



NOTICE TO THE PUBLIC

Subject: FIRST EXPOSURE DRAFT OF SEC PROPOSED GUIDELINES ON THE ISSUANCE AND DISCLOSURE OF SUKUK BONDS

The public is advised that the Commission, in its meeting held on 26 December 2024, resolved to expose for public comment the draft Memorandum Circular on the *Proposed Guidelines on the Issuance and Disclosure of Sukuk Bonds*.

The Commission hereby requests for comments, suggestions and/or inputs from all concerned on the proposed draft Memorandum Circular by submitting written comments on or before **26 January 2025** through email at msrdsubmission@sec.gov.ph, gclagonoy@sec.gov.ph, and amlreyes@sec.gov.ph with subject **"COMMENTS ON THE PROPOSED GUIDELINES ON THE ISSUANCE AND DISCLOSURE OF SUKUK BONDS."**

27 December 2024.



SEC MEMORANDUM CIRCULAR NO. _____
Series of 2025

TO : ALL CONCERNED

SUBJECT : GUIDELINES ON THE ISSUANCE AND DISCLOSURE OF SUKUK BONDS

WHEREAS, Republic Act No. 8799, also known as the Securities Regulation Code (SRC), mandates the Securities and Exchange Commission (SEC) to regulate the issuance and sale of securities in the Philippines, including bonds and other debt instruments;

WHEREAS, Sukuk or Islamic bond represents an important avenue for international fundraising and investment activities generating significant cross-border flows globally, and is the most popular financial instrument in the Islamic Capital Market;

WHEREAS, Republic Act No. 11439, or the Islamic Banking Act of 2019, and related circulars by the Securities and Exchange Commission and Bangko Sentral ng Pilipinas, classify sukuk as an essential instrument to further financial inclusion and economic growth in the Philippines;

WHEREAS, the Commission intends to further the Republic's agenda to promote the development of Islamic banking and finance in the country and to create the opportunity for other Philippine issuers to access the sukuk market in the future;¹

WHEREAS, most countries looking into the development of the sukuk market, seek to establish a conducive environment that would support sukuk issuance and safeguard investor protection;

NOW, THEREFORE, pursuant to the powers vested in the Commission, the SEC issues the following **Guidelines on the Issuance and Disclosure of Sukuk Bonds** to ensure transparency, investor protection, and compliance with Shari'ah principles.

SECTION 1. OBJECTIVE AND SCOPE. This Memorandum Circular provides the regulatory framework for sukuk issuance in the Philippines, establishing comprehensive guidelines for disclosure, Shari'ah compliance and investor protection. These guidelines apply to all sukuk issuances that are not exempted under Section 9.1(b) of the Securities Regulation Code (RA 8799).

SECTION 2. DEFINITION OF SUKUK. Sukuk or Islamic bonds are certificates that represent a proportional undivided ownership right in tangible assets, or pool of tangible assets and other types of assets. These assets could be in a specific project or investment activity that is Shari'ah-compliant.²

¹ The words here reflect elements of the Bureau of the Treasury press release announcing its sukuk issuance, and have been used here in order to provide a consistent reflection of Government policy.

² Accounting and Auditing Organization for Islamic Financial Institutions

SECTION 3. PERMISSIBLE STRUCTURES. The SEC permits the issuance of sukuk bonds under the following Shari'ah-compliant structures:

- a. **Sukuk Ijarah:** Lease-based sukuk backed by assets leased to the issuer.
- b. **Sukuk Murabahah:** Cost-plus financing sukuk for fixed-price sales transactions.
- c. **Sukuk Istisna:** Financing sukuk to raise funds for manufacturing or construction projects.
- d. **Sukuk Wakalah bil Istithmar:** Agency-based sukuk allowing an investment on behalf of holders.
- e. **Sukuk Mudarabah:** Profit-sharing sukuk, where one party provides funds and the other expertise.
- f. **Sukuk Musharakah:** Joint venture sukuk representing co-ownership of assets or projects.
- g. Other sukuk structures as may be determined by SEC in accordance with Shari'ah principles

