

## Capital Market Development Authority

### Regulation on Issuance of Sukuk Securities

No: 2013/R-53

21 July 2013

- Introduction*
1. These regulations govern the issuance of sukuk securities in Maldives, and are issued pursuant to section 60(a) of the Maldives Securities Act (2/2006). These regulations may be cited as 'regulation on issuance of sukuk securities'.
- Definitions*
2. In these guidelines, the following words and expressions shall have the following meanings, unless the context clearly indicates otherwise.  
  
'Corporation' or 'company' shall mean a company registered in Maldives under Maldives Companies Act (10/1996)  
  
'Sukuk' refers to certificates, or such electronic records, which evidence undivided share of ownership of an asset, or of investments in assets or of profits generated by such assets, issued in accordance with the Shari'ah principles and concepts approved by the Authority.  
  
'Issuance of sukuk' shall mean any offer or invitation to subscribe or for sale of sukuk securities.  
  
'sukuk murabahah' refers to sukuks issued in accordance with the principles of 'murabahah'. A murabahah transaction is a transaction entered to fund purchase of an investment or an asset. A murabahah transaction requires the seller to disclosure to the buyer the initial purchase price and the profit margin added. The payment for the asset by the buyer under murabahah may be in a lump sum or in installments. The payment method must be a part of the murabahah agreement.  
  
'sukuk ijarah' means sukuks issued in accordance with the principles of 'ijarah'. An ijarah is an agreement to lease/rent an asset. The amount of rental payments and the duration of lease/rent should be determined prior to entering into the agreement. The owner of the asset during the period of lease is the lessor.  
  
'sukuk mudharabah' refers to sukuk issued in accordance with the principles of mudharabah. A mudharabah transaction is where an agreement is entered into between parties to finance a business or a project. The rab-al-mal (financer) provides the fund and the mudharib (manager) runs/operates the business. Profits are distributed as per a pre-agreed ratio between the parties.  
  
'sukuk musharakah' refers to sukuk issued in accordance with the

principles of ‘musharakah’. A musharakah is a joint venture between two or more persons who contribute capital to fund a business venture. All parties provide capital for the business. Profits would be distributed as per pre agreed ratio between partners. However, losses are shared in the ratio of capital provided.

‘Authority’ refers to Capital Market Development Authority formed by Maldives Securities Act 2/2006.

‘Information memorandum’ refers to any document(s) providing information about the sukuk to be issued, or the proposal or the prospectus to issue sukuk securities and the accompanying documents regardless of whatever name is used.

‘Trust deed’ refers to the document appointing a Trustee(s) for the sukuk holders, having the duties and responsibilities of the trustees.

‘Facility agent’ refers to the person appointed by the sukuk issuer to act on behalf of the issuer in issuance of sukuk. An issuer may appoint more than once agents for a single sukuk-facility.

‘Sukuk holders’ refers collectively to the body of persons who purchase or subscribes to the sukuk being issued.

*Naming of sukuk*

3. (a) The naming of sukuk shall not be misleading and must be based on the type of contract used to structure the sukuk. For an example, a musharakah sukuk shall have the words ‘sukuk musharakah’ in its name.
- (b) Where the sukuk is structured using multiple (more than one) contracts, the sukuk may be named by the name of the issuer, or may include the word ‘investment’ or a similar word in its name, or a similar name may be given to it, provided that the criteria used for the name given is stated in the sukuk documentation.

*Appointing a shariah adviser*

4. (a) The issuer of sukuk securities shall appoint a registered shariah adviser for the sukuk, at the expense of the issuer.
- (b) The adviser appointed as per subsection (a) must undertake the following responsibilities.
- i. Advise on all aspects of the sukuk including documentation and structuring
  - ii. Issue a declaration certifying that the contracts, documentation and structuring of sukuk complies with these regulations; and
  - iii. Assure that the applicable Shari’ah principles and any relevant resolutions and rulings endorsed by the SAC are complied with.

