

Decision No. 3/2016
Issuing Sukuk Regulation

Pursuant to the Capital Market Law promulgated by Royal Decree 80/98; and
The Executive Regulation of the Capital Market Law issued by Ministerial Decision No. 1/2009; and
The Resolution of the Board of Directors of the Capital Market Authority; and
The approval of the Ministry of Finance
In the interest of the public

It has been decided

Article (1): Sukuk shall be regulated by the provisions of the attached Regulation.

Article (2): The Executive President of the Capital Market Authority (CMA) shall issue forms and directives to prescribe the implementation of the provisions of this Regulation.

Article (3): This decision shall be published in the Official Gazette and shall come into force on the day following the date of publication.

Issued on: 27th Jumada A'thaniya 1437 H

Corresponding to: 5 April 2016

Yahya Said Abdullah Al Jabri

Chairman of the Board of Directors of the Capital Market Authority

Sukuk Regulation

Chapter I

Definitions and General Provisions

Article (1):

In the application of this Regulation, words and expressions shall have the same meaning assigned to them in the Capital Market Law and the Executive Regulation and the following words and expressions shall have the following meanings unless the context requires otherwise.

Sukuk: Securities of equal value, issued for a specific term, that represent joint ownership in underlying assets or services or rights or a combination thereof, or assets of specific undertaking or existing investment activity or which will be established from the proceeds of subscription.

Beneficiary: Public or closed joint stock company or other entity approved by the CMA, and the government benefiting from the proceeds of subscription in the Sukuk.

Special Purpose Vehicle (SPV): A juristic person licensed by the CMA in the form of a limited liability company or any other legal entity established for the purpose of issuing Sukuk for the benefit of the Beneficiary and may be entrusted to act as Trustee.

Sukuk Issuer: The SPV.

Sukuk term: Maturity term of the Sukuk which commences on issuance of the Sukuk and ends on redemption.

SSB: Shariah Supervisory Board.

Sukukholders Agent: A person licensed by the CMA and appointed by the Beneficiary.

Prospectus: Written document which includes all the statements, terms and conditions, specifications and provisions relating to the issuance and redemption of the Sukuk.

Trust: An agreement whereby a Settlor entrusts the Trustee with the Trust Property to exercise the functions and powers specified in the Trust Instrument in favour of the Sukukholders.

Trustee: The juristic person entrusted with the management of the Trust Property, who is specialized in this area.

Settlor: Beneficiary.

Trust Instrument: An instrument issued creating a Trust under the provisions of this Regulation.

Trust Property: Includes any property, transferable or non-transferable, or any financial right or any intangible asset.

Article (2):

The Sukuk shall be issued in favour of the Beneficiary through the Special Purpose Vehicle to be established according to the provisions of this Regulation, according to Islamic Shariah.

Article (3):

The CMA may restrict subscription and trading in certain Sukuk to Omanis only.

Article (4):

The Beneficiary and SPV shall maintain any relevant documents, registers and books relating to the Sukuk.

Article (5):

No person may issue or offer or promote any Sukuk or publish any false statements thereon in violation of this Regulation.

Article (6): The provisions of this Regulation shall not prejudice the rules and regulations regulating foreigners' ownership of lands and properties in accordance with the applicable laws and regulations. Sukuk shall not be issued in consideration of fixed or moveable assets owned by the state as public ownership. The Executive President shall determine by decision the rules specifying the assets in consideration for which the Sukuk may be issued, in coordination with the concerned entities.

Article (7):

Where no specific provision is provided on any matter in this Regulation, the relevant provisions of the Capital Market Law and the Executive Regulation shall apply.

Chapter II

Issuing of Sukuk

Article (8):

Subject to the provisions for issuance of securities in the Executive Regulation of the Capital Market Law, the Beneficiary desirous of issuing Sukuk shall apply to the CMA to obtain an initial approval and attach with the application a brief statement on the Sukuk to be issued.

Article (9):

The Beneficiary who has obtained initial approval from the CMA shall provide the following documents on application to obtain the final approval:

1. The resolution of the board of directors of the Beneficiary, and the decision of the head of the unit for governmental entities, approving the issuance of the Sukuk. In the event of a convertible Sukuk, the resolution of the extraordinary general meeting, and the decision of the head of unit for government entities, approved by the competent authority.
2. Draft prospectus as per the form prepared by CMA.
3. Draft offering notice.
4. Copy of the constitutional documents of the Beneficiary and the SPV.
5. Copy of appointment decision appointing the Sukukholders Agent and copy of the contract concluded with the agent.
6. Certificate by the SSB confirming compliance with Shariah precepts.
7. Receipt evidencing payment of the prescribed fees for the approval of the prospectus.
8. Any additional information or documents that the CMA may require.

