

Regulation on the Issuance of Sukuk

Introduction

1. (a) This Regulation is enacted by the Capital Market Development Authority pursuant to Section 60(a) of Law No. 2/2006 (Maldives Securities Act) to stipulate the standards and guidelines to be adhered to by parties in relation to the issuance of sukuk securities. This Regulation shall be referred to as the “Regulation on the Issuance of Sukuk”.

Interpretation

2. The words and expressions referred to in this Regulation shall mean the following unless the context clearly indicates otherwise.

“Company” shall mean a company registered in the Maldives pursuant to Law No. 10/96 (Companies Act of the Maldives).

“Sukuk” shall mean a certificate, document or electronic record evidencing the ownership of an asset or an investment satisfying the shariah principles and concepts approved by the Authority; and evidencing the ownership of the profit generated from the asset or investment.

“Issuance of Sukuk” shall mean the sale of Sukuk to any party; or an offer to sell Sukuk, or an invitation to purchase Sukuk.

“Sukuk Murabaha” shall mean Sukuk issued in accordance with the principles of Murabaha. A Murabaha agreement is a sale and purchase agreement entered for the purposes of raising funds for the purchase of property or assets. In a Murabaha agreement, the seller must disclose the purchase price of the assets and the profit margin to the purchaser. Pursuant to the agreement, the purchaser can choose to either make the payments in a lump sum amount or in instalments and the payment scheme must accordingly be stipulated in the agreement.

“Sukuk Ijarah” shall mean Sukuk issued in accordance with the principles of Ijarah. An Ijarah is an agreement entered into for the lease / rent of an asset. The owner of the asset with the lessee must determine the lease period and rent of the asset or equipment prior to the lease of the asset or equipment. For the duration of the lease period, the owner of the asset shall be the lessor.

“Sukuk Mudharabah” shall mean Sukuk issued in accordance with the principles of Mudharabah. A Mudharabah is an agreement entered into for the financing of a business or project. Pursuant to this agreement, the capital investor (Rab-Al-Mal) shall provide capital for the business and the manager of the business (Mudharib) shall run the business. Where the business generates profit, the profit shall be distributed between the parties in accordance with the agreed ratio for distribution. Any loss suffered by the business shall be borne solely by the investor unless caused by negligence from the manager.

“Sukuk Musharakah” shall mean Sukuk issued in accordance with the principles of Musharakah. A Musharakah is a partnership entered into between two or more persons who contribute capital in the form of monies or assets, for the purpose of running a business. All partners must provide capital for the business. Where the partnership generates profit, the profit shall be distributed between the partners in accordance with the agreed ratio for distribution. However, any loss suffered shall be shared between the partners in accordance with their respective capital contribution.

“Authority” shall mean the Capital Market Development Authority established under Law No. 2/2006 (Maldives Securities Act)

“Information Memorandum” shall mean any document which stipulates information pertaining to Sukuk or a proposal or prospectus prepared for the issuance of Sukuk.

“Trust Deed” shall mean a document in which another person is appointed as trustee for and on behalf of the Sukuk Holder. This document shall include the responsibilities of the trustee.

“Facility Agent” shall mean a person appointed by the issuer of Sukuk to act on matters pertaining to the issuance of Sukuk. In issuance of Sukuk, the issuer may appoint more than one facility agent.

“Sukuk Holder(s)” shall collectively refer to all persons who purchase or subscribe to the sukuk being issued.

Naming the Sukuk

3. (a) The name of Sukuk shall not be misleading. The name should be based on the agreement upon which the Sukuk is structured. For instance, when naming a Sukuk based on the principles of Musharakah, the terms ‘Sukuk Musharakah’ shall be included.
- (b) Where the Sukuk is structured on multiple contracts, the Sukuk may be named after the issuer or may include words such as ‘investment’ or a similar name thereof. The criteria used for the naming of Sukuk shall be provided in the sukuk documentation.

Appointment of a Shari’ah Advisor

4. (a) The issuer of Sukuk shall appoint a Shari’ah Advisor registered at the Authority under the Regulation on Registration of Shari’ah Advisors. The remuneration of the advisor shall be at the expense of the issuer of Sukuk.
- (b) The person appointed as the Shari’ah Advisor shall undertake the following responsibilities.

1. Advise on all aspects of the Sukuk including documentation and structuring;
 2. Issue a declaration confirming that the structure and system for the issuance of Sukuk and the relevant agreements and documents are in accordance with the standards stipulated in this Regulation; and
 3. Assure that applicable shariah principles and any relevant resolutions and rulings endorsed by the Authority are complied with.
- Information required with Sukuk proposal
5. An application for the approval of issuance of Sukuk shall consist of the following documents and information.
 - (a) Background information of the issuer;
 1. Name(s), address, registration number, date and place of registration and primary business activities.
 2. Names and addresses of shareholders, share structure, and information on authorized and paid-up capital.
 3. Names and addresses of the members of the Board of Directors, along with their identity card number (or passport number).
 - (b) Detailed information on Sukuk structure and transactions (a diagram illustrating the Sukuk transaction and structure). The following information shall be included.
 1. Contracts in relation to Sukuk, size of Sukuk (in monetary terms), term, profit/coupon or rent or rate; and the frequency at which payment for the profit/coupon or rent shall be made.
 2. Information about security/collateral (if any).

