



## Research Article

# LEGAL APPROACHES TO THE INTRODUCTION OF ISLAMIC INVESTMENT FUNDS IN UZBEKISTAN

**Submission Date:** February 11, 2023, **Accepted Date:** February 16, 2023,

**Published Date:** February 21, 2023 |

**Crossref doi:** <https://doi.org/10.37547/tajpslc/volume05issue02-04>

**Journal Website:**  
<https://theamericanjournals.com/index.php/tajpslc>

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## ABSTRACT

The article analyzes the possibilities of the normative legal framework for the organization of activities of Islamic investment funds in Uzbekistan and legal approaches in this regard.

Although views on the need to use the opportunities of Islamic finance in Uzbekistan have existed for a long time, no progress has been observed in terms of legislation. The provision of Islamic finance services in the private sector is rapidly developing while the legislature is closely monitoring the processes. Today, according to the author, two different approaches have been formed in Uzbekistan regarding the formation of legislation related to Islamic finance. According to the first approach, new legislation on Islamic finance should be created. The second approach rejects the creation of new legislation and considers it sufficient to introduce amendments and additions to existing legislation. In the course of the analysis, the author studied the contents of both approaches more widely and expressed his opinion. In the concluding part of the article, the author put forward proposals on the establishment of Islamic investment funds and their legal regulation and improvement of national legislation.

## KEYWORDS

Investment fund, investment company, Islamic investment fund, sukuk, muzoraba, Sharia.

## INTRODUCTION

When it comes to improving the legislation on investment funds, we think that it is necessary to dwell on the issues of applying Islamic finance. According to the data, in the following years, the total assets of Islamic financial institutions will amount to 2.5 trillion dollars, growing by 15-20% per year. Investment funds are also a branch of the Islamic financial market.[1] In recent years, the number of Islamic investment funds has increased, and the management of Islamic investment funds has now become the main activity of most banks and financial institutions. [2]

Interest in Islamic finance has been growing in our country in recent years. The draft of the Presidential Decree "On measures to introduce securities based on the principles of Islamic financing" was discussed by the former Capital Market Development Agency. According to the project, for the first time in our country, "sukuk" securities were to be issued in the form of a pilot project in order to determine the extent of changes in the legislation, to review achievements and shortcomings. After the termination of the agency, the fate of the project also remained unknown.

Also, the President of the Republic of Uzbekistan, Sh. Mirziyoev, in his Address to the Oliy Majlis on December 29, 2020, noted that the time has come to create a legal framework for the introduction of Islamic financial services in our country. [3]

Although more than 90 percent of the population are Muslims, Islamic finance is practically not used in our country. However, there is a practice of introducing their capital into the economy through verbal agreements of our citizens who do not use the services of traditional banks due to their religious views. This practice was mentioned in the Decree of the President of the Republic of Uzbekistan dated November 24,

2018 "On additional measures to improve the financing mechanisms of projects in the field of entrepreneurship and innovation" No. PF-5583 as a factor that hinders the effective development of financing mechanisms for prospective projects in the field of entrepreneurship and innovation.

Although Islamic finance originated in Muslim countries, it also developed in European countries. In 1978, Luxembourg was the first European country to offer Islamic finance products. After that, Islamic finance became popular in other Muslim countries. In 2002, "sukuk" bonds were listed for the first time on the Luxembourg Stock Exchange. Malaysia was the first among Muslim countries to introduce Islamic securities (bonds) to the financial market. The Malaysian capital market is one of the most advanced in the world. The timely introduction of Islamic finance into practice led to significant growth in the country's economy.

Under Malaysian law, mutual funds represent structured collective investment schemes, allowing investors to pool their savings into mutual funds with similar investment objectives and risks. Mutual funds are under the management of venture capital investment companies, and mutual funds are invested in a diversified authorized portfolio on behalf of investors in accordance with their investment objectives. Investment schemes of mutual funds include a tripartite relationship between the management company, the trustee and the investor, and are legally bound by the requirements specified in the trust management agreement. The legislation governing the mutual fund sector consists of the Trusteeship Act of 1949 and the Companies Act of 1965. [4] It can be seen that Islamic mutual funds are not much different from conventional mutual funds.