Article (10):

The Sukuk may be issued in Omani Rial or any convertible foreign currency subject to the provisions regulating foreign currencies.

Article (11):

The CMA may request the Beneficiary intending to issue the Sukuk to provide an acceptable credit rating certificate from an institution determined by the CMA. The CMA may refuse approving the issue if the credit rating, according to the institution's report, indicates the Beneficiary is unable to meet its obligations toward the Sukukholders when they fall due.

Article (12):

The prospectus shall include the following:

1. Mechanism for determining the subscription price of the Sukuk.
2. Determining the assets the Sukuk issuer will keep, type of the issue contract, method of investment (if any) through which the income of the Sukukholders will be achieved and protection method of the Sukukholders' interest.
3. Terms of the Sukuk.
4. Name of the Beneficiary, details, rights and obligations.
5. Nominal value of the Sukuk, subscription value and term.
6. Name of the SPV.
7. Credit rating certificate of the issue by a rating institution determined by the CMA, if required.
8. Procedures of Shariah supervision.
9. Mode and procedures of payment of returns due to the Sukukholder.
10. Redemption events and procedures.
11. Method of listing and trading of the Sukuk in the market, whether in the Sultanate of Oman or abroad.
12. Statements relating to the Trust Instrument, if there is an agreement to create it.
13. Provisions pertaining to cases of dissolution or liquidation of the Beneficiary, except for the government, prior to the date of maturity of the Sukuk and method of settlement of the Sukukholders' rights.
14. Statement on the position of the assets after the end of the term of the Sukuk.
15. Description of the assets to be structured into the Sukuk supported by the required documents, and shall include the rights of the Sukukholders.
16. Any other statements the CMA may determine.

Article (13):

The contracts whereby the Sukuk are issued shall contain the statements stated in Article (12) of this Regulation.

Article (14):

The Beneficiary shall, on announcing the offering of any Sukuk for public subscription, observe the following:

1. Ensure the investor must read the prospectus.
2. Caution the investors to bear the risks of the Sukuk and that their right to recourse to the assets of the Sukuk may be restricted if the Beneficiary is subject to liquidation procedures according to the terms and conditions of the prospectus.

Article (15):

The Beneficiary shall, on issuance of a convertible Sukuk, observe the relevant provisions relating to the capital increase and the terms and conditions of the Prospectus.

Article (16):

All Sukuk shall be of the same issue, terms and conditions, nominal value and maturity date and the Sukuk shall be fully paid up on the date of subscription.

Article (17):

The Sukuk may be issued through an issuance programme in several issues through one (1) prospectus covering all the Sukuk intended to be issued. The Beneficiary shall in this case be obligated by the following:

1. Include in the prospectus details of the issue, maturity and redemption dates of the Sukuk.
2. Specify the nominal value of the Sukuk in each issue.
3. Prepare additional statement for each issue showing the details and terms and conditions of each issue.
4. Notify the CMA of the results of allocation and total amounts paid compared to the total issue amount specified in the prospectus.

Article (18):

The Sukuk may be redeemed prior to the end of their term according to the prospectus.

Article (19):

The Sukuk may be redeemed by granting Sukukholders securities or in any other Shariah complaint way, pursuant to the terms and conditions set out in the prospectus.

Article (20)

The terms and conditions in the prospectus shall not be amended except after approval of the general meeting of the Sukukholders. Such approval shall only be valid after the consent of the CMA.

Article (21)

The general meeting of the Sukukholders may request to redeem the value of the Sukuk prior to their maturity, in the event of any violation of the terms and conditions of the issuance and such resolution shall be binding.

Article (22):

The returns accruing on the Sukuk shall be paid to the Sukukholder registered in the Sukukholders register as per the timings and terms and conditions contained in the prospectus.

Chapter III

Sukukholders Agent

Article (23):

The Sukukholders shall have an agent to be appointed by the Beneficiary. The agent shall be a licensed company operating in the field of securities. The written agreement shall set out the rights and obligations of the parties.

