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THE ROLE OF FINANCE TO PROMOTING SUSTAINABLE DEVELOPMENT[1]

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Today the design of sustainable finance system is an important challenge for all of the countries in the world. The current financial crisis calls for the reform of the financial architecture and to revisit the fundamental assumptions about the nature of systemic risk in the actual modern and interconnected economy. The financial crisis is when losses in one market raised concerns about liquidity and solvency in other market. This situation will cause an alert in the system, turning the crisis systemic and the losses could spread in elsewhere. The problem could be stay in a nontransparent market in which the lack of standards increase the speculation which infiltrate a credit bubble bursting that's becoming a time bomb. If we put a new nontransparent financial product in a highly structured system, we will get an excess in the increase of a credit risk that will be very difficult to diagnose, thus the complexity of the financial markets and their investment products, poses additional demand in the evaluation process. Facts demonstrated that the interconnectivity of complex banking institutions droves modern systemic risk in the banking sector. As a result, the financial stability regulation has been marked by the shift from micro-prudential regulation to macro-prudential regulation. In addition, as a consequence of globalization, the movement of capital across the global financial markets is extremely high and we can observed the entry of new financial instruments and players in the international financial markets. Also, we can observed that the introduction of new financial instruments were the source of contagious that produce the systemic risk in the financial markets, because we were found that those products were unsafe and risky. For example, since the introduction of the subprime mortgage through the United States of America's financial markets, the systemic risk made real, so in view of those facts, the financial market players put the emphasis in the study of financial market structure to avoid another systemic risk. However, it is important to emphasis that the development of new financial instruments are necessary to promote the financial innovation. To prove that I will discuss three financial instruments like the "*floating mortgage*" or "*maximum-sum mortgage,*" the "*sukuk*" and the "s*overeign wealth funds*" and I propose that the use of these financial instruments, with the appropriate control design, could moving the flow of capital and that movement will create the necessary elements to enlarge the economic growth in a way of sustainable development system. The study of economic fundamentals together with the study of classical legal concepts, will bring us the mandatory tools to promote a sustainable development system. The growth and interdependence of financial system will present benefits and risks. The challenge is to ensure that through the financial system the policy agenda to promoting a sustainable development could be achieved. The global economy is our present and finance is an integrated part of our global economy that, include public and private entities, and consumers. With the use of finance we could design new financial products and structures that will assists us in the dynamics of the interchange of assets and liabilities. Through the use of finance we can evaluate the yield of different financial products over a period of time and under determined conditions. We can't forget that finance is the science of the time value of money, the risk level and the expected rate of return.

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[1] The theme for this article is inspired in the theme of the 3rd Geneva Summit on Sustainable Finance organized by the University of Geneva, Latsis Foundation, Sustainable Finance Geneva and UNEP FI, celebrated on March 22nd, 2016 at the International Conference Centre Geneva (CICG) in Switzerland.

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I. INTRODUCTION

Today the design of sustainable finance system is an important challenge for all of the countries in the world. The current financial crisis calls for the reform of the financial architecture and to revisit the fundamental assumptions about the nature of systemic risk in the actual modern and interconnected economy.[3] As a matter of fact, after World War I, Great Depression and World War II, the global financial integration could be achieved the level of confidence necessary to promote the reliance in the international flows. Also, in 1990s the emerging economies reaches confidence in their market securities, particularly in bonds market. Moreover, history shows that in times of slow technology advances investors have been operated with independence and negotiations were unhurried, but now the increase in the use of new technologies changed the form of negotiations and the form of doing business. Before 2008 it was thought that the regulation of individual banks would capture all risk in the system because supervision of the parts would add up to supervision of the whole.[4] However, facts demonstrated that the interconnectivity of complex banking institutions droves modern systemic risk in the banking sector.[5] As a result, the financial stability regulation has been marked by the shift from micro-prudential regulation to macro-prudential regulation.[6]

In addition, as a consequence of globalization, the movement of capital across the global financial markets is extremely high and we can observe the entry of new financial instruments and players in the international financial markets.[7] Also, we can observe that the introduction of new financial instruments was the source of contagious that produce the systemic risk in the international financial markets, because we were found that those products were unsafe and risky. As a matter of fact, part of the problem of the latest financial crisis, in some extent, begun with the development of the subprime mortgage as a financial instrument or product. Since the introduction of this financial product through the United States of America's financial markets, systemic risk in the international financial markets made real. Thus, in view of those facts, the financial market players put the emphasis in the study of financial market structure to avoid another international contagion risk or systemic risk. However, it is important to emphasis that the development of new financial instruments is necessary to promote financial innovation. To prove that I will discuss three new financial instruments like the "*floating mortgage*" or "*maximum-sum mortgage,*" the "*sukuk*" and the "s*overeign wealth funds*." I propose that the use of these financial instruments or products, with the appropriate control design, could moving the flow of capital and that movement will create the necessary elements to enlarge the economic growth in a way of sustainable development. By virtue of these financial instruments, we could use the financial innovation to develop a safety and accessible product for the benefits of consumers and the economy. To achieve this goal, the role of finance is extremely important. The use of finance will create the necessary elements to enlarge the economic growth in a way of sustainable development. Even though, in the process to create and design a sustainable finance system, I propose the use of concepts of economic fundamentals with the classical legal figures, because those concepts had the historical data that we could use and put together to develop a sustainable system. In a globalized economic system, the design of new financial product must be build up with the development of strong fiscal policies. We can't ignore that emerging markets in modern times are explained, in part, by the greater similarity between the economic structures in many countries.