Section 4. PROHIBITED STRUCTURES - The structures or elements that are strictly prohibited in sukuk issuance³ include:

- a. **Riba (interest or usury):** Any form of interest-based transactions or unjustified increase in capital is not allowed
- b. **Maysir and Qimar (gambling and games of chances):** Any involvement in speculative activities or games of chance is not allowed
- c. **Ggharar (excessive uncertainty)**
- d. **Jahal (ignorance):** Any lack of transparency or withholding of relevant information among parties in a contract is not allowed
- e. **Rishwah (corruption):** Exploitation or abuse of trust for unlawful gain is not allowed
- f. Investment in prohibited goods and activities

SECTION 5. ELIGIBLE ISSUERS - The following entities may issue sukuk:

- a. National Government under the exemption provided by Section 9.1(b) of the SRC;
- b. Special Purpose Vehicles (SPVs) created specifically for sukuk issuance, incorporated and registered with the SEC, and compliant with both SEC regulations and Shari'ah principles;
- c. Publicly-listed companies (PLCs) may issue sukuk only through an SPV created specifically for sukuk issuance, incorporated and registered with the SEC and compliant with both SEC regulations and Shari'ah principles.

SECTION 6. REQUIREMENTS FOR SPV INCORPORATION AS SUKUK ISSUER - The SPV must be incorporated as a separate legal entity, distinct from the originator and established solely for sukuk issuance and holding the assets for sukuk holders. It must adhere to international standards for sukuk issuance, including Shairah principles and comply with the provisions of the Revised Corporation Code of the Philippines (RCC), particularly the following:

- a. The SPV must register with the SEC before sukuk issuance by submitting the following documents:
 - i. Articles of Incorporation which must clearly define its primary purpose to issue sukuk and act as trustee for the underlying assets in compliance with Shairah principles. It must also clearly state the SPV's role in holding, managing and transferring the underlying assets for the benefit of the sukuk holders;

³ Usmain, 2010

- ii. Bylaws which must include provisions ensuring that the operation of SPV are compliant with Shari'ah principles and that it may engage in other business activities; provided that the total non-permissible income from such activities does not exceed 5% of the total income and does not affect the company's reputation;
- b. The SPV must have a minimum authorized capital stock of Five Hundred Million Pesos (P500,000,000.00), with a minimum subscribed capital stock of One Hundred Twenty-Five Million Pesos (P125,000,000.00) and minimum paid-up capital of Thirty One Million Two Hundred Fifty Thousand Pesos (P31,250,000.00)⁴
- c. The SPV must comply with the corporate governance standards under the RCC, which includes the following:
 - i. appointment of a board of directors or trustees with at least one independent director with expertise in Islamic Finance or Shari'ah principles;
 - ii. independent oversight to ensure compliance with sukuk guidelines
- d. The SPV must submit to the Commission reporting requirements pursuant to RCC Section 177, in addition to the reports on asset management.

SECTION 7: DISCLOSURE AND REPORTORIAL REQUIREMENTS - In addition to the information and documents required by SEC Form 12-1, issuers of sukuk are required to disclose the following information and submit the following documents to the SEC for review and approval:

1. A detailed description of the sukuk structure and transaction flow, including but not limited to the following:
 - a. structural diagram identifying the parties to the sukuk structure, their capacities and the principal contractual relationships among them and the movement of funds and assets;
 - b. the sequence in which the entry into contracts, making of payments, transfer of assets and issuance of the sukuk;
 - c. the contract used in the structure and the relevant information, provisions and arrangements pertaining to the contract; and
2. Summary of the principal contracts.
3. Roles, responsibilities and obligation of the SPV and the sukuk obligor/originator
4. Role of Shari'ah in the interpretation of the sukuk contracts, and particularly in default, enforcement, amendment or restructuring
5. Comprehensive details of the members of the Shari'ah Supervisory Board (SSB) or Shari'ah Advisory Board (SAB) that have reviewed the sukuk on behalf of the issuer, including their qualifications and experiences
6. Details of the qualifications and experience of each of those Shari'ah board members
7. A formal opinion from the Shari'ah Supervisory Board (SSB) or Shari'ah Advisory Board (SAB) confirming compliance, with any implications for asset transferability and relevant SPV management standards
8. Certification from an accredited Shari'ah Supervisory Board (SSB) or Shari'ah Advisory Board (SAB) Shari'ah verifying that the sukuk structure aligns with Shari'ah requirements
9. Arrangements for regular Shari'ah monitoring and assessments, including processes for addressing events impacting Shari'ah compliance and extraordinary matters such as default, enforcement, amendment and restructuring
10. Process and procedures on the purification payments to be made when non-Shari'ah compliant income arise within the sukuk arrangements
11. Disclosure should describe if there are arrangements for zakah or any other Shari'ah-related payments to be made in relation to the asset or activity underlying the sukuk

