full, which the risk-sharing logic of the muḍāraba excludes, since the provider of capital must bear the risk of loss; the solution adopted was to require that Islamic deposits confer that entitlement – so as to qualify as protected deposits on a par with conventional ones – while permitting the individual depositor subsequently to waive the protection on religious grounds and be repaid according to the risk-sharing methodology of the contract (Dewar & Hussain, 2020). The two normative grammars are thus kept simultaneously in force, and the choice between them is devolved to the believer-investor: accommodation here does not merely tolerate the religious norm but organises, transaction by transaction, its coexistence with the secular guarantee.

The supranational level of the euro area adds a further site of translation, documented from within the monetary authority itself. The survey conducted at the European Central Bank examined, on the one hand, the obstacles that the Eurosystem framework raises for stand-alone Islamic banks – a compulsory, interest-bearing minimum reserve account and refinancing operations structured as repurchase or collateralised lending, both at odds with the prohibition of ribā, so that such intermediaries would remain confined to the periphery of the banking system – and, on the other, the conditions of admissibility of sukuk as Eurosystem collateral: at the date of that survey, no sakk figured on the list of eligible assets, and admission would require satisfying the ordinary requirements of the framework – place of incorporation of the issuer, currency of denomination, issuance within the European Economic Area and settlement in the euro area, credit assessment by recognised agencies, which, at that date, still applied conventional methodologies to Islamic instruments – while preserving the religious qualification on which acceptance by compliant investors depends (di Mauro et al., 2013). The exercise described above is precisely the one theorised here: the instrument must be rendered legible to a secular collateral taxonomy without losing the features that make it acceptable to the religious grammar; and the conclusion of the survey – that the ijāra structure is best placed, by reason of its tradability, of the significance of its issuance and of its comparatively uncontroversial compliance – replicates, at the level of central bank operations, the selection that the resolutions of 2008 had performed at the level of doctrine (§ 5.3).

More instructive still, for the purposes of the thesis defended here, is what happens at the margins of those historical poles. In recent years, sukuk have made their entry into contexts that the traditional geography of Islamic finance did not contemplate: in Africa, where Nigeria has made them a recurrent instrument of infrastructure financing, and where even a legal system without a Muslim majority, such as South Africa, has issued a sovereign sukuk (World Bank, 2025; Fitch Ratings, 2025); in Central Asia, where Kazakhstan has built around a dedicated financial centre a common law regulatory framework designed to accommodate it – the Astana International Financial Centre, operating since 2018 (World Bank, 2025); and, above all, in the mature Western markets. Here, diffusion responds not to a religious demand but to financial factors: the search for ethically connoted instruments, the diversification of funding, and the desire to attract capital from the Gulf and Southeast Asia. In all these cases, translation changes direction: it is no longer a religious principle seeking a market form but a secular market that adopts a form of religious origin and redefines it according to its own categories. That the same instrument can function both as a vehicle of religious observance and as a product of ethical finance devoid of confessional reference is the most eloquent confirmation of its nature as a translational construction, and not as an immutable datum.

6.4. Italy as the principal case study

Italy is the principal case study of this article for the reasons anticipated in Section 3: it is the largest European system without any enabling measure; its reception filter – the judicial control of the worthiness of the interests pursued by atypical contracts under Article 1322(2) of the Civil Code – is structurally different from the common law technique of accommodation;

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and it offers a documented legislative attempt that failed, which permits the analysis of a non-reception with the same instruments applied above to the successful receptions.

