

Proposed Provisions for Sukuk Regulation

PRELIMINARY RECITALS**DECISION OF THE CHAIRMAN OF THE SCA BOARD OF DIRECTORS NO. (**/R.M) OF 2018****The Chairman of the Board of Directors of the Securities and Commodities Authority, having considered:**

The Federal Law No. (4) of 2000 concerning the Emirates Securities and Commodities Authority and Market, and amendments thereof.

The Federal Decree No. (130) of 2017 concerning the Formation of the Council of Ministers of the United Arab Emirates.

The Cabinet Resolution No. (13) of 2000 concerning the Regulations as to the Functioning of the Securities and Commodities Authority, and amendments thereof.

The Cabinet Resolution No. (14&8) of 2017 concerning the Restructuring the Board of Directors of the Securities and Commodities Authority.

The SCA Board of Directors' Decision No. (2) of 2014 concerning the Regulations as to Covered Warrants, and amendments thereof.

The SCA Board of Directors' Decision No. (16) of 2014 concerning the Regulations as to Sukuk, and amendments thereof.

The SCA Board of Directors' Decision No. (17) of 2014 concerning the Regulations as to Debt Securities, and amendments thereof.

The SCA Board of Directors' Decision No. (32) of 2014 concerning the Regulations as to Deposit Certificates, and amendments thereof.

The Chairman of the Authority's Board of Directors Decision No. (9/R.M) of 2016 concerning the Regulations as to Mutual Funds, and amendments thereof.

The Chairman of the Authority's Board of Directors Decision No. (11/R.M) of 2016 concerning the Regulations as to Issuing and Offering Shares of Public Joint Stock Companies, and Amendments thereof.

The Chairman of the Authority's Board of Directors Decision No. (20/R.M) of 2018 concerning the Offering of Islamic Securities, and

Based on the approval of the Board of Directors at its [] meeting of the [**] Term held on [**], Has decided as follows:**

ARTICLE 1 DEFINITIONS

Unless otherwise defined in this Regulation, all words and expressions used in this Regulation shall have the same meaning as ascribed to such term under the Sukuk Regulation of 2014 and Islamic Securities Regulation of 2018. In this Regulation, unless the context otherwise requires, the following words and expressions are to be construed in accordance with the following definitions:

Annual Sharia Report means the annual Sharia report of the Sukuk to be issued by the Sharia Supervisory Committee based on the findings of the Annual Sharia Review.

Annual Sharia Review means the annual Sharia review of the Sukuk to be conducted under the supervision of the Sharia Supervisory Committee.

Islamic Security for the purpose of this Regulation shall mean Sukuk.

Islamic Securities Regulation of 2018 means the SCA Board of Directors Decision No 20 of 2018 Concerning Offering of Islamic Securities.

SCA Sharia Advisory Board means the Sharia advisory board to be duly appointed or designated by the SCA to provide opinion and interpretation on the principles of Sharia applicable to Islamic capital markets (including Sukuk).

Sharia Determination for the purpose of this Regulation, means any determination issued by the Sharia Supervisory Committee providing their opinion from a Sharia perspective on any matter pertaining to the Sukuk.

Sharia Pronouncement for the purpose of this Regulation, means the pronouncement issued by the Sharia Supervisory Committee providing their opinion on the structure and documentation to be in accordance with the principles of Sharia pertaining to the Sukuk.

Sukuk means financial instruments of equal value representing undivided ownership in the underlying assets (including ownership rights, usufruct, concessions, and services) and/or investments, which are in accordance with the principles of Sharia.

Sukuk Regulation of 2014 means the SCA Board of Directors Decision No 16 of 2014 Concerning Regulation of Sukuk.

Sukuk Al Ijara are a type of Sukuk wherein instruments of equal value are issued for raising funds for utilization in the acquisition of Ijara assets (which also include usufruct interest or services) in order for the instrument holders to have undivided ownership interest in the underlying Ijara assets (which also include usufruct interest or services) and all proceeds in relation thereto.