3. Primary method for repayment and other alternative repayment methods.
 4. Where the Sukuk is to be listed, the status of listing; and whether there are any limitations for trading or exchanging of the Sukuks in the secondary market. (Any Sukuk structured on a contract structured on a debt can only be traded at face value of the Sukuk).
 5. Where the Sukuk is rated by a credit rating agency/agencies, the letter issued by the agency in relation to the credit rating.
 6. Covenants, conditions precedents, representations, and warranties.
 7. Events of default (or enforcement events, where applicable).
 8. Arrangements for repurchase or early redemptions of Sukuk.
 9. Possible disputes that may arise between parties, and arrangements for resolution of such disputes.
- (c) Details on utilization of Sukuk proceeds (money), including a schedule (where applicable).
- (d) Any special approvals obtained from the Authority in relation to appointment of a Shari'ah Advisor and/or in relation to a Shari'ah principle or standard.
- (e) In relation to issuance of Sukuk, declaration of the appointed Shari'ah Advisor(s).

- (f) Any other information relating to the issuance of Sukuk;
and
 - (g) Name, telephone number, fax number and email address
of the officer in charge of the issuance of Sukuk.
 - (h) Declaration of the issuer of Sukuk.
 - (i) Copy of the letters of approval from the regulatory
authorities (including any approvals needed in relation to
issuance of sukuk and in relation to utilization of sukuk
proceeds).
 - (j) The latest audited financial statements of the issuer.
 - (k) The proposed mechanism for immediate disclosure of
information to Sukuk Holders and to hold the annual
general meeting of Sukuk Holders.
- Information Memorandum
- 6. (a) An 'Information Memorandum' that contain details
required to be included in the Sukuk proposal prior to the
issuance of Sukuk under this Regulation, and other
information required to be disclosed to investors before
the issuance of Sukuk shall be submitted to the Authority.
 - (b) If Sukuk is being sold to the public, the Information
Memorandum shall be made available to the public 7
(seven) days prior to the issuance of Sukuk.
 - (c) The Information Memorandum shall include Sukuk
subscription period, arrangement to issue certificate,
procedural matters relating to subscription of Sukuk, and
all information relating to rights of Sukuk Holders.
 - (d) The Information Memorandum shall state if an issuer or a
board member of the issuer was charged or convicted with
an offence under laws relating to securities, companies,

and any other law relating to fraud or dishonesty within 5 (five) years prior to the date of Information Memorandum.

- (e) The Information Memorandum shall state if the issuer or a board member of the issuer had been released or disciplined by a stock exchange for violation of listing requirements or standards within 5 (five) years prior to the date of Information Memorandum.
- (f) The Information Memorandum shall include any other information which the Authority or issuer deems material to the investors.

Shari'ah requirements applicable for all types of Sukuks

7. In all types of Sukuks, the underlying assets must fulfill the following.

- 1. The underlying asset and its utilization shall not be contrary to the rules of Shari'ah.
- 2. An underlying asset that has been mortgaged or is a debt, such as an asset charged to Islamic financial institutions or an asset that is jointly owned with another party can only be used as an underlying asset for the issuance of Sukuk, only if the issuer has obtained consent from the chargee or the joint owner(s) of the underlying asset.
- 3. Where receivables are used as the underlying asset, they must be *mustaqir* (established and certain) and transacted on cash basis (on spot).

Requirements for Sukuk Ijarah

8. Sukuk Ijarah can be issued according to the following rules.

- (a) The lease rate and lease period shall be determined while contracting.
- (b) The leased asset shall only be used for Shari'ah compliant activities.

- (c) The lessee can sublease the leased asset to a third party for a period not exceeding the initial lease period.
- (d) The owner of the leased asset shall not lease the asset to a third party during the lease period.
- (e) The owner of the asset is responsible for the maintenance of the leased asset. However, the parties to a lease agreement may agree on the maintenance of the leased asset in the terms and condition of the agreement. The owner of the asset may also assign the lessee to maintain the leased asset as an agent, at the expense of the owner.
- (f) Forward lease (Ijarah Mawsufah-Fi-Zimmah)
 - 1. A forward lease is a permissible contract for the issuance of Sukuk.
 - 2. A forward lease is a lease contract on an asset which will exist in the future. The rent, the type of the leased asset, the term of the lease and the rent payment method agreed by the parties must be clearly stated in the lease contract.
 - 3. Nonetheless, upon delivery of the asset to the lessee, if the lessor was in breach of the specification agreed by the lessor;
 - (a) The lessee may refuse to accept the asset, or
 - (b) Demand from the lessor to replace the asset which conforms with the agreed specifications; or
 - (c) May terminate the Ijarah contract, and if the lessee has paid the rental in advance, the lessor should return such paid amount.