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[3] C. S. Dwight, Missed (Inter) Connections: Proposed Revisions To The Federal Reserve's Approach To Financial Stability Analysis Under The Bank Holding Company Act, 18 N.C. Banking Inst. 599 (2014).
[4] Id.
[5] Id.
[6] Id.
[7] P. Mauro and Y. Yafeh, Financial Crises of the Future, Finance & Development, International Monetary Fund, December 2007, hptt://www.imf.org/external/pubs/ft/fandd/2007/12/pdf/mauro.pdf (last visited October 10, 2015).

And now, the emerging economies are better diversified and they engaged in more similar economic activities than they did in the past.[8]

The source of systemic risk today, in financial markets, is not necessarily the source of systemic risk in the future. The increase in interbank connectivity creates more opportunities for financial development, but as the same time, creates more opportunities for systemic risk contagion and transmission in the future.[9] The role of finance to promoting sustainable development will be define to seek and capture the risk at the market level.

II. THE RISK OF THE CREDIT BUBBLE BURSTING

The financial crisis is when losses in one market raised concerns about liquidity and solvency in other market. This situation causes an alert in the system, turning the crisis systemic and the losses could spread in elsewhere. The problem could be stay in a nontransparent market in which the lack of standards increases the speculation which infiltrate a credit bubble bursting that's becoming a time bomb.

If we put a new nontransparent financial product in a highly structured system, we will get an excess in the increase of a credit risk that will be very difficult to diagnose. The complexity of the financial markets and their investment products poses additional challenges in the evaluation process. Typically, this evaluation will be made by the credit rating agencies. Although these agencies have a long and well-known track record in rating the investments in the financial market, it was not the experience when they rated the subprime residential mortgage created in United States of America.[10] The subprime residential mortgage as a new nontransparent financial product was packaged into the structured credit system as a security. The mortgage-related securities were backed by pools of securities, loans or credit derivatives, and the cash flows were divided into various segments with different repayment and return characteristics.[11] In addition to the subprime residential mortgage as a new nontransparent financial product, the increase in the amount of cash move around in the international financial market and the policies of credit granting, turned flexible the principle of prudence. Apart to the mortgage market crises, the effects of the actual financial crisis have been found in areas like: banks making loans to another bank ("interbank loans"), short-term commercial paper and even in the municipal bonds.[12] Thus, the financial market is hard to understand. The risk of the credit bubble bursting is difficult to identify if we have lack of information and it is difficult to differentiate the credit risk in a specific segment of the financial system. As a result of, there is the importance in the regulation and supervision of the structured credit instruments. We have to evaluate the leverage of the credit instrument in terms of capital reserve to buffering the investment and avoid the illiquidity.[13] One of the problems detected in the actual financial crisis is the pattern used by banks to maintain off in their balance sheets the mortgage-related securities and their credit derivatives. Bank's management strategy was to highly leverage the subprime mortgage and put these financial products out of their balance sheet to keep the bank out of loss position.[14] The last housing bubble bursting occurs when homeowners were in default in their mortgage loans, caused the increase in foreclosure proceedings and the prices of properties used as collateral were falling down. The strong demand for liquidity by banks to leverage the investments not included in their balance sheet

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[8] Id.
[9] Id., *supra*, note 3.
[10] R. Dodd and P. Mills, Outbreak: U.S. Subprime Contagion, Finance & Development, International Monetary Fund, June 2008, hptt://www.imf.org/external/pubs/ft/fandd/2008/06/dodd.htm (last visited October 10, 2015).
[11] Id.
[12] Id.
[13] Id.
[14] Id.

provoked the demand for short-term liquidity that made difficult for banks in United States of America and Europe to borrow money to funding the risk of lending to a counterparty.[15] The fragility of trust in the interbank markets system illustrated how quickly a bank can runs out of cash when its reputation is damaged. When financial markets are illiquid, the effects were in the form of systemic risk that we already known through the actual financial crisis.

Another example of the effects of the credit bubble bursting is the bond insurers, who began in 2003 to insured mortgage-related securities and their credit derivatives.[16] With the increase in mortgage loan defaults, many bond insurers became in problems, their liabilities increase so they being in a negative position that caused the downgraded of their financial position by the credit rating agencies.[17] This situation was never happened previously. The effect of the actual financial crisis in the insurer companies still has an incredible impact in the financial market and in the interbank market system.

As we are seeing financial markets involve greater amount of leverage and the recent facts shown that they were vulnerable to large price movements and market illiquidity. The nontransparent products like the subprime mortgage, exacerbated the structure of the credit market instruments and contributing to the actual crisis. The interbank system needs an appropriate regulatory incentives and supervision to aid banks to consolidate the off balance sheet entities into their accounts. If we can move in a right direction, and to establish strong fiscal policies, we correct current problems and deter future recurrence.