Sukuk Al Istisna are a type of Sukuk wherein instruments of equal value are issued for raising funds for utilization in the development of assets on Istisna basis in order for the instrument holders to have undivided ownership interest in the underlying Istisna assets and all proceeds in relation thereto.

Sukuk Al Salam are a type of Sukuk wherein instruments of equal value are issued for raising the Salam capital for utilization in the purchase of Salam commodities in order for the instrument holders to have undivided ownership interest in the underlying Salam commodities and all proceeds in relation thereto.

Sukuk Al Murabaha are a type of Sukuk wherein instruments of equal value are issued for raising funds for utilization in the purchase of assets in order for the instrument holders to have undivided ownership interest in the underlying assets and all proceeds in relation thereto.

Sukuk Al Mudaraba are a type of Sukuk wherein instruments of equal value are issued for raising the Mudaraba capital for utilization in the Mudaraba venture in order for the instrument holders to have undivided ownership interest in such Mudaraba venture.

Sukuk Al Musharaka are a type of Sukuk wherein instruments of equal value are issued for raising the contribution to the Musharaka capital for utilization in the Musharaka venture in order for the instrument holders to have undivided ownership interest in such Musharaka venture and all proceeds in relation thereto.

Sukuk Wakala-bil-Istithmar are a type of Sukuk wherein instruments of equal value are issued for raising the Wakala capital for utilization in the investment Wakala venture in order for the instrument holders to have undivided ownership interest in such investment Wakala venture and all proceeds in relation thereto.

Sukuk Wakala Khidmah or **Service Agency Sukuk** are a type of Sukuk wherein instruments of equal value are issued for raising the capital for utilization in the purchase of Wakala assets (which may include tangible assets, intangible assets or a portfolio of assets constituted through a combination of the aforementioned) and management of such Wakala assets is performed on a service agency basis in order for the instrument holders to have undivided ownership interest in such underlying Wakala assets and all proceeds in relation thereto.

ARTICLE 2
SCOPE OF APPLICATION

- (1) Subject to the provisions of the law, or the regulations or resolutions issued by the Authority concerning the issuing or offering of securities (including Sukuk Regulation of 2014 and Islamic Securities Regulation of 2018), the provisions of this Regulation shall apply to the Issuer issuing or offering an Islamic Security inside or outside the State, and to the Foreign Issuer issuing or offering an Islamic Security in the State.
- (2) In case of any inconsistency between this Regulation and the provisions of the Sukuk Regulation of 2014 and Islamic Securities Regulation of 2018, the provisions of this Regulation shall supersede and prevail.
- (3) To the extent expressly otherwise provided for under the relevant Articles of this Regulation, the application of the rest of the provisions of this Regulation shall have a prospective effect from the date of this Regulation coming into effect and shall only apply for new issuances to be made by the Issuer and/or the Foreign Issuer (as the case may apply).

ARTICLE 3

REQUIREMENT PERTAINING TO THE SHARIA SUPERVISORY COMMITTEE

- (1) An Issuer issuing or offering an Islamic Security inside or outside the State and a Foreign Issuer issuing or offering an Islamic Security must appoint a Sharia Supervisory Committee to advise on all Sharia related matters pertaining to such Sukuk so as to enable the adherence to the provisions of this Article 3.
- (2) The appointment of the Sharia Supervisory Committee (including any replacements made during the tenure of the Sukuk) should be evidenced through a written engagement letter or agreement executed with each member of the Sharia Supervisory Committee.
- (3) The Issuer or the Foreign Issuer (as the case may apply) shall ensure that the members of the Sharia Supervisory Committee satisfy the following fit and proper criteria:

(a) Academic Criteria

A member of the Sharia Supervisory Committee should have the following academic qualifications:

- (i) At least hold a bachelor's degree/ijazah in Sharia from a recognized university (including Islamic transaction/commercial law (Fiqh al-Muamalat)) and should be able to demonstrate an adequate understanding of finance in general and Islamic finance in particular.
- (ii) Proven skills in the philosophy of Islamic law (Usul al-Fiqh) and must be capable of applying appropriate Fiqh methodologies for deriving juristic opinions.
- (iii) High proficiency in written and spoken Arabic.
- (iv) Working knowledge of English and must be able to comprehend and interpret legal documentation drafted in English.