The Italian case illustrates these conditions well: sukuk have not experienced any appreciable diffusion in Italy. On the demand side, some studies suggest that the propensity of a largely first- and second-generation Muslim population to remit savings to their countries of origin, with a horizon often oriented towards return, depresses the domestic demand for sharīʿa-compliant investment instruments (Cupri, 2023). This suggestion is plausible, but to the authors' knowledge, it has not been verified by systematic empirical research on the investment behaviour of Muslim households in Italy and is therefore treated here as a conjecture, not a finding. The following analysis accordingly concentrates on the supply side, where the legal data are solid. On the supply side, the Italian legal system lacks any bridging provision between the instruments of Islamic finance and the existing normative framework, particularly the Consolidated Banking Act (Testo unico bancario) and the Consolidated Finance Act (Testo unico della finanza), as well as a clear tax treatment. Therefore, the potentially viable route passes through legislative intervention that recognises sukuk as an atypical contract and ensures the tax neutrality of the transactions, based on the example of legal systems that have already taken this step. One such intervention was attempted: bill A.C. 4453, presented to the Chamber of Deputies on 2 May 2017 under the title «Disposizioni concernenti il trattamento fiscale delle operazioni di finanza islamica», which undertook to equalise the tax treatment of murābaḥa, istiṣnāʿ, ijāra, and sukuk transactions with that of the corresponding conventional operations, and defined the Islamic bank by simple renvoi to the authorisation requirements of the Consolidated Banking Act. However, the bill lapsed with the end of the XVII Legislature without being enacted, and no equivalent measure has since been adopted (Cupri, 2023, 2025). Therefore, its legal status is that of a lapsed proposal: it produces no normative effect and retains only the value of drafting precedent. Institutional attention, for its part, has not been lacking more than a decade ago, the survey of the European Central Bank already recorded the conferences hosted by the Banca d'Italia, the working group coordinated by the Italian Banking Association on a possible corporate or sovereign issuance, and the activity of Italian intermediaries in the Islamic capital market through foreign offices and subsidiaries (di Mauro et al., 2013). That such attention has produced no enabling measure sharpens, rather than attenuates, the inertia diagnosis formulated below.

The supply-side analysis can be given more precise content along the dimensions of Table 1. As to the legal basis and the regulatory framework, Consob has mapped the possible qualification of *sukuk* within the categories of the Consolidated Finance Act, as financial products and, depending on the structure, as instruments susceptible of public offer and prudential treatment, concluding that no insurmountable incompatibility exists but that the absence of any express provision leaves every qualification to interpretation, with the attendant uncertainty for issuers and investors (Alvaro, 2014). As to the civil law gateway, scholarship has argued that the participatory schemes underlying *sukuk* can pass the test of Article 1322(2) of the Civil Code, since the interests they pursue – the anchoring of finance to real activity, the sharing of risk – are not merely lawful but consonant with values the legal system itself protects (Russo, 2014; Cupri, 2021, 2025). As to tax neutrality, the double transfer inherent in the structures would today attract a double incidence of transfer taxation, which no administrative practice corrects: the very obstacle the English legislation of 2003 and 2009 removed (Miglietta & Rampino, 2017; Cupri, 2025). As to *sharīʿa* governance, no Italian provision contemplates the supervisory board, but its insertion within the ordinary corporate governance of an Italian intermediary has been argued to be feasible without legislative amendment (Cupri, 2025). The Italian non-reception, in other words, is not the effect of a substantive incompatibility – none of the eight dimensions discloses one – but of legislative inertia on a single dimension, the fiscal one, combined with the interpretive uncertainty that the absence of qualification produces on the others: a diagnosis exactly symmetrical to the English cure.

7. Discussion

7.1. Dual formalism as the failure mode of legal translation

The legislative intervention envisaged in § 6.4, however, must be assessed with caution. If the objective of the intervention were reduced to the attraction of foreign capital, and notably of the wealth of the Gulf countries, the sukuk would risk being received as a mere device of tax and regulatory arbitrage, deprived of the ethical and participatory dimension that constitutes its raison d'être. In that case, there would emerge a formalism specular to the one described in § 4.3: where sharīʿa certification risks being reduced to a documentary check, here the secular legal system risks receiving the instrument as a mere contractual form, bracketing its substance. The twofold formalism – religious and secular – is the real danger that legal analysis must be able to recognise translation fails not when the principle is lost altogether, but when both normative grammars retain only its shell.

