

Law No. 2013-30 of July 30, 2013, relating to Islamic sukuk ⁽¹⁾.

In the name of the people,
The National Constituent Assembly having adopted,
The President of the Republic promulgates the following law:

Chapter I

General provisions

Article 1 - Sukuk are negotiable securities representing common shares of equal value in the ownership of existing or future property, usufruct, services, rights, or a combination of property, usufruct, services, currencies, and receivables from the proceeds of the subscription. They are issued under a contract in accordance with Sharia law and on the basis of the principle of profit and loss sharing.

Art. 2 - Sukuk are considered securities within the meaning of Article 1 of Law No. 2000-35 of March 21, 2000, relating to the dematerialization of securities.

Art. 3 - Sukuk may be issued in Tunisian dinars or in foreign currencies, subject to compliance with the foreign exchange laws and regulations in force.

Art. 4 - Sukuk may be secured by personal or real guarantees in accordance with Sharia standards and the legislation in force.

Art. 5 - Sukuk are issued for the benefit of:

- * The State,
- * Public institutions and enterprises and local authorities,
- * Private sector companies under conditions determined by decree.

Art. 6 - Sukuk issued or guaranteed by the State on international financial markets are excluded from the application of the provisions of Articles 8 to 24 of this Law.

Chapter II

Issuance conditions

Art. 7 - Sukuk issued or guaranteed by the State shall be authorized by the Finance Act. Each issue shall be ratified before the proceeds are used.

The issuance of sukuk for the benefit of public institutions and enterprises and local authorities shall be authorized by the Ministry of Finance.

(1) Preparatory work:

Discussion and adoption by the National Constituent Assembly at its meeting on July 17, 2013.

Art. 8 - The call for subscription to sukuk is made by means of a "sukuk issue document" drawn up and signed by the legal representative of the issuer and bearing the approval of the Sharia supervisory committee for the issue.

Public institutions and companies, as well as private sector companies, must obtain certification from the auditor(s) on the sukuk issuance document and must publish it in a legal notice in the Official Journal of the Republic of Tunisia. This publication does not confer on the call for subscription to sukuk the character of a public offering.

The sukuk issuance document must include at least the following information:

- the issuer's decision to issue sukuk and the approval of the Sharia supervisory committee for this issue, specifying the list of members of said committee,
- the sukuk issue agreement(s),
- the total amount of the sukuk, their number, their nominal value, the issue costs, and the method of payment,
- the opening and closing dates of the subscription,
- the estimated rate of return,
- the list of parties involved in the subscription operation and the role of each of them,
- the nature of the guarantee and the procedures for enforcing it in the event of adoption of the sukuk guarantee within the meaning of Article 4 of this Law,
- a detailed description of the allocation of the proceeds of the issue,
- a statement on the economic and social feasibility or the objective of the issuance operation,
- the conditions for the negotiability and recovery of sukuk in accordance with the provisions of the contract(s) governing them,
- designation of the party to whom ownership of the assets underlying the sukuk will be transferred, as well as the party to whom the management and investment of these assets will be entrusted,
- indication of the remuneration required in return for the management and investment of the assets underlying the sukuk,
- the terms and conditions for the redemption of sukuk.

Issuers who intend to issue sukuk through a public offering are required to comply with the provisions of Law No. 94-117 of November 14, 1994, on the reorganization of the financial market, and in particular Article 2 thereof, as well as with the regulations issued by the Financial Market Council in this regard.

Art. 9 - Any sukuk issuance document that does not contain the information set out in Article 8 of this law shall be considered null and void.

Chapter III

Sukuk mutual fund

Art. 10 - The sukuk issuance operation shall be carried out through the creation of a sukuk mutual fund, unless the Sharia Supervisory Board deems it unnecessary.

Art. 11 - The shares of the sukuk mutual fund shall be considered sukuk within the meaning of Article 2 of this Law.

Art. 12 - The sukuk mutual fund is a joint ownership entity whose sole purpose is to acquire assets that are the subject of the sukuk issuance transaction.

Art. 13 - The sukuk mutual fund does not have legal personality, and the provisions of the property rights code relating to joint ownership and the provisions governing joint ventures do not apply to it.

Sukuk holders, their heirs, beneficiaries, and creditors may not cause the existing sukuk mutual fund to be divided. Any provision to the contrary shall be deemed null and void.

Art. 14 - The establishment of the sukuk mutual fund or its early liquidation, in cases other than those provided for in the internal regulations, are subject to approval by the Financial Market Council in accordance with conditions laid down by decree.

Art. 15 - The sukuk mutual fund shall be established on the joint initiative of the management company and the depositary.

