

THE 3<sup>RD</sup> IIUM – KYOTO UNIVERSITY RESEARCH COOLOQUIUM  
AnCasa Hotel & Spa, Kuala Lumpur  
2nd – 3rd December 2015

# A COMPARATIVE ANALYSIS BETWEEN SHARIAH COLMPLIANT AND CONVENTIONAL CONTRACT PROVISIONS FOR CONSTRUCTION WORKS

Professor Sr. Dr. Khairuddin Abd Rashid  
Asst. Prof. Dr. Sharina Farihah Hasan



# Content

1. Introduction
2. The Shariah in Contract
3. Current conventional contract practices
4. Comparison between conventional contract practice and Istisna'
5. Conclusion

# Introduction

- The *Muamalat* emphasizes the need for business transactions to apply concept of justice, moral obligation, accountability and equality.
- In accordance to Islamic beliefs
- Subject matter, agreement, terms, conditions and the nature of the contract or covenant in business transaction should not be contrary to the shariah.
- Hence the term ‘Shariah Compliant’.

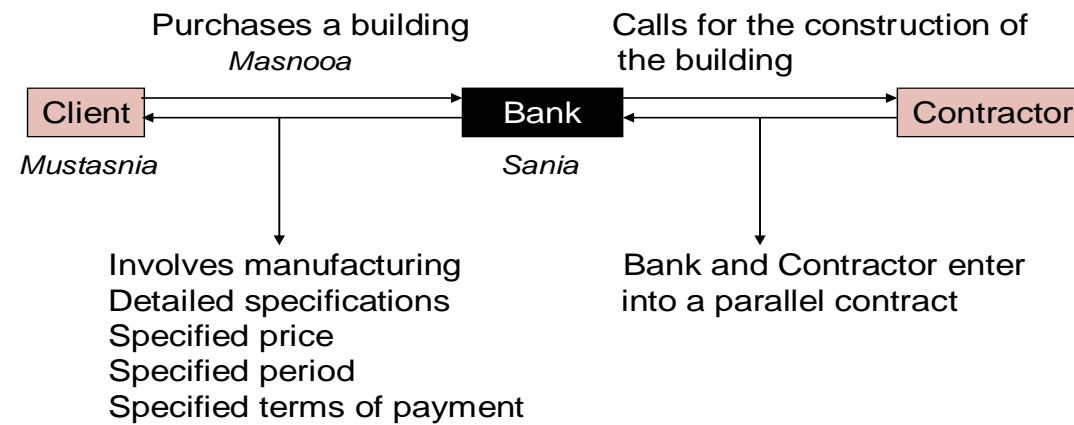
# The Shariah in Contract

- Contract or covenant between people, it's binding on the parties etc both in personal and in business transactions outlined by Quran and Sunnah
- Must acknowledge and incorporates these aspects into its subject matter, agreement, terms and conditions thereto
- Contract – *al-aqad* (to tie, to knot, to conjunct)
- *Al-aqad* – contract or a covenant between two or more parties on a subject matter
  - Based on *ijab* and *qabul*
  - Mutual consent
  - Subject matter not contrary to shariah
  - Persons of sound mind, reached puberty, free to enter into contract and not bankrupt.