Article (24):

The Sukukholders Agent shall monitor the execution by the Beneficiary and SPV of their obligations mentioned in the prospectus to protect the Sukukholders' interests. In particular, it shall be responsible for the following:

1. Requesting for any information related to his obligations from the Beneficiary or SPV.
2. Ensuring that the profits due to the Sukukholders are paid by the SPV on the due dates.
3. Verifying compliance with the provision of the prospectus in the event of redemption or conversion into shares.
4. Calling for the general meeting of the Sukukholders pursuant to the provisions of this Regulation.
5. Ascertaining that the funds raised through the issue of the Sukuk are utilized in accordance with the prospectus.
6. Ensuring there are no material changes in the structure of the Sukuk without prior approval of the general meeting of the Sukukholders.
7. Carrying out such other acts as necessary for the protection of the interests of the Sukukholders.

Article (25):

Notwithstanding its obligations toward Sukukholders, the Sukukholders Agent may seek the assistance of experts and professionals to perform its duties.

Chapter IV

General Meeting of Sukukholders

Article (26):

A general meeting of Sukukholders shall be formed comprising Sukukholders of any single issue of Sukuk to protect their common interests. The resolutions of the general meeting shall be binding on all Sukukholders. The Beneficiary shall bear the related expenses.

The general meeting shall have a secretary and legal advisor to be appointed by the Sukukholders Agent.

Article (27):

The Sukukholders Agent shall call for the general meeting of Sukukholders to consider any matter that may affect the interests of Sukukholders or on request by one (1) or more Sukukholders holding at least ten percent (10%) of the total issued Sukuk.

Article (28):

The Sukukholder shall have the right to attend the general meeting of Sukukholders.

The Sukukholder may appoint any person in writing to attend the general meeting of Sukukholders and vote on the resolutions.

The general meeting of Sukukholders shall not be valid unless such meeting is attended by a number of Sukukholders representing at least two thirds (2/3) of the Sukuk of a certain issue. Failing such quorum, a second meeting shall be convened and such meeting shall be valid if attended by a number representing at least a third (1/3) of the Sukuk.

Article (29):

The notice to the general meeting shall not be valid unless it contains the agenda and substitute date of the second general meeting where quorum is not present in the first general meeting.

The notice shall be, after approval by the CMA, published in two (2) consecutive days, in at least two (2) daily newspapers, one (1) of which shall be in Arabic language. The notice shall be sent to each holder of Sukuk on the addresses registered in the Sukukholders' register maintained by the Muscat Clearing & Depository Company SAOC at least two (2) weeks prior to the date of the meeting. The CMA may send an observer to attend the meeting.

The Sukukholders Agent shall file the minutes of the meeting with the CMA within two (2) weeks from the date of the meeting after being signed by the secretary and legal advisor and approved by the Chairman of the meeting.

Article (30):

Every Sukukholder shall have one (1) vote for each Sukuk held. Resolutions shall be adopted by majority of the votes of present Sukukholders.

Resolutions of the general meeting of Sukukholders held to change the date of Sukuk redemption shall not be valid unless approved by two thirds (2/3) of attending votes.

Chapter V

Shariah Supervision

Article (31):

The Beneficiary shall ensure that the Sukuk issue is Shariah compliant through one of the following means after approval of the CMA:

1. Constitution of the SSB to review the issue.
2. Use the service of existing SSB of the Beneficiary.
3. Contract with independent Shariah consultancy firms.

In all cases, the number of members of the SSB shall be an odd number and shall not be less than three (3) who are competent to perform their duties. The meeting of the SSB shall not be valid unless attended by all the members. Resolutions of the SSB shall be issued by the majority.

Article (32):

The Beneficiary and SPV shall not interfere in the work of the SSB and must enable the SSB to perform its duties including access to all relevant records and provision of information and documents relevant to the issue and provision of reasonably required assistance.

Chapter VI

Issuance of Sukuk in Private Placement

Article (33):

All the relevant provisions relating to public subscription in this Regulation shall apply on the issuance of Sukuk in a private placement, to the extent they are not conflicting with the requirements of private placement provided for in the Executive Regulation of the Capital Market Law.

Article (34):

The Beneficiary shall, after approval of the prospectus by the CMA, submit the following information to the CMA:

1. Names and nationalities of the persons to whom the Sukuk are allocated.
2. Disclose the related parties of the Beneficiary to whom the Sukuk are allocated.

Chapter VII
Provisions for Disclosure

Article (35):

The Beneficiary shall file the following reports annually to the CMA:

1. Report on the position of the Sukuk assets, in addition to any investments during such term.
2. Report by the Shariah Supervisory Board confirming the Sukuk are Shariah compliant.
3. Any other reports the CMA may request.

Article (36):

The Beneficiary who is not listed on the Market shall disclose the audited annual financial statements.

