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Personal Property IJARAH Sukuk's Canadian Legal Issues and the Leasing Market

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Basic Structure

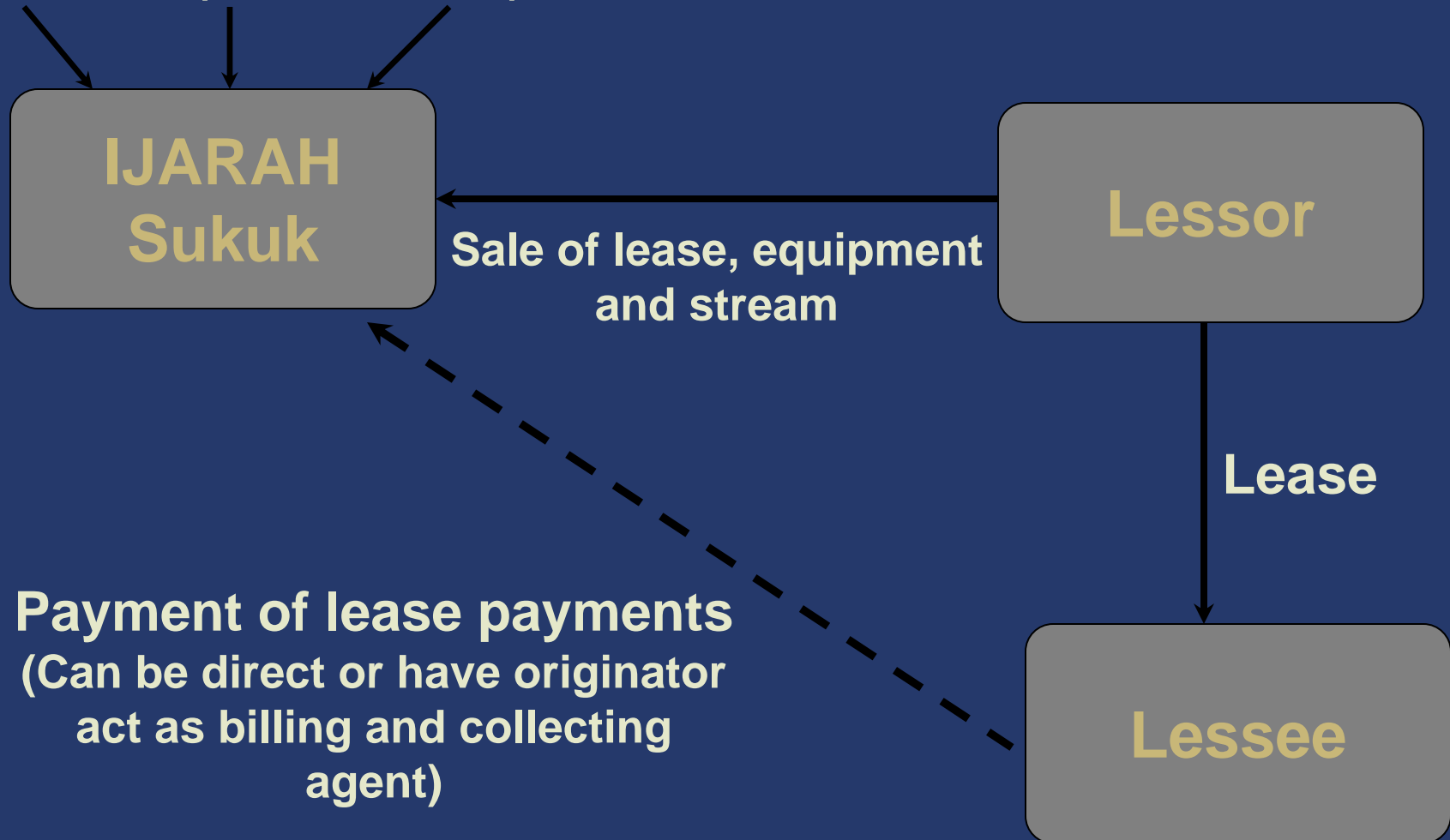


- The asset can either be through a sale leaseback or one where the lessee asks the lessor to obtain assets on its behalf
- Vendor programs can also work
- Lease (true or finance) are fully secured
- Rare vicarious liability in Canada