According to the accounting and auditing organization of Islamic financial institutions, sukuk are certificates of equal nominal value, which confirm an indivisible share of the ownership of tangible assets, services, and assets of a particular project. [5]

An equity, as opposed to a debt obligation, is an interest in a dedicated tangible asset or a financed project. Its income, unlike a bond, is generated from the use of assets and services or from the profit of the project being financed. Legislation of rights as a security makes it possible to quickly and easily implement large projects in partnership.

In the management of Islamic mutual funds, it is possible to use the principles of two forms - negotiation (partnership) and authority. If the negotiation principle is used, the management company participates as a negotiator and shares in the profit with the investor. On the other hand, if the principle of delegation is used, the manager only participates as a representative and may receive administrative fees for his actions. The principle used is usually indicated in the issue prospectus. [6]

The term "Islamic investment funds" refers to a common pool (common fund) into which investors invest their surplus funds in order to obtain a halal profit in strict compliance with the rules of Sharia. Participants of the fund acquire the right to participate in the fund and receive a document confirming the ownership of a share in the profit actually earned by it. These documents can be called "certificate", "action" and other names, their legality from the point of view of Sharia must meet two main requirements.

First, participants can expect a profit in proportion to what the fund actually earns instead of the fixed face value of these certificates. Therefore, no profit rate is guaranteed. Participants of the fund should clearly

understand that the yield of their certificates depends on the profit or loss generated by the fund. If the fund receives a large profit, the yield of the certificate will increase by this amount. The first of the main principles of Islamic finance is the prohibition of riba. Islamic banks or takaful companies involved in Islamic finance do not practice riba, that is, they do not charge additional interest on top of their loans.

Secondly, the amount entered must be invested in business activities permitted by Sharia. Business activities must meet Islamic requirements. That is, there should be no alcohol, weapons production or depraved entertainment industries.

Two different approaches can be put forward regarding the application of Islamic finance in our country. According to the first approach, it is necessary to develop a separate legal framework for the application of Islamic finance. According to the second approach, Islamic finance should be accepted as a new financial product and directly applied in practice, as it is a part of the world financial system. In the case of Islamic investment funds, the legislation of the Republic of Kazakhstan relied on the second approach. Although the Law "On Investment and Venture Funds" was adopted in the Republic of Kazakhstan in 2004, by 2018, Article 4-1 was added to the law. According to it, an Islamic investment fund is an equity investment fund that invests the fund's assets in accordance with the principles of Islamic financing, and a closed-end mutual fund is an Islamic investment fund. The investment declaration of an Islamic investment fund must be in accordance with the principles of Islamic finance and must be agreed with the board on these principles. [7]

All issues related to the establishment, management, firm establishment and liquidation of the Islamic investment fund are regulated by the norms of this

law. In our opinion, it is appropriate to adopt the approach of the Republic of Kazakhstan in our country as well. Since the relationship between investment funds and their investors is of a legal nature, it is sufficient in our view that the business entity providing the investment service indicates that it is an Islamic investment fund in its investment declaration. At the same time, Islamic investment funds must meet the requirements set for all investment funds and strictly comply with the law. Creating a separate legal framework for Islamic finance, including Islamic investment funds, is a long-term process. However, today in our country there are investment companies operating on the basis of current legislation. Currently, according to the current legislation, it is possible to establish and operate Islamic investment funds without any obstacles. In principle, the organization of activities based on the principles of Islamic financing does not lead to violation or circumvention of applicable legislation. However, the implementation of the law requires amendments and additions to the legislation on the stock market.

According to Article 1, Part 2 of the Law of the Republic of Uzbekistan "On Securities Market", this Law applies to shares, bonds, treasury obligations, certificates of deposit, securities derivatives and promissory notes. If the sukuk is included in the Law of the Republic of Uzbekistan "On the Securities Market" as a security, it can be traded in our country.

### CONCLUSION

In conclusion, it can be said that there is no need to create a separate legal system for using the services of Islamic investment funds in the national economy. However, it is considered necessary to introduce legal categories necessary for the operation of Islamic investment funds into the existing legal norms.

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