- (g) Variable rate mechanism (the system to form the rent in variable values) – The rental value of the leased asset may be based either in fixed or variable value. If the rent is in variable value, the parties must agree to the computation of the lease term and the agreed rent value in the lease contract.
 - (h) Transfer of ownership of the leased asset – upon the expiry of the lease term, the lessor may transfer the ownership of the leased asset to the lessee or to any third party through any one of the following methods.
 - 1. Sell the leased asset to an agreed price; or
 - 2. Gift (hibah) the leased asset.
- Requirements for Sukuk Musharakah
- 9. Sukuk Musharakah shall be granted in accordance with the following rules.
 - (a) Capital of Musharakah – Capital contributed by the partners (musharik) shall be in the form of cash, asset, or a combination of both.
 - (b) Kafalah (guarantee) on Musharakah capital – Kafalah on Musharakah capital may be paid by way of a third-party guarantee, with or without imposition of fee.
 - (c) Partners of Musharakah – A Musharakah shall be formed with minimum of 2 (two) partners. However, there is no minimum number of Sukuk investors for the trade of the asset.
 - (d) Profit and loss – The profit from the Musharakah venture may be distributed among the partners according to the pre-agreed profit-sharing ratio. However, losses incurred

shall be shared among the partners in accordance with their respective capital contribution.

- (e) Waiver of Right (Tanazul) – If any of the partner intends, a partner may terminate his right to profit from the Musharakah venture.
- (f) Management of the venture – A partner or the issuer of Sukuk or a third party may be appointed as the manager.

Requirements for
Sukuk Mudharabah

10. The Sukuk Mudharabah shall be granted in accordance with the following rules.
 - (a) Mudharabah Capital – Capital contributed by a Rab-Al-Mal (capital provider) shall be given in the form of cash, asset, or a combination of both.
 - (b) Kafalah (guarantee) on Mudharabah capital –Kafalah for the Mudharabah capital may be paid by way of a third-party guarantee, with or without imposition of fee.
 - (c) Rahn (collateral) – The Rab-al-Mal may request the Mudharib (manager of the business) to place a Rahn as protection from possibility of loss on capital, that may be incurred as a result of negligence or misconduct by the Mudharib.
 - (d) Profit and loss – The profit from Mudharabah venture shall be distributed between the capital investor and the operator of the business in accordance with the pre-agreed profit-sharing ratio. However, losses incurred shall be borne solely by the capital investor.
 - (e) Waiver of Right (Tanazul) – A party may waive his right on the profit payment from the Mudharabah venture if he so desires.

- (f) Management of the venture – The management of the venture may be carried out by the Mudharib or a third party appointed by the Mudharib.
- Trust deed
11. (a) In the absence of a trust deed for the issuance of Sukuk, the transaction documents must consist of a provision indicating that the occurrence of an event of default would entitle the Sukuk Holders to declare the Sukuk immediately due and payable without any provision for a grace period and a provision indicating that parties can negotiate otherwise if the Sukuk Holder desires shall also be included.
- (b) In the absence of a trust deed for the issuance of Sukuk, the transaction documents must consist of a provision which give the right to the issuer of Sukuk to cancel the Sukuk repurchased or redeemed, and that the Sukuk could not be resold.
- (c) These transaction documents must include that the issuer or the facility agent(s) acting on behalf of the issuer for the purchase or redemption of Sukuk, shall cancel the Sukuk so purchased or redeemed, and that such Sukuk shall not be resold.
- Use of Sukuk proceeds
12. Funds raised from issuance of Sukuk shall be utilized for Shari'ah-compliant purposes, and in accordance with the purpose disclosed to the Authority. Where funds are disbursed to the issuer of the Sukuk to carry out a project for the purpose of generating cashflow to pay for the Sukuk Holder, the transaction documents shall include the relevant parameters, conditions, supporting documents and where applicable, certificates of the Sukuk trustee or facility agent for the release of the funds to the issuer.
- Other regulatory approvals
13. Where regulatory approval(s) are required from relevant authorities, such approvals must be obtained, and conditions

laid by such authorities (if any) must be fulfilled prior to submitting the Sukuk proposals to the Authority.

- | | |
|---|--|
| Amendments to the terms and conditions of Sukuk | 14. Any amendments to the fundamental terms and conditions of Sukuk shall only be made after a general meeting with all Sukuk Holders and upon unanimous consensus of all Sukuk Holders. Any such amendments must be notified to the Authority |
| General principles in structuring Sukuk | 15. In structuring the Sukuk, the Shari'ah principles embodied in the Sukuk must comply with all the principles for application of those concepts. Transaction documents such as agreements shall be made and implemented in compliance with the rules and principles of Shari'ah. |
| Disclosure obligations | 16. The issuer of Sukuk, after issuance of the Sukuk, shall submit a progress report including the use or planned use of proceeds to the Authority on a quarterly basis. |
| Implementation | 17. This Regulation shall take effect from the date of its publication in the Gazette of the Republic of Maldives. |