(b) Experience and Exposure

A member of the Sharia Supervisory Committee should have understanding of:

- (i) Sharia rules and principles that apply to Islamic capital markets.
- (ii) Legal and regulatory framework that may apply to Islamic capital markets.

- (iii) Impact of Islamic capital market instruments on the market and the public based on the principles of Maqasid al-Sharia.
 - (iv) The functioning of the Islamic financial services industry in general and Islamic capital markets in particular.
 - (c) Personal conduct and morality
A member of the Sharia Supervisory Committee must have a respectable character and be of good conduct, particularly in terms of honesty, integrity and reputation in their professional business and financial dealings.
 - (d) Additional Criteria
Such other additional criteria determined and communicated by the SCA or SCA Sharia Advisory Board (as the case may apply) from time to time.
- (4) The Issuer or the Foreign Issuer (as the case may apply) shall ensure that the Sharia Supervisory Committee carry out the following roles and responsibilities:
- (a) Conduct Sharia review of the structure and documentation of the Sukuk and provide their Sharia Pronouncement.
 - (b) Provide guidance on all Sharia related matters pertaining to the Sukuk, particularly in structuring, documentation and implementation, in order to ensure compliance with the principles of Sharia.
 - (c) Provide on-going Sharia review and Sharia Determination on all Sharia related matters pertaining to the Sukuk throughout the tenure of the Sukuk.
 - (d) Ensure that the Sharia guidance provided does not contravene the applicable Sharia rulings, principles and concepts endorsed by the **SCA Sharia Advisory Board**.
 - (e) Supervise or conduct the Annual Sharia Review and issue an Annual Sharia Report in relation to the Sukuk.
- (5) In the event any member of a Sharia Supervisory Committee does not comply with any of the requirements set out in this Article then the Issuer or the Foreign Issuer (as the case may apply) shall be obliged to disclose the extent of such non-compliance to SCA in order for SCA to either require the due compliance to the subject requirement or provide the requisite remedial measures to be adopted on a case to case basis.

ARTICLE 4
REQUIREMENT PERTAINING TO SHARIA PRONOUNCEMENT

- (1) An Issuer offering or issuing an Islamic Security inside or outside the State and a Foreign Issuer offering or issuing an Islamic Security shall be obliged to obtain a Sharia Pronouncement from the Sharia Supervisory Committee in writing and submit the same to the Authority.

- (2) The Sharia Pronouncement must be duly executed by all members of the Sharia Supervisory Committee and shall contain the following sections:
 - (a) Summary of the Sukuk structure.
 - (b) Overview of the transaction documentation used to implement the Sukuk structure.
 - (c) Basis and rationale of the Sharia Pronouncement as to how the Sukuk structure complies with the principles of Sharia as interpreted by the Sharia Supervisory Committee.
 - (d) Confirmation on the suitability and eligibility of the underlying assets or a pool of assets comprised of tangible and intangible assets (including ownership rights, concessions, services) and investments (as case may apply) in accordance with the Sharia nominate contract and instruments used to implement the Sukuk structure.
 - (e) Description on the tradability of the Sukuk and factors affecting tradability under the Sukuk structure from a Sharia perspective.
 - (f) Confirmation on the Sharia review and Sharia audit arrangements to ensure on-going Sharia compliance of the Sukuk.
 - (g) Confirmation that the Sharia Supervisory Committee has reviewed the structure and were presented with the final version of the transaction documentation based on which the Sharia Pronouncement has been duly issued.
 - (h) Disclosure of any exceptions, reservations, and qualifications regarding Sharia compliance, if any, and details thereof.
 - (i) To the extent the structure had been intended to be used to satisfy regulatory capital requirements, a confirmation to demonstrate as to how the commercial and regulatory requirements have been implemented from a Sharia perspective.
 - (j) A statement providing whether the Sharia Pronouncement was issued by the consensus of all members or the majority of members of the Sharia Supervisory Committee, while stating the dissenting opinion and reasons thereof in case the Sharia Pronouncement is issued by the majority of members of the Sharia Supervisory Committee.