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The Italian caution generalises and provides the direct answer to the main research question. The translation of sharīʿa principles into market instruments preserves their normative substance when, and only when, the four criteria of § 2.3 are jointly satisfied: when the economic substance of the instrument retains risk sharing and real anchoring (substantive fidelity), the instrument functions on the market (functional adequacy), the receiving system can accommodate it within its categories without fiction (recognisability), and a governance mechanism capable of more than documentary control verifies the first condition over time (verifiability). The analysis of Sections 5 and 6 has shown where each criterion is decided: substantive fidelity at the junction of true sale, undertakings, and recourse (§§ 5.3–5.4); functional adequacy at the junction of the negotiability rules and secondary-market liquidity (§ 5.2); recognisability at the junction of tax neutrality and civil law qualification (§§ 6.3–6.4); verifiability in the independence and depth of the certification apparatus (§ 4.3). Dual formalism names the configuration in which the failure of the first and fourth criteria on the religious side is masked by an apparent success of the third on the secular side: the certification attests a substance that is no longer there, and the receiving system enforces a form it has no means, and no wish, to look behind. The asset-based sukuk enforced as an unsecured obligation while marketed as ownership is its exact embodiment. As announced in Section 1, this is an analytical result, not an empirical one: it identifies the conditions and the failure mode, not their statistical frequency.

7.2. Standardisation and interpretive pluralism: what should be standardised

On the standardisation front, the actions of the AAOIFI and the IFSB have produced appreciable results but encounter a limit that is not merely technical. The persistent heterogeneity of interpretations of the sharīʿa affects issuance costs, contractual structures admitted, and the full international recognisability of the securities; and such heterogeneity, as the literature has shown, derives from the differences between the legal schools and represents one of the main barriers to genuinely global standardisation (Ercanbrack, 2015). One should, however, resist the temptation to read interpretive pluralism as a mere transitory defect, destined to be reabsorbed by the progress of standardisation. As has been observed, Islamic law is structurally a jurists' law, and ijtihād is the very source of the legitimacy of the instruments: an integral standardisation, imposing a single interpretation, would end up suppressing the interpretive activity on which religious compliance is founded. The tension between harmonisation and pluralism is therefore not accidental, but constitutive; and it is a tension that no purely technical solution can dissolve.

The tension can, however, be given a more determinate resolution than mere acknowledgement of its constitutive character, and the criteria of § 2.3 indicate where the line runs. What can, and should, be standardised is the layer of verification: the disclosure of the nature of the structure (asset-backed or asset-based) and of the effective recourse of the certificate holders; the documentation of the true sale; the metrics of the composition of the underlying pool on which negotiability depends; the accounting treatment; and the procedural safeguards of the certification – independence, incompatibilities, disclosure of the standards applied. None of this touches the substance of the religious qualification: it standardises the conditions under which any qualification, whatever school it proceeds from, can be verified and relied upon. What should remain open to interpretation is the substantive layer: the qualification itself, the boundaries of *gharar*, the treatment of the trade in debt, the admissibility of structures – in short, the domain of *ijtihād*, which, as Section 6 has shown, no market has suppressed without cost. Legal certainty and *ijtihād* coexist, on this view, not by freezing interpretation but by making transparent which interpretation governs a given instrument: the investor does not need a single answer; the investor needs to know which answer applies. The balance between the two layers differs across jurisdictions, and the comparison explains how: Malaysia obtains certainty by centralising the substantive layer in a State organ; the Gulf obtains it, partially, through the voluntary or mandated adoption of the AAOIFI corpus; the secular systems obtain it by declining jurisdiction over the substantive layer altogether and regulating only the shell. The English regulator has stated the posture in terms: it supported the elaboration of common standards by the AAOIFI and the IFSB while declining to implement them, since they lack binding legal effect, and it examines the *sharīʿa* board of an applicant institution only to classify its role – advisory or executive – for the purposes of authorisation, without employing religious scholars of its own (Dewar & Hussain, 2020). Each arrangement is a different distribution of the same two layers, and each pays a different price: authority, heterogeneity, or externalisation.