III. FINANCIAL INNOVATION TO INCREASE THE SCALE OF SUSTAINABLE FINANCE

Another effect of the current financial crisis was observed in the movement of capital from advanced economies to emerging markets. Investors looked for new opportunities in emerging economies like: China, Brazil, Chile, Colombia, Mexico, Peru, Uruguay and India. Investors may have many reasons to invest in an emerging economy and to obtain profits in a foreign country. The investments in emerging economy could be made through the investment in portfolio (buying bonds or shares), or to acquire control over a company in a selected country.[18] The direct investment in a foreign country adopts different characteristics and investors evaluate different concepts. For example, they evaluate the costs of investing in a foreign country such as: taxes and government grants, the existence of abundant natural resources and the costs of labor.[19] Direct investment often depends on the decision of the recipient country to attract and allow investment, so foreign investors, like foreign corporations with global presence, sometimes tend to keep close relations with local authorities.[20] As a result, the interest in the investment could have an impact in the atmosphere of the internal politics issues and the economy of the selected country.[21] Some of these countries may even have laws that allow the opacity of the capital movements (tax havens), whereupon the data on those investments may be difficult to interpret at the macro level.[22]

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[15] Id.
[16] Id.
[17] Id.
[18] T. Galeza and J. Chan, What is Direct Investment?, Finance & Development, International Monetary Fund, September 2015, hptt://www.imf.org/external/pubs/ft/fandd/2015/09/basics.htm. (last visited October 10, 2015).
[19] Id.
[20] Id.
[21] Id.
[22] Id.

For example, the fast growth of financial sectors across Asia was an important part of the growth miracle that has made Asia the world's most dynamic region.[23] The establishment of the bank in the Shenzhen Special Economic Zone, approximately on 1988 in the southern of China and near the border of Hong Kong SAR, began to buy and sell shares in local companies to investors.[24] Today, Shenzhen is among the world's 20 largest stock exchanges comparable to the stock markets in Switzerland and Madrid.[25] As countries get richer, their consumers demand more financial services like: mortgages or credit cards.[26] Also, the increase in the financial needs demand more financial services like: buying property for new stores or equipment for new factories.[27] Asia's growth is an example of an extraordinary expansion of the region's financial sectors.[28] Asian's banks also tend to be more focused on the traditional bank system of deposit taking and consumer lending to households and companies.[29] Asian's banks rely less on lending to other banks and on selling products such as swaps and other derivatives.[30] Facts shown that these were an advantage during the ultimate global financial crisis when dependence on borrowing from other banks created problems across the United States of America and Europe.[31]

In sum, we have to considerate these important factors in the evaluation of the role of finance to promoting sustainable development. However, financial innovation and the design of new financial products are very important to obtain a sustainable development. To explain my views of the role of finance to promoting sustainable development, next, I will discuss three examples or areas of study that we could use to evaluate the sustainable economic growth.

a. "Floating Mortgage"

The "*floating mortgage*" or "*maximum-sum mortgage*" is a type of mortgage introduce in the Spain legislation by the Act 41 on December 7, 2007.[32] The "*floating mortgage*" is a type of mortgage that is constituted to secure the fulfillment of an uncertain obligation through a maximum amount of liability. The purpose of the Act 41 was to create a new financial structure through the flexibility of the collateral used as a security of the mortgage loan. The Act 41 of 2007 define that the "*floating mortgage*" may be constituted on behalf of financial institutions, public and social security administration, with all of these entities without covenant of modification.

According with the Act 41 of 2007, it will be sufficient that clauses of the "*floating mortgage*" specifies and recorded: (1) the general description of the basic legal acts that caused or may be derived in the future demand of the secured obligation, (2) the maximum amount of liability, (3) the term of the mortgage, and (4) the computation of the final balance or payoff cancelation. The "*floating mortgage*"

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[23] J. P. Walsh, The Future of Asian Finance, Finance & Development, International Monetary Fund, June 2014, hptt://www.imf.org/external/pubs/ft/fandd/2014/06/walsh.htm (last visited October 13, 2015).
[24] Id.
[25] Id.
[26] Id.
[27] Id.
[28] Id.
[29] Id.
[30] Id.
[31] Id.
[32] Ley 41/2007, de 7 de diciembre, por la que se modifica la Ley 2/1981, de 25 de marzo, de Regulación de Mercado Hipotecario y otras normas del sistema hipotecario y financiero, de regulación de las hipotecas inversas y el seguro de dependencia y por la que se establece determinada norma tributaria [LH] Boletín Oficial del Estado [(B.O.E. n. 294], 8 de diciembre de 2007) (Spain), translated in Regulation of the mortgage market and other rules of the mortgage and financial, regulation of reverse mortgages and dependency insurance system and which establishes certain tax standard, (art. 153 bis Ley Hipotecaria 2012).

allows to negotiate that the amount payable will be the result of the assessment made by the lending financial institution according with the written conditions and obligations agreed by the parties in a contract. The "*floating mortgage*" promotes the flexibility with the introduction and mix of the present and future obligations agreed in the mortgage contract. Before the introduction of the "*floating mortgage*," it was necessary to constituted many mortgages as obligations to ensure, thus this situation complicated the lending practice and affected the operations of debtors. The "*floating mortgage*" could be a new financial product that intend to generalize the possibility to ensure various legal obligations with one mortgage. As examples of "*floating mortgage*" I can mention the mortgage denominated in foreign currency or "*multicurrency mortgage*," in which the payment should be made in foreign currency and the amount depends on the exchange rate governing at the time of payment for the corresponding currency. In the "*floating mortgage*" the maximum amount of liability is not initially determined. In this type of contract, the maximum amount determines the maximum risk for third parties who acquire the rights of the mortgaged property. Thus when a third party possessor exist or when subsequent creditors exist, the maximum amount established in a "*floating mortgage*" will be the maximum amount of liability by which the debtor will respond in the event of default.

