

Islamic syndicated financing for West Java International Airport development



INDONESIA

By Farouk Abdullah Alwymi

Seven Indonesian Islamic regional banks have approved financing via syndication for the development of West Java International Airport in Kertajati, Indonesia. The beneficiary of this syndicated financing is the West Java Regional Government (Pemprov Jabar) majority-owned company, Bandara Internasional Jawa Barat (BIJB). BIJB was set up by Pemprov Jabar in November 2014 to specifically undertake part of the development of Kertajati.

The agreement of this syndicated financing amounting to IDR906 billion (US\$68.08 million) was signed on the 13th June 2017 and witnessed by the governor of West Java, Ahmad Heryawan. The Islamic regional banks that participated in this syndicated financing are Bank Jateng Syariah (Islamic Central Java Bank), Bank Sumut Syariah (Islamic South Sumatra

Bank), Bank Sulbar Syariah (Islamic West Sulawesi Bank), Bank Kalbar Syariah (Islamic West Kalimantan Bank), Bank Jambi Syariah (Islamic Jambi Bank), Bank Kalsel Syariah (Islamic South Kalimantan Bank) and Bank Jabar Banten (Islamic West Java & Banten Bank).

The development of Kertajati is undertaken by the Ministry of Transportation, the Republic of Indonesia and Pemprov Jabar. The Ministry of Transportation is working on the air part and Pemprov Jabar on the land part. The total financing required for the land part amounts to IDR2.16 trillion (US\$162.37 million), of which IDR808 billion (US\$60.98 million) was covered by Pemprov Jabar itself, IDR906 million (US\$68,106.9) was financed through the aforementioned syndicated financing and the remaining shortfall of IDR400 billion (US\$30.19 million) is planned to be covered through a collective investment scheme arranged by one securities company.

The representative of the Islamic syndicated banks, Hanawijaya, saw that the opportunity to be involved in financing a national strategic project such as Kertajati is important for Islamic banks to contribute to the development of infrastructure in the country. He expects the remaining financing required to also be covered by Islamic banks. He also indicated that there are eight Indonesian Islamic banks keen to participate in the second syndicated financing.

West Java has the second-largest regional income after Jakarta, amounting to IDR24.2 trillion in 2015 (US\$1.83 billion). The development of this international airport in the region is expected to further foster the growth of business in the region.☺

Farouk Abdullah Alwymi is CEO of Alwymi International Capital and the chairman of the Center for Islamic Studies in Finance, Economics, and Development. He can be contacted at faalwymi@alwymicapital.co.id.

First considerations on new law proposal on taxation of Islamic financial transactions



ITALY

By Stefano Padovani

Although the law proposal meant to regulate the tax treatment of certain Islamic financial transactions executed in Italy, which we reported on in May 2017, has not yet been published, we have been able to obtain and review unofficially its text and are in a position to set forth some initial considerations and comments.

The first main comment is that the proposal sets two general principles of paramount importance. The first is the principle of equal treatment of Islamic financial transactions and conventional ones, thus introducing in Italy, as it has happened in other jurisdictions, the so-called level-playing field approach. The second principle is that, when the proposal does not explicitly deal with a given transaction, the ordinary rules for financing agreements under Italian tax law apply. In other words, it would appear that the proposal has also introduced in Italy the principle that taxation must occur having regard to the substance of the transaction rather than to its form.

The second comment is that, apart from what is stated as aforementioned, the proposal has followed the approach of regulating only certain Islamic finance contracts, rather than providing a set of rules applicable to all of them. In fact, the proposal only deals with Murabahah, Ijarah and Istisnah. Furthermore, those contracts are identified by reference to the concept and contracts drawn by the Italian civil law system (such as sale (including sale with reservation of title), work and leasing contracts provided by the Italian civil code) and which may not necessarily accurately reflect financial techniques which are defined by reference to general standards and precedents.

This is a choice which could lead to issues of application of the law to financial contracts which, although being identified as Murabahah, Ijarah and Istisnah contracts under Islamic finance standards and precedents, do not fully conform to what has been identified as the correspondent Italian civil law-regulated contracts. Should this be the case, one could probably resort by way of interpretation to the aforementioned

general principles to apply the tax regime of the most similar regulated contract.

Furthermore, it has to be noted that only debt-based contracts and not profit and loss ones have been addressed. There are in fact no rules, for instance, for Mudarabah or Musharakah agreements, thus leaving uncovered a substantial part of the Islamic finance universe. It may be that this choice signals that the Italian legislator is of the idea that Islamic finance will develop in Italy first in the retail banking space. This could be justified by the fact that the Italian Islamic community is mostly made up of immigrants which are in need of basic banking products for buying houses and other goods. It remains to be seen whether it is an appropriate choice, or whether attention should also have been given to instruments which could be issued independently from religious beliefs and be preferred by Islamic investors.☺

Stefano Padovani is a partner and the head of banking and finance at NCTM Legale Associato. He can be contacted at stefano.padovani@nctm.it.