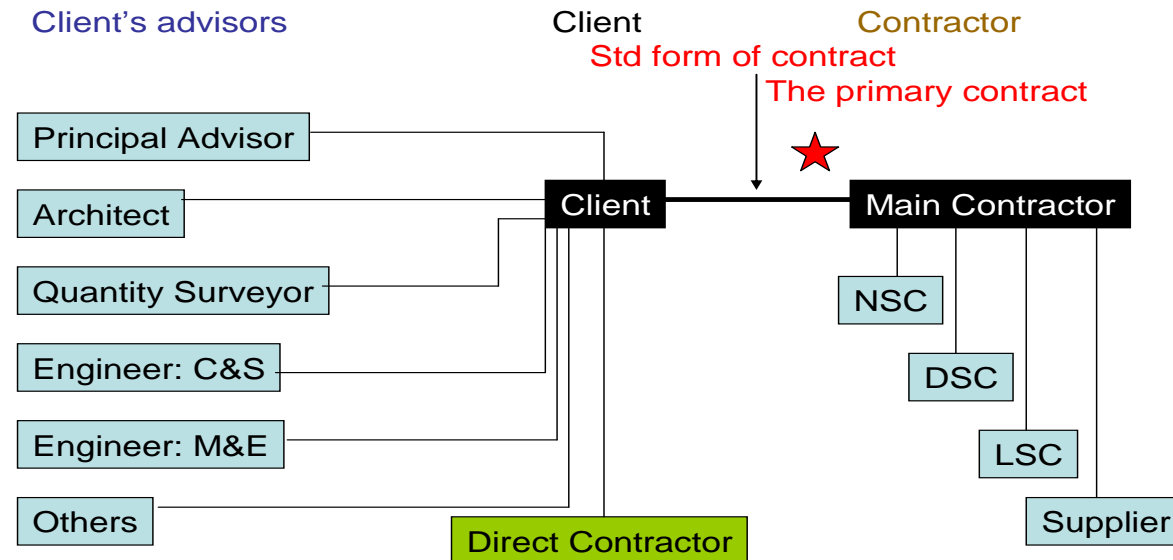
# The Shariah in Contract

## *Istisna'* financing contract



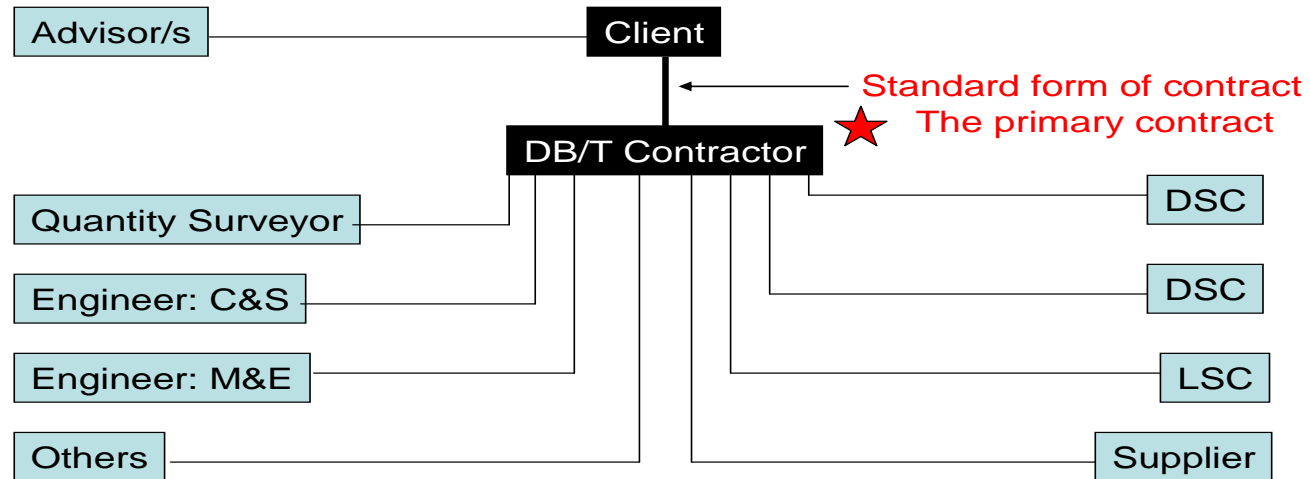
# Current Conventional Contract Practice

## Construction contracts - Traditional



# Current Conventional Contract Practice

## Construction contracts – Design and Build / Turnkey



# Comparison between conventional contract practice and Istisna'

Description	Remarks
1. Formation of contract <ul style="list-style-type: none"><li>• Capacity to contract</li><li>• Offer and acceptance</li> <li>• Consideration</li></ul>	Broadly appears consistent Data on the basis of an ijab and qabul and the procedures they entail are currently not available  Broadly appears consistent
2. Contractor's obligations	Broadly appears consistent
3. Insurances	Should include provisions making Takaful mandatory
4. Third parties	Broadly appears consistent
5. The works	
6. Payments	



# Comparison between conventional contract practice and Istisna'

Description	Remarks
7. Damages for non-completin and Liquidated damages (L&D)	Broadly appears consistent
8. Delay and extension of time	
9. Alternative method of dispute resolution through arbitration	
10. When is contractor discharged of his liabilities	

# Conclusion

- A shariah compliant construction contract should embrace in its subject matter, agreement, terms and the conditions the Islamic doctrines that reiterate all of the Islamic belief, practice and value system
- Absent features:
  - The validity of a shariah compliant contract is subjected to the divine sanctions
  - The subject matter, considerations etc must be in conformity with the divine lawas
  - Business transaction that complies with the shariah is considered part and parcel of the religious belief and practice of the Muslims

# Conclusion

- Based on mutual agreement
- *Istisna'* is the most appropriate model
- Brief comparison between 10 key conventional contract practice and their relation to the shariah has been identified and provided
- Initial findings suggested that most of them broadly comply with the requirements of the shariah
- The demand will grow
- Desire of muslims to apply *al-muamalat* in procuring construction works
- Shariah, legal and construction experts should prepare themselves to embrace this new challenge.

THANK YOU  
&  
WASSALAM

[sfarihah@iium.edu.my](mailto:sfarihah@iium.edu.my)