The "*floating mortgage*" guarantees a plurality of different obligations, present or future, in which the existence of a causal connection is not required. Also, the modification or extinction between the different obligations are not necessary. This type of mortgage could cover the needs in the lending practice, because this mortgage could coverage and ensures a plurality of operations with a same client. The characteristics of the "*floating mortgage*" are the following: (1) various obligations, present or future; (2) undetermined obligations with determine basic lines; (3) absence of relationship between the obligations agreed in a contract, in other words, the obligations can be different and not related to each other; (4) absence of distinctive modification of the different obligations, which means that each obligation remains from the beginning until the end of a mortgage contract with independence and autonomy; (5) the use of the same property as warranty of the various obligations agreed in a contract, in which it must be established the maximum amount of liability and (6) the maximum liability is limited and unchanging.[33] The clauses of this type of mortgage must include the maximum amount for principal, interest, costs and expenses.

Other requirements of the "*floating mortgage*" are: (1) the maximum time period or term period for the mortgage, which will be independent of each one of the obligations agreed in a contract and (2) the formula for calculating the guaranteed final balance, because parties can agree in writing that such balance will be the result of the assessment made by the mortgagee and that it is payable on demand, such certification of balance would be the amount payable in the foreclosure procedure.[34]

However, the mortgagor is entitled to demand the cancellation of the "*floating mortgage*," if the following conditions are jointly met: (1) all of the assurances and susceptible obligations agreed in a floating mortgage were met and (2) for the beginning of new future obligations subject to the warranty of the "floating mortgage," will be required a new consent by the parties in the contract. As Ms. Encarna Cordero-Lobato explains, the clause that identify a "*floating mortgage*" is the "*globalization clause*," which will include a general description of the basic legal acts that result, or may result, in the demand of the secured future obligation. That is the contract should set the criteria for integration of the guarantee obligations.[35]

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[33] M. Goñi Rodríguez de Almeida, El devenir de la hipoteca flotante, 731 Rev. Crítica Der. Inmobiliario 1646 (2012).
[34] Ley del Notariado art. 17 [B.O.E. 1862, 4073] (Spain) translated in where the first copy of the deed or which the interested party requested, and designated it with character of enforcement).
[35] Encarna Cordero Lobato, Tratado de Derechos de Garantía, 566 (Editorial Aranzadi, 3rd ed. 2002).

Therefore, it is very common in commercial practice that when the debtor constitutes a guarantee in favors of various creditors (usually credit institutions), it is necessary that in the contract established and identify the specific participation of each creditor on the collateral (the joint character), also it is necessary to established the amount of such participation and the system or form of the demand of execution which will normally will be by the regimen of majorities.[36] In the "*floating mortgage*," unlike the ordinary mortgage, the maximum amount of liability is not reduced by each payment made by the mortgagor, because this type of mortgage is offer to the mortgagee as a security right for the assurance of one or more undifferentiated obligations.[37] However, the debtor could request a partial cancelation of one or more of the guarantee obligations agreed in a "*floating mortgage*."

The advantages of this legal figure are the following: (1) lowers the costs and promote the constitution of the set of different credits through the achievement of a single mortgage, whereupon the debtor could use the maximum leverage of a real estate property, (as a means of stretching the credit to the last consequences), (2) avoids the need to establish or cancel various mortgages and allows creditor or creditors to accept the mortgage over any of the guaranteed credits and (3) also allows to make a set of different obligations, "*so that the whole value of the real estate as collateral serves or cover any of the distinctive or different guaranteed obligations*."[38] Although, for the constitution of the "*floating mortgage*" it is not a legal requirement that debtor will be an entrepreneur, but the creation of this type of mortgage was thought to help the small and medium-sized enterprises. Through this type of mortgage, the entrepreneur could be rating whether to submit his property to an early mortgage, even before the origination of the obligation. With this type of contract, it is more likely that debtor will obtain credit from financial institution, and at the same time the financial institution will be more willing to extend credit if the entrepreneur has a warranty on behalf of the entity.[39]

Possible disadvantages of the "*floating mortgage*" is the anticipation of debt, in which the debtor's real estate will be linked to a specific lender even before the origination of the obligation.[40] Based on that, it is necessary to carefully analyze the kind of obligations included in the "*floating mortgage*," because as another disadvantages, the lending institution can set unilaterally not only the amount of debt to put on demand for collection but also the lending institution, as a creditor, could demand the compliance of the guaranteed obligations, and as a result the debtor will be in a disadvantage position.

According to the latest judgements issued by Courts of United States of America, the Supreme Court of Spain, and the Court of Justice of the European Union, they seek to foster the dissemination of truthful, clear and accessible information for consumers about financial products based on the promotion of legal and economic security. The "*floating mortgage*" could be a new financial product that debtors and creditors could use to create a new form of financing structure. However, the complexity of the "*floating mortgage*" presents the necessity of it study. The application of this type of mortgage has been suspended in the light of the current financial crisis since 2007, year in which this type of contract was introduced in the Spain legislation.

b. "Sukuk"

[36] J. I. Canle Fernández, Consideraciones sobre la hipoteca flotante: El nuevo artículo 153 bis de la Ley hipotecaria, 723 Rev. Crítica Der. Inmobiliario (2011).
[37] F. Azofra Vegas, Hipotecas en mano común, 725 Rev. Crítica Der. Inmobiliario 1285, 1311 (2011).
[38] M. A. Parra Lucán, Los principios generales de la Ley 41/2007, de 7 de diciembre, de modificación de la Ley del mercado hipotecario y otras normas del sistema hipotecario, 711 Rev. Crítica Der. Inmobiliario 261 (2009).
[39] Id.
[40] Id.