Art. 16 - The management company and the depositary shall establish the internal regulations of the sukuk mutual fund, which must specify its purpose, powers, and liquidation mechanism.

Art. 17 - The issuer shall appoint or establish an independent management company to manage the assets of the sukuk mutual fund and perform the following functions:

- protecting the rights of sukuk holders,
- managing the project in accordance with the sukuk issuance document,
- managing the assets of the sukuk mutual fund,
- publishing a newsletter for sukuk holders on the status of their assets,
- any other tasks specified in the sukuk issuance document.

The management company must be a public limited company whose sole purpose is to manage the sukuk mutual fund. It represents the fund in any legal proceedings, both as plaintiff and defendant, as well as in any action affecting their rights and obligations.

Art. 18 - The management of the sukuk mutual fund is subject to approval by the Financial Market Council in accordance with conditions set by decree.

Art. 19 - The management company may not incur debts on behalf of the sukuk mutual fund or mortgage its assets.

Art. 20 - The management company may, with the issuer's approval, appoint an investment agent to be responsible for the execution of the project.

Art. 21 - The custodian is a bank within the meaning of Law No. 2001-65 of July 10, 2001, relating to credit institutions.

The custodian is responsible for the safekeeping of the sukuk mutual fund's units and cash. It shall ensure that the decisions taken by the management company comply with the laws and regulations in force and with the internal regulations of the sukuk mutual fund. It shall ensure the collection of income from profits, rents, and other sources, and the distribution of the net profit of the sukuk and their income to their holders in accordance with the sukuk issue document.

Art. 22 - The management company and the depositary shall be individually or jointly liable, as the case may be, to third parties and to sukuk holders for any breaches of the laws and regulations applicable to the sukuk mutual fund, any violations of its internal regulations, or any misconduct in relation to its interests.

The court may, at the request of a sukuk holder, order the dismissal of the managers of the sukuk mutual fund management company or those of the depositary.

Similarly, the depositary may ask the court to dismiss the managers of the management company, in which case it must inform the auditor.

In both cases, the court shall appoint a provisional administrator until new managers are appointed or, if such appointment proves impossible, until liquidation.

Art. 23 - Upon the expiry of the sukuk, the sukuk mutual fund shall be liquidated and the proceeds of the liquidation shall be distributed to the sukuk holders in accordance with the terms and conditions set out in the sukuk issuance document.

The redemption of sukuk refers to the recovery by sukuk holders of their funds in accordance with the terms and conditions of redemption set out in the sukuk issuance document.

Chapter IV

Registration and negotiability of sukuk

Art. 24 - The terms and conditions for the registration and maintenance of sukuk are governed by the provisions of Law No. 2000-35 of March 21, 2000, relating to the dematerialization of securities and the related implementing regulations, unless otherwise provided for in this law.

Art. 25 - Sukuk shall be traded and redeemed after the close of subscription in accordance with Sharia standards governing assets, receivables, currency, and foreign exchange, and in accordance with the conditions stipulated in the sukuk issuance document and in application of the decisions of the Sharia supervisory committee.

Art. 26 - Sukuk are negotiable on the Tunis Stock Exchange in accordance with the provisions of Law No. 94-117 of November 14, 1994, and the regulations issued by the Financial Market Council in this regard.

Sukuk issued in foreign currencies may be negotiable on foreign stock exchanges.

Chapter V

The Sharia Supervisory Board

Art. 27 - A Sharia Supervisory Board shall be appointed by the issuing party and shall be responsible for ruling on all Sharia matters relating to the sukuk issuance, fatwa, and Sharia audit.

Art. 28 - The Ministry of Finance shall appoint a Sharia Supervisory Board to examine Sharia matters, fatwas, and Sharia audits of sukuk transactions issued or guaranteed by the State or issued by local authorities.

Art. 29 - The decisions of the Sharia supervisory committee shall be binding.

This committee shall, upon request, submit an annual report and periodic reports to the board of directors or supervisory board of the management company on the latter's compliance with Sharia standards in the conduct of its activities.

This committee shall be composed of at least three members chosen on the basis of their expertise and experience in the field of Islamic financial jurisprudence. They shall be appointed for a term of three years, renewable once.

The members of the Sharia Supervisory Board are bound by professional secrecy with regard to the information and documents they hold in the course of their duties. In the event of a breach, the provisions of Article 254 of the Penal Code shall apply to them.

This law shall be published in the Official Journal of the Republic of Tunisia and enforced as a law of the State.

Tunis, July 30, 2013.

The President of the Republic

Mohamed Moncef El Marzougui