Article (37):

The Beneficiary shall immediately disclose to the CMA any material information that may affect the Sukuk.

Chapter VIII
Special Purpose Vehicle (SPV)

Article (38):

The SPV shall be established after obtaining a license from the CMA, on request by the Beneficiary. The SPV shall have financial liability separately from the Beneficiary.

The SPV may not amend its constitution documents except after obtaining the CMA's approval.

Article (39):

Licensing application shall be filed with the CMA by the Beneficiary together with the following documents:

1. Licensing fees payment receipt.
2. SPV constitution documents.
3. Mode of management of the SPV.

Article (40):

The license term of the SPV shall be for five (5) years and may be renewed for similar term or terms, and on the same terms and conditions required for the license, on request by the Beneficiary, at least three (3) months prior to the end of the license term.

Article (41):

The Beneficiary shall manage the SPV and may use the service of companies specialized in this area.

Article (42):

The SPV shall carry out the following activities:

1. Issuance of Sukuk by way of public offering or private placement in favour of the Beneficiary according to the prospectus approved by the CMA.
2. Acquiring financial and non-financial rights for the purpose of financing the Beneficiary by issuing the Sukuk.
3. Receiving the proceeds of subscription in the Sukuk in favour of the Beneficiary.

4. Owning the Sukuk assets and keeping in favour of the Sukukholders.
5. Collecting the Sukuk profits and distribution to the Sukukholders.
6. Acting on behalf of the Sukukholders in all the contracts with the Beneficiary entity and other participants in the Sukuk issue.
7. Regular disclosure to the Sukukholders to inform them of all matters pertaining to their rights.
8. Liquidation of the Sukuk assets at the end of the Sukuk term and distribution of the proceeds between the holders according to the prospectus.
9. Carry out financial trust activity.
10. Any other activity the CMA agrees on.

Article (43):

The license may be cancelled by decision for cause by the CMA if the SPV loses any of the terms and conditions of the license.

The CMA may also cancel the license of the SPV if it infringes the provisions and laws or fails to discharge its obligations, provided notice is served on the SPV in any way to remedy the infringement during the term specified in the notice.

Article (44):

The SPV shall notify the CMA of any process that may affect its financial position.

Article (45):

The SPV shall expire in accordance with the laws and regulations.

Chapter IX
Financial Trust

Article (46):

The financial trust may be created under a written Trust Instrument after the approval of the CMA including the following statements.

1. The names of the Settlor and Trustee.
2. Description of the Trust Property and of its basic characteristics.
3. The duration of the financial trust and any provision of early termination.
4. The duties and powers of the Trustee.
5. Any other statements required by the CMA.

Article (47):

The Trust Property must be defined, and must not violate the public policy or the provision of Shariah. Where the violation leads to invalidity of the Trust Property or obligation or being null and void for any reason, the Settlor shall take the necessary procedures to create another Trust according to the provisions of this regulation including protection of the beneficiaries not less than the invalidated Trust. Where the creation of such new Trust is not possible, the Settlor shall compensate the beneficiaries for any loss they incur.

Article (48):

The Settlor shall be obliged to:

1. Deliver the Trust Property or evidence of the Sukukholders' right therein to the Trustee within not more than sixty (60) days from the date of creation of the Trust.
2. Deliver to the Trustee the documents and providing all necessary statements relating to the Trust Property.
3. Refrain from any act that may affect delivery of the Trust Property and causing transfer of the Trust ownership difficult or impossible.

Article (49):

The Trust shall be managed by the Trustee in consideration of fees to be agreed in the Trust Instrument. The Trustee may delegate the Trust management to specialized parties, however, the Trustee shall be liable for all the effects of such management. Management costs shall be deducted from the Trust Property unless the Trust Instrument stipulates otherwise.

Article (50):

The Trustee shall be financially and administratively independent of the Settlor and shall exercise its powers specified in the Trust Instrument and the provisions of this Regulation without interference by the Settlor. The Trust shall be null and void if the Trust Instrument provides otherwise.

The Settlor may request the court to remove the Trustee or replace it if it violated the limits of its powers provided for in the Trust Instrument or the provisions of this Regulation.

Article (51):

The Trustee shall be obliged to:

1. Cooperate with the Settlor to transfer the Trust Property to the Trustee.
2. Take all necessary actions to perform its duties in accordance with the Trust Instrument and best practices.
3. Maintain the necessary accounting books and records, and record in them all transactions and work relating to the Trust.
4. Keep the accounts and records of the financial trust separate from the accounts and records of any other business it may be undertaking.
5. Notify the Settlor and Sukukholders of any matter that may have an important effect on the value of the Trust Property or on investing the Trust Property.
6. Carry out the registration procedures in the Register of Financial Trust provided for in Article (58) of this Regulation and inform the CMA of any changes in the information recorded therein.
7. Keep the Trust Property separate from its own property.