Another financial instrument that has captured the attention of the investors, financial institutions and economists is the "*sukuk*." Since few years ago, the Shari'ah financial instrument has been access to the capital markets and that access was successfully achieved through the use of "*sukuk*" (the Islamic equivalent of bonds). It can be said that all started on December 2001, when Kumpulan Guthrie Berhad a Malaysian company, completed the first international issuance of "*sukuk*."[41] "*Sukuk*" is an instrument analogous to bonds. The targeted investors in "*sukuk*" was in Asia and Middle East.[42] Therefore, on July 2002 the Malaysia Federation completed the second issuance of "*sukuk*."[43] In both occasions the issuance was denominated in U.S. dollars and "*sukuk*" was sold internationally, including in the financial market of United States of America. Also, the issuance of "*sukuk*" was rated by the international credit rating agencies.[44] At that time, the international "*sukuks*" have been issued by borrowers located in Germany, Pakistan, Indonesia and United States of America.

In recent years, Islamic banks have begun operating in such countries as: Denmark, France, Luxembourg, Nigeria, Switzerland, South Africa and United Kingdom.[45] In addition, a number of large European and American banks, such as Citibank and HSBC, have opened Islamic banking windows.[46] There are $38 billion in "*sukuk*" listed in London, primarily issued by businesses and banks based in the Middle East.[47] As a matter of fact, on June 2014 was the first offering of "*sukuk*" outside the Islamic world and since then Hong Kong SAR, South Africa and Luxembourg have issued sovereign "*sukuk*."[48]

Today, Islamic finance system is one of the fast growing segments in financial industry.[49] The growth of Islamic banking outpaced conventional banking over the past decade, and now these accounts have more than 20 percent of assets in the banking system in at least 10 countries like: Islamic Republic of Iran and Sudan (which have a full development as Islamic financial centers), Bangladesh, Brunei Darussalam, Kuwait, Malaysia, Qatar, Saudi Arabia, United Arab Emirates and Yemen.[50] The Islamic finance assets grew at double-digit rates in the past decade and actually they reach an estimated of $1.8 trillion at the end of 2013 with further expected growth.[51] This growth reflects the demand from large and relatively unbanked Muslim populations, in consequence, they seek to deposit money or invest in sharia-compliant banks (which means financial instruments that are acceptable under Islamic law).[52] Also, the Islamic banking represents fast growth and this occurs in many countries in which Muslim living or move, as well as, the large pool of savings in oil-exporting economies looking for sharia-compliant investment opportunities.[53]

It is important to emphasis that Islamic banking is very different to traditional or conventional banking. The Islamic banking system operated with absence of fixed interest rates. Islamic banks are typically funded by current accounts that do not receive interest or profit-sharing investment. On these accounts the investors will receive a return determined by the eventual profitability of the bank or the

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[41] A. Roger Wedderburn-Day, Sovereign Sukuk: Adaptation and Innovation, 73-FALL Law & Contemp. Probs. 325 (2010).
[42] Id.
[43] Id.
[44] Id.
[45] Ananthakrishnan Prasad, Global Aspirations, Finance & Development, International Monetary Fund, September 2015, http://www.imf.org/external/pubs/ft/fandd/2015/09/prasad.htm, (last visited October 13, 2015)
[46] Id.
[47] Id.
[48] Id.
[49] Id.
[50] Id.
[51] Id.
[52] Id.
[53] Id.

pool of assets financed by these accounts.[54] Therefore, Islamic banks uses these funds to purchase assets. For example: homes in the case of mortgage, or industrial equipment in the case of business loan. Then leases those assets to the borrower.[55] The financial gain is associated with the underlying profitability obtained by the rental value of the asset. Another characteristic of the Islamic banking is that, in most of the times, investors engage in partnerships with the bank on a profit and loss sharing basis.[56] Also, for religious reasons many of the Islamic enterprises refrain from borrowing from the traditional banks, thus there is a huge untapped potential for the increase of the Islamic financial growth.[57]

In view of the number of "*sukuk*" issued in recent years, it is necessary the study and the improvement of their financial structure. "*Sukuk*" is an example of financial innovation. As a matter of fact, the development and issuance of sovereign "*sukuk*" were occurred in: (a) Malaysian, in this market the issuance of "*sukuks*" were used to structuring the Islamic securities to substantially replicate the conventional debt securities; (b) Bahrain, the fourth sovereign "*sukuk*" market (and fifth international "*sukuk*" market) which significantly refined the structure of international "*sukuk*" issued; (c) Pakistan, which it was one of the lasted international "*sukuk*" market and use the issuance of "*sukuk*" as a true-sale structure and (d) Ras Al Khaimah, which it was the first sovereign "*sukuk*" issued under a sukuk-issuance program.[58] A key driver of the issuance of "*sukuk*" as a financial instrument are, the desire to establish a benchmark and to encourage the development of the "*sukuk*" market in a relevant country. Although in countries in which the Islamic principles are already part of national law, for many of them, it is important the development of a legal framework to support the issuance of "*sukuk*."[59] Thus at this moment, it is indispensable for those countries, the design of the structure that will facilitate the development of the "*sukuk*" legal framework. The development of this legal framework would be the key factor or the reason, for the Islamic countries, to establish and encourage the development of a "*sukuk*" market.[60] Thus, we can observe that the Islamic finance presents a challenge in terms of regulation, supervision and monetary policy. Also, as another topic or theme of study, there are gaps in central bank instruments in managing the liquidity of Islamic banks.