⁴ SECTION 7 OF THE REPUBLIC ACT NO. 9182 KNOWN AS THE SPECIAL PURPOSE VEHICLE (SPV) ACT OF 2002

12. Disclosure on ta'wid or other compensation payments must be made for overdue amounts
13. Comprehensive disclosures on risks, particularly those related to SPV limitations, asset ownership, operational controls, Shari'ah non-compliance, and legal considerations
14. Evidence of ownership or rights to underlying assets backing the sukuk, particularly ensuring SPV-held assets comply with sukuk requirements
15. When trustee, delegate trustee or agent is appointed to act for sukuk holders, disclosures should describe the following:
 - a. Their rights, obligations and powers
 - b. The circumstances and pre-requisites for them acting on behalf of the sukuk holders
 - c. Provisions for change or termination
 - d. Their role in default, acceleration, enforcement or restructuring of the sukuk
 - e. Party responsible for the fees and expenses
16. In the case of a sukuk with an exchangeability or convertibility into shares, the following matters should be disclosed:
 - a. On what basis and by whom the relevant shares have been determined to be Shari'ah-compliant;
 - b. Any risk that the relevant shares might become non-compliant in the future; and
 - c. Any accommodation for sukuk holders should the relevant shares become non-compliant.

SECTION 8. ONGOING REPORTING AND CONTINUING DISCLOSURES - In addition to the periodic disclosures mandated by the SRC, a report using SEC Form 17- C must be filed with the SEC within five (5) days of the event upon the occurrence of any one or more events specified under this section:

- a. Any amendments to the contracts that would materially affect the Shari'ah aspects of the sukuk
- b. Any changes in the matters in relation to convertible or exchangeable sukuk
- c. Any material changes in the assets, investments and/or activities underlying the sukuk structure
- d. Any appointment or replacement of a trustee, delegate trustee or agent
- e. Any material changes in the matters disclosed under Use of Proceeds and Source of Payments and Recourse
- f. Details of payments made in respect of purification or compensation, if any occurred after the issuance of sukuk
- g. Any new fatwa or confirmation relating to the sukuk
- h. Any matters that a reasonable Shari'ah-sensitive investor would consider material to an investment decision as to the sukuk
- i. Any case wherein the sukuk obligor differs from the issuer requires that the information to be disclosed regarding the issuer, whether initial or ongoing, should likewise be disclosed for the obligor

SECTION 9. USE OF PROCEEDS - Disclosure should describe the use of proceeds beyond the initial application by any SPV used in the sukuk structure.

SECTION 10. SOURCE OF PAYMENTS AND RECOURSE - The ultimate source(s) of funds used to make distributions should be disclosed clearly and prominently. Disclosure should also include:

- a. Information on any contractual limitations in disposing of or enforcing against those assets
- b. Explaining that the performance of the underlying assets depends entirely on the performance of the sukuk obligor/originator
- c. Any arrangement for credit enhancement

SECTION 11. UNDERLYING ASSET AND OWNERSHIP RIGHT - The following information in relation to the underlying asset and the ownership right shall be disclosed:

- a. The assets, investments and/or activities underlying the sukuk structure, together with their intended use.
- b. Valuation of the asset, including who has performed or will perform the valuation, the basis for the valuation, when the valuation was performed and whether a valuation report has been prepared.
- c. Any arrangements for assets to be varied or substituted during the lifetime of the sukuk, including how substituted assets will be valued
- d. Any arrangement that transfers or mitigates the ownership risks or price risks relating to assets underlying the sukuk structure, such as takaful.
- e. Any encumbrance on the assets.
- f. The mechanisms for the transfer of the asset into the sukuk structure at the time of issuance and the transfer of the asset out of the sukuk structure at redemption.
- g. The precise legal interests of the issuer and sukuk holders in the asset, without solely relying on terms such as "legal ownership", "beneficial ownership" or "usufruct right".
- h. Limitation of the rights of the issuer and sukuk holders have in the asset.