- (3) The provisions of clause 3 of Article (4) of the Islamic Securities Regulation of 2018 shall be replaced by the provisions of this Article in relation to Sukuk.

ARTICLE 5

STRUCTURE RELATED DISCLOSURES PERTAINING TO CERTAIN TYPES OF SUKUK

In addition to any other obligations contained in the laws or regulations, the Issuer and/ or the Foreign Issuer (as the case may apply) shall be obliged to comply with the following structure related disclosures in the Prospectus in order to enable an Investor to understand the various considerations and risks associated with the Sukuk:

- (1) In relation to Sukuk-Al Ijara, the following specific matters need to be disclosed:
 - (a) Detailed identification and description on the subject matter of the lease (including intended usage of the leased asset).
 - (b) Description of the lease term (including details of lease periods comprising the lease term).
 - (c) Description of the mechanism of determining the rental rate.
 - (d) Permitted use of the lease asset by lessee (including the ability of the lessee to sub-lease the leased asset).
 - (e) Circumstances leading to the termination of the lease or modification (including effects of a partial or total loss event), and the consequences of early termination for Sukuk holders.
 - (f) Description on the arrangements for the servicing of the leased assets under the structure (including major maintenance and structural repair, takaful, ownership related taxes, etc).
 - (g) Description on the structural arrangements for the sale or transfer of the leased asset at the end of the lease term.
 - (h) Details of any Sharia compliant credit enhancement used (if any).
 - (i) To the extent the structure had been intended to be used to satisfy regulatory capital requirements, a confirmation to demonstrate as to how the commercial and regulatory requirements have been implemented from a Sharia perspective.
 - (j) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).

- (2) In relation to Sukuk Al Musharaka, the following specific matters need to be disclosed:
 - (a) Description of the Musharaka partners.

- (b) Description of the capital of the Musharaka contributed by each Musharaka partner and the form of such capital (whether cash, in kind or both).
- (c) Description of the activity of the Musharaka venture (including details of the business plan).
- (d) Description of the manager of the Musharaka and the scheme of the management expenses (either as part of the Musharaka arrangement or through a separate management agency arrangement).
- (e) The manner of allocation of profits and losses amongst the Musharaka partners.
- (f) Mechanism for periodic distributions under the Musharaka venture.
- (g) Details of expected distributions to be made on maturity of the Musharaka venture.
- (h) The scheme of distribution of the fee payable to the manager of the Musharaka (including details of any performance incentive).
- (i) Details of unilateral Wa'ad issued by any party in relation to the Musharaka assets to be exercised at the relevant point of time and their compliance with the principles of Sharia.
- (j) Any waiver (Tanazul) of a Musharaka partner's rights to profit payments (if any).
- (k) Details of any Sharia compliant credit enhancement used (if any).
- (l) To the extent the structure had been intended to be used to satisfy regulatory capital requirements, a confirmation to demonstrate as to how the commercial and regulatory requirements have been implemented from a Sharia perspective.
- (m) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).

(3) In relation to Sukuk Al Mudaraba, the following specific matters need to be disclosed:

- (a) Description of the Rab-al-Maal and the Mudarib.
- (b) Description of the capital of the Mudaraba to be contributed by the Rab-al-Maal and the form of that capital (whether cash, in kind or both).
- (c) Description of the activity of the Mudaraba venture (including details of the business plan).
- (d) The manner of allocation of profits amongst the Rab-al-Maal and the Mudarib and under what circumstances the Mudarib may be liable for losses.
- (e) Mechanism for periodic distributions under the Mudaraba venture.
- (f) Mechanism for the determination of any performance incentive to be payable to the Mudarib.
- (g) Details of expected distributions to be made on maturity of the Mudaraba venture.