The Islamic finance assets are in continuous growth, for that reason, we have to evaluate the role of finance in this important sector. If we can do that, we will promoting a sustainable development. However, we have to look carefully to this financial market because we are faced with the possibility of creating new financial instruments that could be used as a collateral for monetary transactions between Islamic banks and conventional banks. In consequence, we have to be capable of create and design an effective deposit insurance system. We have to create a system in which revenues of the Islamic banking are not mixed with the revenues of the conventional banking. As any other financial system, the key is to establish the adequate framework to ensure the stability of the financial system as a whole. As we already known through the latest financial crisis, the shocks of individual institutions and markets, adversely affect the global financial system. The Islamic banking presents an opportunity to create a specific legal framework with a specific bank's resolutions. In order to avoid factors that could generate events of financial crises, we have to develop the correct techniques to provide liquidity assistance when it is appropriate. In the design of "*sukuk*" legal framework we have to observe the Islamic bank's balance sheet and pay attention to investments in sectors like real estate and construction. History shown that these sectors are vulnerable and they could trigger the beginning of a cyclical credit bubble bursting. It is more than likely that "*sukuk*" market will continue to growth and expand. The development of "*sukuk*"

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[54] Id.
[55] Id.
[56] Id.
[57] Id.
[58] Id., *supra*, note 41.
[59] Id.
[60] Id.

market will give to Islamic banks the access to high-quality liquid assets, and those assets are necessary to comply with the international liquidity standards.[61]

Finally, the development of a viable and robust Islamic capital market could take the form of a secondary market like the mortgage market. The Islamic capital market would have the possibility to be expanded in the very near future and generate considerable earnings.

c. "Sovereign Wealth Funds"

The use of financial innovation to increase the scale of sustainable finance presents additional options for global investors and borrowers and they could allow more efficient allocation of financial resources. Some of the new financial instruments and players on the international financial markets are: hedge funds, private equity funds and sovereign wealth funds.[62] This last fund is sparking new interest because sovereign nations have been investing their reserves in the international financial markets for years.[63] A sovereign wealth fund is a state-owned investment fund in which the state investing in financial assets such as: stocks, bonds, private equity fund or hedge funds. But the definition most likely to be influential is the definition given by the International Working Group of Sovereign Wealth Funds. This group produced the "*Santiago Principles*"[64] and defines the sovereign wealth funds as:

> "Special purpose investment funds or arrangements, owned by the general government. Created by the general government for macroeconomic purposes, sovereign wealth funds hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies which include investing in foreign financial assets. The sovereign wealth funds are commonly established out of balance of payments surpluses, official foreign currency operations, the proceeds of privatizations, fiscal surpluses, and/or receipts resulting from commodity exports."[65]

The sovereign wealth fund invests globally and across different capital markets. Most of the sovereign wealth funds are funded by revenues from commodities exports or from foreign exchange reserves held by the central banks. The sudden interest in this type of fund has been kindled by various factors such as: (a) these funds have grown fast in the past decade, attaining a vast scale; (b) they have acquired large stakes in both emerging market, corporations and financial institutions, thus occasionally raising concerns about the perceived strategic of the target companies; and (c) several of them do not make their investments public.[66] Examples of sovereign wealth funds are: *Abu Dhabi Investment Authority* (ADIA), *Government Pension Fund of Norway* (GPF), *China Investment Corporation* (CIC) and *Government of Singapore Investment Corporation* (GIC). By some estimates, sovereign wealth funds manage assets well in excess of $1½ trillion, with most of this amount accounted for by a handful of such

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[61] Id., *supra*, note 41.
[62] P. Mauro and Y. Yafeh, Financial Crises of the Future, Finance & Development, International Monetary Fund, December 2007, www.imf.org/external/pubs/ft/fandd/2007/12/pdf/mauro.pdf (last visited October 12, 2015)
[63] Id.
[64] In October 2008 a group of 26 countries [Australia, Azerbaijan, Bahrain, Botswana, Canada, Chile, China, Equatorial Guinea, Islamic Republic of Iran, Ireland, Korea, Kuwait, Libya, Mexico, New Zealand, Norway, Qatar, Russia, Singapore, Timor-Leste, Trinidad and Tobago, the United Arab Emirates, and the United States. Permanent observers of the IWG are Oman, Saudi Arabia, Vietnam, the OECD, and the World Bank] committed themselves to transparency, good governance, and accountability standards by signing a voluntary code of principles, the "Generally Accepted Principles and Practices" for sovereign wealth funds (GAAP), also known as the "Santiago Principles," http://www.iwg-swf.org (last visited October 13, 2015)
[65] L. Catá Backer, Sovereignwealthfunds As Regulatory Chameleons: The Norwegian Sovereignwealthfunds And Public Global Governance Through Private Global Investment, 41 Geo. J. Int'l L. 425 (2010).
[66] Id., *supra*, note 62.