7.3. ESG, green sukuk and digitalisation: new layers of translation

In recent years, legal translation has been enriched by the convergence between Islamic finance and ESG criteria. The growth of green and sustainability sukuk is supported by multilateral institutions and joint standard-setting initiatives (LSEG, UKIFC & GEFI, 2024; ICMA, IsDB & LSEG, 2024; UNDP, 2025; World Bank, 2025), and rests on a real conceptual affinity: the

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logic of the earmarked use of proceeds and traceability of results, proper to impact finance, displays evident points of contact with the requirements of transparency and real anchoring of Islamic finance. This affinity is not a recent discovery: institutional analysis had compared Islamic and socially responsible investments well before the current season of green issuance, finding both to rest on positive and negative screening and to diverge, in substance, only in the exclusion of interest-based instruments and institutions (di Mauro et al., 2013). Such convergence, besides being genuine, is also strategically convenient and demands a critical eye: it allows sukuk to access the demand for responsible products and conventional issuers to draw closer to Islamic finance. The risk of greenwashing, already flagged by the promoting institutions themselves, is that the label – religious or environmental – may be superimposed on the substance, adding to sharīʿa certification a further layer of formal qualification. Analogous considerations apply to digitalisation: tokenisation and smart contracts promise efficiency, traceability, and a possible standardisation of certain structures (Mousavi et al., 2025), but they merely displace, without resolving it, the underlying problem, namely who defines, and according to what criteria, the compliance embedded in the protocol.

Read through the framework, the two developments can be stated with the precision the concept requires. In green sukuk, what is translated is a second normative layer – the sustainability commitment – rendered into the technical language of use-of-proceeds frameworks, eligibility criteria, and reporting duties; the translators are the issuer, which drafts the framework, together with two distinct certifiers, the sharīʿa board on the religious side and the external reviewer on the environmental side; the applicable governance mechanism is precisely this double certification, coordinated by the joint guidance of market and multilateral institutions (ICMA, IsDB & LSEG, 2024; LSEG, UKIFC & GEFI, 2024); and the verification mechanism consists of second-party opinions at issuance and of post-issuance allocation and impact reporting (UNDP, 2025). The risk of formalism is assessed here exactly as in Section 5: it materialises when either certification attests a substance the structure does not deliver – proceeds not traceably allocated, assets whose environmental quality is declaratory – and the stacking of two labels, far from doubling the guarantee, doubles the surface available to formalism, since each certification can be invoked to reassure about the other. In tokenised sukuk, what is translated is the compliance condition itself, rendered into code; the translators are the developers together with the board that approves the protocol; the governance mechanism is the audit of the code and of its correspondence to the approved structure; and the verification problem is displaced rather than resolved, because the immutability of the protocol fixes one interpretation at the moment of coding and thereby withdraws the instrument, for its entire life, from the interpretive supervision that § 4.3 has shown to be constitutive (Mousavi et al., 2025). Both developments, in short, add layers of translation without altering its grammar; and both are therefore subject, without residue, to the criteria of § 2.3.

However, it would be a mistake to conclude on a merely sceptical note. Islamic finance, and sukuk in particular, retain a critical potential that jurists should not underestimate. By insisting on the necessary link between the financial instrument and real activity, on risk sharing, and on the illegitimacy of speculation as an end, it functions as a critical analyser of conventional finance: it denaturalises some of its presuppositions, showing that they are not natural data, but historically situated normative choices. The presumed axiological neutrality of conventional finance – the idea that the capital market is a technical mechanism devoid of value options – appears, in the light of the comparison, far less obvious. The financial crises that originated in the disconnection between financial instruments and the real economy have lent this critique an unexpected plausibility (Salvi & Miglietta, 2013). The point is not to accredit Islamic finance as an ethically superior model – its practice, as has been seen, is exposed to formalist drifts that are no less serious – but to recognise its heuristic value: it renders visible, by contrast, what conventional finance tends to present as self-evident.