- (h) Details of unilateral Wa'ad issued by any party in relation to the Mudaraba assets to be exercised at the relevant point of time and their compliance with the principles of Sharia.
 - (i) Any waiver (Tanazul) of the Rab-al-Maal's or Mudarib's rights to profit payments (if any).
 - (j) Details of any Sharia compliant credit enhancement used (if any).
 - (k) To the extent the structure had been intended to be used to satisfy regulatory capital requirements, a confirmation to demonstrate as to how the commercial and regulatory requirements have been implemented from a Sharia perspective.
 - (l) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).
- (4) In relation to Sukuk Wakala-bil-Istithmar, the following specific matters need to be disclosed:
- (a) Description of the Muwakkil and the Wakil.
 - (b) Description of the capital of the Wakala to be contributed by the Muwakkil and the form of that capital (whether cash, in kind or both).
 - (c) Description of the activity of the Wakala venture (including details of the investment plan).
 - (d) The manner of allocation of profits amongst the Muwakkil and the Wakil and under what circumstances the Wakil may be liable for losses.
 - (e) Mechanism for periodic distributions under the Wakala venture.
 - (f) The scheme of distribution of the fee payable to the Wakil (including details of any performance incentive).
 - (g) Details of expected distributions to be made on maturity of the Wakala venture.
 - (h) Details of unilateral Wa'ad issued by any party in relation to the Wakala assets to be exercised at the relevant point of time and their compliance with the principles of Sharia.
 - (i) Any waiver (Tanazul) of the Muwakkil's or Wakil's rights to profit payments (if any).
 - (j) Details of any Sharia compliant credit enhancement used (if any).
 - (k) To the extent the structure had been intended to be used to satisfy regulatory capital requirements, a confirmation to demonstrate as to how the commercial and regulatory requirements have been implemented from a Sharia perspective.
 - (l) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).

- (5) In relation to Sukuk Wakala Khidmah or Servicing Agency Sukuk, the following specific matters need to be disclosed:
- (a) Detailed identification and description of the subject matter of the underlying assets or a pool of assets comprised of tangible and intangible assets (including ownership rights, concessions, services) (as case may apply) (the **Asset Portfolio**).
 - (b) Description on how the Asset Portfolio constitution complies with the principles of Sharia.
 - (c) Description on the intended use in relation to the Asset Portfolio and their ability to generate the requisite revenues.
 - (d) Description of the service agency term (including details of periods comprising such term).
 - (e) Description of the mechanism of determination of income from the Asset Portfolio.
 - (f) Permitted use of the Asset Portfolio by the service agent.
 - (g) Circumstances leading to the termination of the service agency mandate or modification (including effects of a partial or total loss event), and the consequences of early termination for Sukuk holders.
 - (h) Description on the arrangements for ensuring the continuous Sharia compliance of the Asset Portfolio during the life of the Sukuk (including measures for purification in case of tainted income).
 - (i) Description of the service of the Asset Portfolio under the structure.
 - (j) Description on the structural arrangements for the sale or transfer of the Asset Portfolio during or at the end of the service agency mandate term.
 - (k) Details of any Sharia compliant credit enhancement used (if any).
 - (l) To the extent the structure had been intended to be used to satisfy regulatory capital requirements, a confirmation to demonstrate as to how the commercial and regulatory requirements have been implemented from a Sharia perspective.
 - (m) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).
- (6) In relation to Sukuk Al Istisna, the following specific matters need to be disclosed:
- (a) Description of seller and purchaser under the Istisna arrangement.
 - (b) Detailed description of subject matter Istisna asset(s) being manufactured or built.
 - (c) Description of the scheduled delivery date and procedures in relation to the Istisna asset(s).