funds.[67] Although most of these funds have used conservative and long-term investment strategies, thus they could play a destabilizing role if they reversed a position abruptly, particularly one in a small emerging market country.[68] A prudent working assumption, would be that contagion is likely to reemerge, suggesting the need to be prepared at both the domestic and the international level.[69] At the domestic level, many countries have taken steps including improved macroeconomic policies and debt management, those actions reducing their vulnerability and softening the blow in the event of a crisis.[70] At the international level, the extent of the investment made by a sovereign wealth fund and its consequence in market failures and externalities require global governance and coordination.[71] The debate has focused on the possible role of the sovereign wealth funds in the international financial market or other supranational institutions, for example, if it is necessary the establishment of mechanisms committed to providing liquidity in a financial crisis scenario.[72] Also, regional groups of countries have been arrange to pool their international reserves to provide a backstop in case of a crisis.[73] Some observers have suggested the necessity of regulation of the sovereign wealth funds in the international financial flows, in refinements the existing prudential regulations and to address the attention in the needs for additional transparency and financial data provision. This analysis will include a discussion of whether gaps were uncovered by the recent turmoil originating in the subprime market.[74]

The implications of the sovereign wealth funds in the financial market are not yet fully understood and some experts present arguments on whether, on a net basis, each of these players is likely to foster stability or volatility. In particular, the policy debates that is likely to concentrate on whether these players should provide additional information about their strategies and investments (transparency), and on the possibility that new (voluntary) codes of conduct will be conceived for these new players.[75] The evaluation of the implications of the sovereign wealth funds in the financial markets as a whole, will require the identification of exactly what information is needed to permit effective prudential regulation and to facilitate informed decisions by investors without unnecessarily hampering the operation of the financial system.[76] However, the latest financial crisis which started approximately during the summer of 2007 has shined the spotlight on issues related to transparency of advanced-country financial institutions and the importance of preserving stability in the core financial markets, not only for the well-being of domestic investors, but also to avoid the harmful of international contagion.[77]

According to Congressional Research Service, sovereign wealth funds currently manage between $1.9 and $2.9 trillion, and they are expected to grow to over $12 trillion by 2015.[78] Similarly, the International Monetary Fund indicates that the expected growth of sovereign wealth funds' assets will be over $10 trillion in the next 5 to 10 years.[79]

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[67] Id.
[68] Id.
[69] Id., *supra*, note 65.
[70] Id.
[71] Id.
[72] Id.
[73] Id.
[74] Id.
[75] Id.
[76] Id.
[77] Id.
[78] M. A. Weiss, Cong. Research Serv., Sovereign Wealth Funds*:* Background and Policy Issues for Congress, http://www.opencrs.com/document/RL34336 (last visited October 13, 2015)
[79] D. Velculescu, Norway's Oil Fund Shows the Way for Wealth Funds, IMF SURVEY MAGAZINE, http:// www.imf.org/external/pubs/ft/survey/so/2008/POL070908A.htm (last visited October 13, 2015)

From a perspective of law and organization, the sovereign wealth fund appears to be part of the state, in which the state provides the funds and controls them. Thus the sovereign wealth funds are public owned entity with a public purpose. But from a functionalist perspective, these funds appear to behave like other private investment entities, so they participate rather than regulate.

Actually, the most influential sovereign wealth fund is the Norwegian's sovereign wealth fund known as *Government Pension Fund of Norway* (GPF). It is among the largest sovereign wealth fund in the world and the largest in Europe. The International Monetary Fund indicates that Norway's Government Pension Fund, is one of the largest and fastest growing sovereign wealth fund in the world with total assets amounting to $373 billion at the end of 2007, which represents nearly 100 percent of Norway's gross domestic product.[80] However, Norway's sovereign wealth fund is closely tied to the exploitation of petroleum resources within Norway.[81] Petroleum in Norway was first discovered in the North Sea in 1969, thus the oil production started soon thereafter in 1971.[82] By 1990 a sizeable income from the exploitation of this resource was accumulating and, in response thereto, Norway's Parliament passed the Government Petroleum Fund Law.[83] That enactment established the Petroleum Fund as a fiscal policy tool to support a long-term management of the petroleum revenues.[84] It was not invested with separate legal personality, but instead, was constituted a department of the government to be managed by the Norwegian Central Bank.[85] In 1996 was effectuated the first net transfer to the Fund which was invested as Central Bank currency reserves.[86] In 2002 non-government bonds were added to the fixed income benchmark and ethical guidelines for the Fund were issued in 2004 based on the recommendations of a government commission.[87] Such guidelines have two main elements. First, the Fund is an instrument for ensuring that a reasonable portion of Norway's petroleum wealth will benefits future generations representing an ethical obligation for present and future generations to manage the fund it in a way that generates a sound return.[88] Second, the Fund does not make investments which constitute an unacceptable risk in which the Fund may contribute to unethical acts or omissions, such as violations of fundamental humanitarian principles, violations of human rights, gross corruption or severe environmental damages.[89]

Norway's sovereign wealth fund have been characterized as a model and its characteristics are considered the best practices by international standards.[90] However, Norway's sovereign wealth fund was continued to invest heavily in the financial sector and that participation had become a source of concern by August 2008 with the collapse of the Lehman Brothers in which the Norway's sovereign wealth fund had invested heavily.[91] The Norway's sovereign wealth fund, also suffered losses with the collapse of Fannie Mae and Freddie Mac.[92] As a result of the last financial crisis, Norway's sovereign wealth fund moved more aggressively to protect its assets. For example, in December 2008, Norway filed a law suit in Maryland, USA, seeking to prevent Constellation Energy Group (in which Norway owns 4.8 percent) from convening a special shareholder meeting on December 23 to vote on a takeover by MidAmerican

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[80] Id.
[81] Id.
[82] Id.
[83] Id.
[84] Id.
[85] Id.
[86] Id.
[87] Id.
[88] Id.
[89] Id.
[90] Id.
[91] Id.
[92] Id.