It should be added that conventional finance has in turn developed through rules on transparency, on the countering of informational asymmetries, and on sustainability criteria, rules that, in some respects, converge with the concerns of Islamic finance. The two systems proceed from different underlying rationales but meet on a common ground: and it is this partial convergence, and not the presumed incommensurability of the two models, that constitutes the most promising object for comparative law. Islamic finance is not an irreducible otherness vis-à-vis market finance; rather, it is a variant that, by translating religious principles into the language of financial instruments, compels the value choices implicit in every financial construction, including those that present themselves as neutral, to be made explicit.

8. Policy Implications

The results of the analysis are analytical; they identify the legal variables on which the quality of the translation depends. From them, however, normative recommendations can be derived, and it is important – as the distinction between the two has

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been maintained throughout – that they be presented as such: what follows is not a finding but a set of proposals addressed to regulators, standard-setters, and, for the Italian case, the legislator, each grounded in a specific result of Sections 5–7.

The first implication concerns the tax neutrality. The comparison shows that reception stands or falls on the fiscal dimension before any other: the recommendation, for systems in the Italian position, is a functional-equivalence rule of the English type – identify the economic essence of the transaction and tax it once, whatever the number of formal transfers the compliant structure requires – for which the lapsed bill A.C. 4453/2017 already offers a drafting basis. The second concerns regulatory treatment: the qualification of the certificates for the purposes of securities and prudential law should be settled by express provision or by authority guidance rather than left to interpretation, since the analysis of § 6.4 has shown that uncertainty of qualification, not substantive incompatibility, is what blocks the supply side; Consob's own mapping indicates that this can be done largely within existing categories (Alvaro, 2014).

The third implication concerns sharīʿa governance. If verifiability is a condition of successful translation, the independence of the certifying function must be protected by the instruments of corporate law, namely, disclosure of the members' concurrent appointments and remuneration, incompatibility rules separating certification from paid structuring advice on the same product, and rotation or cooling-off arrangements – safeguards that address the concentration, circularity, and conflict problems identified in § 4.3 (DeLorenzo, 2007; Biancone, 2017). The fourth extends verification over the life of the instrument: certification at issuance should be complemented by a periodic sharīʿa-compliance audit, internal and external, on the model of AAOIFI governance standards, so that the supervening degeneration of a structure – the specific vulnerability documented in Section 5 – does not escape control (Cupri, 2022).

The fifth implication concerns investor protection: the single most effective measure the analysis supports is a mandatory 'substance label' – prospectus disclosure, in a standardised form, of whether the structure is asset-backed or asset-based, of the existence and price basis of any purchase undertaking, and of the effective recourse of the certificate holders in the originator's insolvency – because it is precisely on these variables, and not on the contract types employed, that the investor's real position depends (§§ 5.3–5.4). The sixth concerns cross-border recognition: rather than pursuing a uniform substantive standard, mutual recognition should attach to the transparency of the standard applied – identification, in the documentation, of the corpus (AAOIFI or other) and of the rulings governing the issue – in line with the two-layer resolution proposed in § 7.2. The collateral frameworks of the central banks are the terrain on which the recommendation will first be tested, since eligibility there depends on secular criteria alone, while marketability continues to depend on the integrity of the religious qualification (di Mauro et al., 2013). The seventh, finally, concerns interpretive fragmentation itself: the recommendation that follows from the framework is not its suppression, which § 7.2 has argued to be both impossible and undesirable, but its governance through the standardisation of the verification layer; fragmentation that is disclosed is a price of pluralism, fragmentation that is concealed is a vehicle of formalism.