*Required documents and information*

5. An application seeking approval for issuance of sukuk shall be accompanied by following documents and shall have following information.
- (a) Background information of the issuer
- i. Name(s), address, registry number, date and place of

- registration/incorporation, and principal business activities
- ii. Names and addresses of shareholders, (percentage) structure of shareholdings, and the number and value of authorized, issued and paid-up capital.
  - iii. Names and addresses of the members of the Board of Directors, their ID card or passport number
- (b) Details about the sukuk structure and transactions involved (a diagram illustrating the structure of the sukuk and the transactions involved) including the following information
- i. Sukuk facility/contracts' description, size (in monetary terms), tenure, profit/coupon/rental rate, and frequency of payments
  - ii. Information about security/collateral (if any)
  - iii. Principal repayment method and other available repayment methods
  - iv. Where the sukuk is to be listed, the current status of listing; and whether there are any limitations for trading of, or exchanging of, the sukuk in the secondary market. (A sukuk based on a debt can only be traded at face value)
  - v. Where the sukuk is rated, the letter issued by the Credit Rating Agency, indicating the rating of the sukuk
  - vi. Covenants, conditions precedents, representations and warranties
  - vii. Events of default (or enforcement events, where applicable)
  - viii. Arrangements for repurchase or early redemptions of sukuk
  - ix. Arrangements for dispute resolutions between the parties.
- (c) Details on utilization of proceeds, including a schedule (where applicable)
- (d) Any special approval(s) issued by the Authority in relation to an appointment of a shariah adviser and/or in relation to a shariah principle or concept.
- (e) Declaration for the appointed shariah adviser(s) in relation to the sukuk to be issued
- (f) Other information relevant to the sukuk to be issued
- (g) Names, telephone numbers, facsimile number and e-mail address of the officers-in-charge for the issue
- (h) Declaration of the issuer
- (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

- (k) The proposed mechanism for continuous disclosure of information and arrangements for annual general meeting of the sukuk holders
- Information memorandum* 6. (a) An 'information memorandum' which contain information that is required to be submitted along with the proposal to issue sukuk and information required to be disclosed to the investors prior to issuance of sukuk, must be submitted to the Authority.
- (b) The information memorandum shall be made available to the public seven days prior to the date of opening for subscription
- (c) The information memorandum must include the duration for subscription, the arrangements to issue sukuk certificates, procedural matters for subscription and details of the rights of the sukuk holders.
- (d) The information memorandum must state whether the issuer, or a member of the board of directors of the issuer, had been convicted or charged with an offence under securities laws or company legislation, or any offence involving fraud or dishonesty, within the last five years from the date of publication of the information memorandum.
- (e) The information memorandum must state whether the issuer, or a member of the board of directors of the issuer, had been disciplined by a Stock Exchange for violation of the listing requirements of the Exchange, within the last five years from the date of publication of the information memorandum.
- (f) The information memorandum must have any other information which the Authority or the issuer deems material to the investors
- Shariah requirements applicable for all types of sukuk* 7. In all types of sukuk, the underlying assets must comply with the following requirements
- i. The underlying asset and its use must comply with the requirements of Shari'ah.
- ii. An encumbered asset, such as an asset charged to an Islamic Financial Institutions, or an asset that is jointly-owned with another party, can only be used as an underlying asset provided the issuer has obtained consent from the chargee or the joint-owners.
- iii. 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. (a) An ijarah sukuk must comply with the following requirements
- i. The rate of lease rental and lease period should be determined upon the `aqd.
- ii. The leased asset should be used for Shari'ah-compliant

activities only.

- iii. The lessee can sub-lease the leased asset to a third party provided that the sub-lease period does not exceed the initial lease period.
  - iv. The owner of the leased asset should not lease the asset to a third party during the lease period.
  - v. The lessor is responsible for maintaining the leased asset. However, the maintenance of ijarah asset may also be determined by the terms and conditions of the ijarah agreement. The lessor may also assign the responsibility to maintain the asset to the lessee as a service agent of the lessor at the lessor's cost.
- (b) Forward lease (Ijarah mawsufah fi zimmah)
- i. A forward lease is a permissible contract for the issuance of sukuk
  - ii. A forward lease is an ijarah contract on an asset that will exist in future. The rate of lease rental, the nature of the leased asset, the lease period and the method of lease payment are to be clearly stated in the contract as agreed between the contracting parties
  - iii. However, if upon delivery, the lessor fails to deliver the asset based on the agreed specification, the lessee is entitled to –
    - a. reject the asset, or
    - b. demand replacement of the asset that conforms to agreed specifications; or
    - c. terminate the ijarah contract, and if the lessee has paid any of the advance rental, the lessor should refund the amount paid.
- (c) Variable rate mechanism – The rate of lease rental may be based on fixed or variable rates. In the case of variable rate, the effective lease period and the lease rental computation must be agreed upon `aqd.
- (d) Transfer of ownership of the leased asset – At the end of the lease period, the ownership of the leased asset may be transferred from the lessor to the lessee or to any third party through any one of the following methods–
- i. By way of selling the leased asset at an agreed price; or
  - ii. By way of hibah (gift) of the leased asset

*Requirements for  
sukuk  
musharakah*

9. A sukuk musharakah shall comply with the following requirements
- i. Musharakah Capital – Capital contributed by each of the musharik (partners) should be in the form of cash, in kind or

a combination of both.