Energy Company, a unit of Berkshire Hathaway.[93] But perhaps the most telling intervention of Norway occurred in late of 2008 in India. In a move that will bring considerable relief to Indian equity markets roiled by the global credit crisis, the Norwegian's sovereign wealth fund, plan to invest around $2 billion in India, primarily in equities.[94]

As a broad view, the effects of the sovereign wealth funds in the financial market need more study and regulation. This study will include all direct and indirect actions with regulatory effect. The sovereign wealth funds can be seen as a powerful method of indirect regulation and that regulation was through the participation in private markets.[95] At one level, the sovereign wealth funds act no differently than other private participatory funds and that provides a strong argument in favor of little special regulation, this position was taken by many influential academics in the United States of America and Europe.[96] The sovereign wealth funds often operate without full regulatory supervision and with objectives other than maximizing the return on their investment. These powerful funds raise legal, economic and strategic security issues, that's private funds do not. As the number and size of sovereign funds continue to grow, the global legal community is confronted by novel issues of both public and private international law.[97]

Regulatory, educational and financial innovation allowing the increase of the scale of sustainable development. The sovereign wealth funds are an example of financial instrument in which through the use of finance we could promote a sustainable development. To achieve a sustainable development of this type of financial instrument, we have to take into account the guidelines established and used by Norway's government, because those guidelines allowed Norway to keep and hold a sustained development.

Under the current economic situation, it would be worthwhile that both debtors and creditors could explore new type of financing structure and new type of financial instruments, but to do so, it is completely necessary to choose and establish the correct bases when they come to grouping the different obligations under which the creditor will be requesting and providing credit. In addition, new financial products require the study of the overall supervisory mechanisms to reach the protection of the investment together with certain aspect of capital adequacy requirements. In times of economic standstill, the initiative of the parties to carry out business must be accompanied with the practices that have been used successfully in our history. The regulatory cooperation would be a key factor in the world's financial sectors to become and reach more integration.[98] In a development of new fiscal policies, we have the responsibility to continuously adjust the law to the new trends.

IV. CONCLUSIONS: HOW TO USE FINANCE TO PROMOTING SUSTAINABLE DEVELOPMENT? AND HOW TO SURVIVE IN THE GLOBAL MARKET WITH THE AVAILABLE RESOURCES?

The evolution of international financial markets is constant. There is a social consensus about that wealth management, can created a sustainable development not only in well developed economies, but also in emerging economies. Policymakers should add pressure and be prudential in restraint the leverage of new financial instrument. The requirement of higher capital or collateral conditions had always brought good results. The financial crises affect countries but the major impact, in general terms, is on

[93] Id.
[94] Id.
[95] Id.
[96] Id.
[97] Id.
[98] Id., *supra*, note 23.

consumers which are one of the principal characters in the global economy. The negative assessment that consumers made on their own wealth could generate different problems. The problems associated with this negative assessment could create obstacles difficult to resolve in order to achieve a sustainable development. In the efforts to improve the global financial systems, we have to take into consideration the design of international controls and regulations. The integration of controls and regulations will contribute to reach a more balanced growth. Service sectors like: education, tourism, health care and financial services, are the major potential sources of income in any country around the world.[99] The development of secure pension plans, the access to a quality health care and higher education system, are the key factors to achieve a sustainable development.[100]

In addition, to survive in the global market with the available resources, it is necessary to maintain and develop liquidity mechanisms that will allow us to restrain events of financial uncertainty. Also, it is necessary the establishment of fiscal policies to eradicate corruption acts, because corruption has a wider reach and cover all dimension of governance in any country, and as a consequence, they could go into the international financial markets. The fight against corruption requires an integrated governance approach that alerts corruption actions and creates a system of transparency and accountability. However, to prevail corruption acts, it is essential the engagement of all branches in government as well as civil society, public and private sector.

The study of economic fundamentals together with the study of classical legal concepts, will bring us the mandatory tools to promote a sustainable development system. The growth and interdependence of financial system will present benefits and risks. The challenge is to ensure that through the financial system the policy agenda to promoting a sustainable development could be achieved. Institutional arrangements for coordination and integration of different financial sectors, are indispensable to pursue the role of finance as an economic engine. The role of finance must be evolving accordance with a sustainable economic development and with the integration of different sectors, both private and public. Global economy is our present and finance is an integrated part of our global economy. Finance include public entities, corporate and consumer. With the use of finance we could design new financial products and structures that will assists us in the dynamics of the interchange of assets and liabilities. Through finance we can evaluate the yield of different financial products over a specific period of time and under determined conditions. We can't forget that finance is the science of the time value of money, the risk level and the expected rate of return.

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