9. Limitations

The limits of the study follow from its design and should be stated. First, the analysis is doctrinal and comparative: it identifies conditions and failure modes, but it neither measures the incidence of asset-based structures in current issuance nor tests empirically the demand-side conjectures discussed in § 6.4, and none of its conclusions should be read as a quantitative claim. Second, the jurisdictional selection, chosen to maximise institutional variation, leaves outside the comparison systems – Indonesia, Türkiye, the Central Asian markets beyond Kazakhstan – whose inclusion might refine the typology. Third, the treatment of *fiqh* is conducted through the standard-setting corpus and the secondary literature, not through the primary juristic sources in Arabic, and inherits the mediations of that scholarship. Fourth, the regulatory and market landscape evolves rapidly: the cut-off date of 30 June 2025 (Section 3) bounds the validity of the descriptive statements, and the market data cited are those of the institutional sources, with the margins of approximation proper to such reporting. Fifth, the criteria of § 2.3, although defined to be applicable beyond the present case, have been tested here on a single instrument; their extension to other products of the sector remains to be undertaken.

10. Conclusions

The itinerary makes it possible to specify the theoretical contribution that the present work intends to offer. Islamic finance has been described here neither as a confessional segment of the market, nor as a repertoire of techniques of circumvention, but as a laboratory of legal translation: the space in which principles of religious origin are converted into the language of contracts, securities, and regulation, and in which that conversion transforms the principle and the instrument reciprocally. Sukuk have

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proved to be the paradigmatic case of this process because they display at once its success and its fragility: success, in that they have effectively enabled Islamic finance to access the debt market and to spread well beyond its original borders; fragility, in that their structure, notably in the asset-based form, is constantly exposed to the risk of replicating, at the level of economic substance, the interest-bearing bond it was meant to supersede.

Stated as answers to the questions of Section 1: the translation preserves the normative substance of the principle when the four criteria of § 2.3 are jointly met, and degenerates into dual formalism when substantive fidelity and verifiability fail behind an intact secular shell (main question); the legal features that separate the two outcomes are the reality of the sale, the content and price basis of the undertakings, the direction of recourse, and the resulting allocation of risk, not the nominate contracts employed (first secondary question); the balance between standardisation and pluralism varies systematically with the institutional locus of interpretation – centralised in Malaysia, decentralised and partially standardised in the Gulf, externalised in the secular systems – and the sustainable line of standardisation runs between the verification layer and the substantive layer (second secondary question); and the Italian case shows a non-reception produced not by incompatibility but by fiscal inertia and qualificatory uncertainty, for which the analysis has indicated determinate remedies (third secondary question). These are findings of a doctrinal kind; the recommendations of Section 8 are distinct from them and have been presented as such.

Therefore, Sharia compliance is not a datum acquired once and for all, but an unstable process, and its most insidious enemy is not the open transgression of the principle, but formalism: the reduction of compliance to a documentary formality, on the one hand, and the reception of the instrument as a mere contractual form by the secular legal system, on the other. Recognising this twofold risk is the main critical acquisition of this work. At the same time, the analysis has sought to avoid any celebratory or dismissive simplification: Islamic finance is not an ethical utopia, but neither is it a marginal curiosity; it is, more precisely, a device which, by interrogating the relationship between the financial instrument and the real economy, calls into question the presumed axiological neutrality of conventional finance and renders visible its implicit value options.

Ultimately, the decisive question is not whether *sukuk* are 'really' Islamic or 'really' market instruments. Rather, it is what the act of their translation reveals about the relationship between law, religion, ethics, and markets. It is on this terrain that the case of *sukuk* exceeds the field of Islamic finance and acquires relevance for the general theory of law. Having stated the limits of the study in Section 9, the directions of research it opens can be indicated: the empirical analysis of the conditions for a possible reception of *sukuk* in the Italian legal system, the comparative study of the tax neutrality models adopted in other Western legal systems, and the verification, at the regulatory level, of the effects of digitalisation on the very definition of compliance, to which may now be added the empirical measurement of the incidence of asset-based structures in current issuance and the testing of the criteria of § 2.3 on instruments other than *sukuk*. These are many directions of research along which the perspective of legal translation proposed here may be put further to the test.

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