Basic Structure



Investors (Bond Holders)



Payment of lease payments
(Can be direct or have originator
act as billing and collecting
agent)

Basic Structure



Two Basic Structures

1. Sukuk – Defined asset model
 - i) Lessor enters into lease with lessee and an asset purchase agreement with asset vendor (who may be lessee)
 - ii) Sukuk investors fund Sukuk
 - iii) Sukuk buys lease from lessor who then utilizes funds to pay asset vendor for assets
 - iv) Lessee pays Sukuk

2. Lessor warehouses assets until they reach a sufficient size and then sells en-block to Sukuk

Flow of funds – Investors to Sukuk and Sukuk to Lessor on a periodic basis. Lessee's make rent payments to Sukuk which is distributed

Basic Structure



- i. Issues – true sale → BC Tel case
 - a) intention of the parties
 - b) recourse to vendor
 - c) ownership risk
- ii. Lessor/vendor – can act as collection agent and lessee need not be notified of sale
- iii. Warehouse facility makes it more complicated
- iv. Insolvency risks – Sukuk has asset ownership and rights on insolvency of lessee. The rights will depend on whether the lease is a true or finance lease

Canadian Leasing Market



- Non-Consumer Market
53.8 billion of which 22.6 billion is refreshed annually (2009)
- 9th Largest market in the world (based on 2007 World Leasing Year Book)
- Most Active Markets
Ontario, Alberta and Quebec
- Asset Class
Commercial Equipment (18.1 billion)
Commercial Vehicles (4.5 billion)
Retail Vehicles (21.3 billion)

Types of Finance Companies



1. Bank and Bank Affiliates
 - i) U.S. – Bank of America, PNC
 - ii) Canadian – Bank of Nova Scotia, Royal Bank of Canada
 - iii) Europe – De Lage Landen Financial Services Inc.

2. Large Commercial Finance
 - i) CIT
 - ii) General Electric

3. Independent Finance Companies
 - i) CSI
 - ii) Nexcap

Transaction Size (with likely funder)



1. Very Large Ticket \$10- \$250 Million
 - Bank → may syndicate
 - Large commercial finance → mostly syndicated
2. Large Ticket \$1- \$10 Million
 - Bank → generally kept
 - Commercial finance → some syndicated
3. Mid-Ticket \$250,000 - \$1 Million
 - Bank → kept
 - Commercial finance → kept
 - Independent finance → syndicated
4. Small Ticket \$50,000 - \$250,000
 - All → independent usually syndicated
5. Tiny Ticket \$0 - \$50,000
 - All → independent syndicate

Lease (IJARA) Agreement



- Commercial leasing does not require interest rate disclosure which consumer (retail) leasing requires
- Asset classes tend to be Halal
- As asset is known there is very little risk (Gharar)
- Canadian leases tend to be based on fixed rate and as such payment stream is steady
- Term is defined
- Normal to have lessee compensate for maintenance (this may be an issue)
- General provisions of insurance to cover loss or damage so only paying rent so long as lessee has equipment

Lease (IJARA) Agreement (2)



- Most leases have lessee obtain insurance. (This may have to be modified by having lessor obtain insurance and build into rent payment)
- Some Canadian structures have payments due before equipment in possession. This is particularly true for large ticket equipment. (There are methods to structure around this issue)
- Canadian leasing end of term options such, return with purchase option, full payout, and TRAC leasing. (TRAC is likely not available but often can be structured around and purchase option needs to be split into a separate document)

Lease (IJARA) Agreement (3)



- Canadian leasing requires full payout on default. Past rent plus present value of stream and residual. (This may have to be structured to comply)
- Late penalty fee is common. (Methods to structure around)



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