SECTION 12. DEFAULT, ENFORCEMENT, RESTRUCTURING AND INSOLVENCY.

- a. Disclosure should state whether or not the sukuk obligor has conventional debt, and if so whether or not its sukuk and conventional debt contain cross-default provisions.
- b. Any arrangements to facilitate a Shari'ah-compliant restructuring should be disclosed.
- c. Disclosure should state whether there is a risk that, in an insolvency proceeding, the obligor payment obligations may be treated differently than its (other) unsecured obligations.
- d. If the SPV faces Shari'ah constraints in participating in an insolvency proceeding of the sukuk obligor or accepting distributions from the insolvency estate, this should be disclosed and the constraints described.
- e. Disclosure should describe the effect that limitations in ownership rights in the asset underlying the sukuk structure would have on enforcement.
- f. The precise mechanisms for pursuing recourse to the sukuk obligor and the disposition of the underlying asset following default should be disclosed.
- g. The risk of uncertainty as to how courts might interpret or enforce key provisions in sukuk contracts that are legally untested must be disclosed.

SECTION 13. SHARI'AH GOVERNANCE AND CERTIFICATION - Issuers must appoint an accredited Shar'iah Supervisory Board (SSB) or Shari'ah Advisory Board (SAB) to certify that the sukuk structure and underlying assets comply with Shari'ah principles.

- a. Qualifications. The SSB or SAB should comprise a panel of not less than three (3) Islamic scholars with expertise in Islamic jurisprudence (fiqh al-muamalat) and finance.
- b. Role. The SSB or SAB provides guidance and oversight to ensure that all aspects of the sukuk issuance adhere to Shari'ah principles
- c. Independence. The SSB or SAB operates independently from the Board of Directors of the SPV and of the sukuk obligor/originator.

SECTION 14. CREDIT RATING REQUIREMENTS

- a. All publicly offered sukuk must obtain a credit rating from an SEC-accredited agency to assess the creditworthiness and risk profile of the sukuk.
 - i. In asset-backed sukuk (wherein SPV and sukuk holders have legal ownership of the underlying asset), the credit rating should pertain to the sukuk and the underlying asset.
 - ii. Asset-based sukuk (wherein the sukuk obligor/originator still holds the asset and SPV and sukuk holders have a beneficial ownership/interest over the underlying

asset), the credit rating should pertain not only to the sukuk and the underlying asset but also to the sukuk obligor/originator's creditworthiness

- b. The credit rating must be disclosed in the sukuk prospectus and offering materials.
- c. Any change in credit rating after issuance, whether due to re-evaluation or market conditions, must be reported to the SEC and disclosed to sukuk holders.

SECTION 15. TAX TREATMENT OF SUKUK INSTRUMENTS - The tax treatment of sukuk instruments shall be in accordance with the Revenue Regulations No. 17-2020, issued by the Bureau of Internal Revenue (BIR), to ensure neutral tax treatment for Islamic finance transactions equivalent to those of conventional banking.

SECTION 16. PENALTIES - Any violation of the provisions of these Guidelines shall be subject to the appropriate penalties under Rule 54 of the SRC as determined by the Commission, without prejudice to the imposition of other sanctions prescribed under other applicable laws, rules, and regulations.

SECTION 17. IMPLEMENTATION AND EFFECTIVITY

The SEC shall issue supplementary regulations as necessary to implement the provisions of this Memorandum Circular. This Circular shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation and posting on the SEC website

Done this [date], Makati City, Philippines.