Article (52):

The Trustee shall invest the Trust Property, if applicable, in a manner that does not conflict with the terms of the Trust Instrument. The Trustee may delegate the management and investment of the Trust Property, in whole or in part, to specialized parties, in which case, the management costs shall be deducted from the Trust Property, unless the Trust Instrument stipulates otherwise.

Article (53):

The Trustee is prohibited from disclosing any accounts, data or information relating to the Trust or giving the documents relating to the Trust to others, except where:

1. Required under applicable laws or the Trust Instrument.
2. Required pursuant to an order of a court.
3. Required by the CMA.

Article (54):

The Trustee is prohibited from using the Trust Property for its personal benefit or the benefit of third parties in violation of the provision of the Trust Instrument.

Article (55):

Any agreement exempting the Trustee from personal liability in whole or in part for any error shall be void.

Article (56):

The CMA, the Settlor and Sukukholders shall have the right to question the Trustee and they have the right to access and to obtain copies of the accounts, documents and records of the Trust.

Article (57):

The Trustee, in case of losing such capacity, whether as a result of removal or replacement or liquidation or bankruptcy, must submit to the Settlor, Sukukholders and the CMA a final account of the Trust supported by all the data and documents related to the work the Trustee has done for the benefit of the Trust.

Article (58):

- a. The CMA shall establish a "Register of Financial Trust" in which detailed data on each financial trust shall be recorded as per the form prepared by CMA for this purpose after payment of the prescribed fee.
- b. The Trustee shall be granted a certificate of registration once the financial trust has been registered in the Register. The Trust shall be legally valid only after registration.

- c. The Trustee must inform the CMA of any modification to the data and information recorded in the Register of Financial Trust.

Article (59):

The Settlor, the Trustee and the Sukukholders may view the information relating to the financial trust and each of them has the right to obtain an official certificate of the data and information recorded in the Register.

Article (60):

The financial trust shall terminate:

1. At the expiry of the specified term.
2. If the Settlor, Trustee and Sukukholders agree in writing to terminate the financial trust, however the agreement shall not be effective unless approved by two thirds (2/3) majority of the present votes of the general meeting of Sukukholders.
3. On occurrence of any of the causes provided for termination in the Trust Instrument.

Article (61):

Unless the Trust Instrument provides otherwise, upon expiry of the financial trust, the Trust Property shall be returned to the Settlor.

Chapter X

Conciliation and Fees

Article (62):

The acts committed in violation of the provisions of this Regulation may be conciliated prior to a court ruling after payment of the amount specified by a resolution of the Board of Directors of the CMA.

Conciliation shall result in termination of the public action relating to the conciliated acts.

Article (63):

Where the violator makes any financial gains from the violation, that shall be refunded to the person who incurred damage or where there is no such person, they shall devolve to the CMA.

Article (64):

If the violation is related to a failure in complying with the requirements provided for in this Regulation, the conciliation amount shall be increased for each day of delay at fifteen percent (15%) of the reconciliation amount up to a maximum of fifteen (15) days.

Article (65):

The violator shall pay the conciliation amount to the CMA within ten (10) days from the notice. The CMA may bring legal proceedings against the violator if he fails to pay the reconciliation amount within the prescribed time period.

Article (66):

The CMA shall collect the following fees:

S	Fee	Fee Amount	Due
1	Fees for approval of prospectus for the issue of Sukuk	0.05% of the nominal value of the Sukuk subject to a maximum of RO 2,000 and minimum of RO 1,000	Once on filing the initial draft prospectus.
2	Fees for listing of the Sukuk	0.01% of the nominal value of Sukuk subject to a maximum of RO 2,500	Annually on January 1 st of every year and on listing any new securities during the course of the year, proportionately for the remaining months of the year. Fraction of a month shall be rounded up to a whole month.
3	Fees for licensing SPV	RO 1,000	Once on licensing.
4	Fees for renewal of licensing SPV	RO 1,000	On renewal.
5	Fees for registration of the financial trust in the Register of Financial Trust	0.01% of the nominal value of Sukuk subject to a maximum of RO 2,500	Once on registration of the Trust.
6	Fees for obtaining an official certificate of the contents of the Register of Financial Trust	RO 10	For each application.