- ii. Kafalah (guarantee) on musharakah capital – Kafalah on musharakah capital may be provided by way of a third-party guarantee, with or without imposition of fee
- iii. Musharakah partners – There should be at least two (2) partners to form a musharakah. However, there is no minimum number of musharakah partners (i.e. sukuk investors) in the secondary market.
- iv. Profit and loss – The profit from musharakah venture will be distributed among the partners according to the pre-agreed profit sharing ratio. However, any loss should be shared among the partners according to their respective capital contribution.
- v. Tanazul (Waiver of Right) – A partner may waive his right on the profit payment from the musharakah venture, if he so desires.
- vi. Management of the venture – One of the partners or issuer or a third party may be appointed as the manager to manage the venture.

*Requirements for  
a sukuk  
mudharabah*

10. The following Shari'ah rulings are applicable to issuance of sukuk mudharabah
  - i. Mudharabah Capital – Capital contributed by a rabb al-mal (capital provider) should be in the form of cash, in kind or a combination of both.
  - ii. Kafalah (Guarantee) on mudharabah capital – Kafalah on mudharabah capital may be provided by way of a third-party guarantee, with or without imposition of fee.
  - iii. Rahn (Collateral) – The rabb al-mal may request mudharib (entrepreneur) to place rahn as protection from possibility of loss on capital that may occur as a result of negligence and misconduct by the mudharib.
  - iv. Profit and loss – The profit from mudharabah venture should be distributed between the rabb al-mal and the mudharib according to the pre-agreed profit sharing ratio. However, any loss should be borne in entirety, solely by the rabb al-mal.
  - v. Tanazul (Waiver of right) – A partner may waive his right on the profit payment from the mudharabah venture, if he so desires.
  - vi. 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) Where trust deed is not entered into for an issuance of sukuk, there must be a provision in its transaction documents 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 period of grace, while provision for remedy may be negotiated to the extent appropriate
- (b) Where trust deed is not entered into for an issuance of sukuk, there must be a provision in its transaction documents that the issuer would cancel sukuk which are redeemed or purchased by the issuer or by its subsidiaries or by agent(s) of the issuer who is acting for the redemption or purchase and that the sukuk could not be resold.
- (c) The documents must also state that, the issuer, or the facility agent(s) acting on behalf of the issuer for repurchase or redemption of sukuk, shall cancel the sukuk so repurchased or redeemed, and that such sukuk shall not be resold.
- Use of sukuk proceeds*
12. (a) Funds which are raised from any issue, offer or invitation of sukuk must be utilized for Shari'ah-compliant purposes and in accordance with the purpose disclosed to the Authority. In situations where the funds are disbursed to the issuer for a project which will generate cash flows for payments to sukuk holders, the transaction documents shall provide for the relevant parameters, conditions, supporting documents and certificates for the sukuk trustee or facility agent, where applicable, to manage the release of the funds to the issuer.
- Other regulatory approvals*
13. (a) Where regulatory approval(s) are required from particular authority, such approvals must be obtained and conditions laid by such authorities (if any) must be fulfilled prior to submitting the proposals to the Authority.
- Amendment to the terms and conditions*
14. An amendment to terms and conditions of sukuk can be brought by a general meeting of all sukuk holders and upon consensus of all sukuk holders. All such amendments must be notified to the Authority
- General principles in structuring sukuk*
15. The application of shariah concepts to structuring of sukuk must comply with the rules and requirements and principles for application of those concepts. Creation of documents such as contracts and implementation of those must comply with shariah rules and principles.
- Disclosure obligations*
16. The issuer of sukuk must submit to the Authority a progress report detailing the use or planned use of proceeds quarterly.
- Commencement*
17. These regulations shall commence upon publication in the official gazette.

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