- (d) The determination and manner of settlement of the consideration in relation to the purchase of the Istisna asset.
- (e) Details of any additional manufacturers, builders or subcontractors of the Istisna asset(s).
- (f) The circumstances in which the Istisna asset(s) may be rejected, and the consequences of any failure to timely deliver or accept delivery for Sukuk holders (including but not limited to cancellation rights, price reductions or compensation payments).
- (g) Details of any security provided to secure the obligations under the Istisna.
- (h) Details of any warranties and any arrangements for maintenance of the Istisna asset(s) after delivery.
- (i) Details of any Sharia compliant credit enhancement used (if any).
- (j) To the extent the structure had been intended to be used to satisfy regulatory capital requirements, a confirmation to demonstrate as to how the commercial and regulatory requirements have been implemented from a Sharia perspective.
- (k) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).

(7) In relation to Sukuk Al Murabaha, the following specific matters need to be disclosed:

- (a) Description of seller and purchaser under the Murabaha arrangement.
- (b) Detailed identification and description of the Murabaha asset that is the subject matter of the Murabaha arrangement.
- (c) The determination and manner of settlement of the purchase or sale price that is the consideration to be paid to the seller under the Murabaha arrangement.
- (d) Description of the delivery procedures in relation to the Murabaha commodities.
- (e) Circumstances based on which early payment of the purchase or sale price can be requested.
- (f) Disclosure on the consequences for delayed payment.
- (g) Details of any security provided to secure the obligations of the purchaser under the Murabaha in case of deferred payment of the purchase or sale price.
- (h) Details of any warranties in relation to the Murabaha commodities after delivery.
- (i) Disclosure of any agency arrangements (if applicable).
- (j) Details of any Sharia compliant credit enhancement used (if any).
- (k) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).

- (8) In relation to Sukuk Al Salam, the following specific matters need to be disclosed:
- (a) Description of seller and purchaser under the Salam arrangement.
 - (b) Detailed identification and description of the subject matter Salam commodities to be delivered under the Salam arrangement.
 - (c) The determination and manner of settlement of the capital of Salam in relation to the purchase of the Salam asset.
 - (d) Description of the scheduled delivery date and procedures in relation to the Salam commodities.
 - (e) The circumstances in which the Salam commodities may be rejected, and the consequences of any failure to timely deliver or accept delivery for Sukuk holders (including but not limited to cancellation rights, price reductions or payments in case of non-delivery).
 - (f) Details of any security provided to secure the obligations under the Salam.
 - (g) Details of any warranties and any arrangements for maintenance of the Salam commodities after delivery.
 - (h) Details of any Sharia compliant credit enhancement used (if any).
 - (i) Such other structural clarifications required by SCA or the **SCA Sharia Advisory Board** (as the case may apply).
- (9) In relation to Sukuk combining one or more of the above-mentioned Sharia structures then the structure related disclosures should address each of the requirements set out above in relation to the respective structure adopted.
- (10) In relation to Sukuk that contain an arrangement for exchangeability and convertibility of shares, the following specific matters need to be disclosed:
- (a) The basis on which the shares that shall be subject matter of the convertibility option (the **Convertible Shares**) have been determined to be in accordance with the principles of Sharia;
 - (b) Disclosure of risk in the Convertible Shares becoming repugnant to the principles of Sharia in the future; and
 - (c) Any alternative arrangement to be adopted for the benefit of the Sukuk holders in case the Convertible Shares become repugnant to the principles of Sharia.

- (11) In relation to Sukuk that are not specifically addressed in the above clauses, the structure related disclosures should be in accordance with the specific requirements notified by the SCA or the **SCA Sharia Advisory Board** (as the case may apply).

ARTICLE 6

DISCLOSURE OBLIGATIONS RELATING TO SHARIA GOVERNANCE OF SUKUK

In addition to any other obligations contained in the laws or regulations, the Issuer and/ or the Foreign Issuer (as the case may apply) shall be obliged to comply with the following Sharia governance related disclosures in relation to Sukuk:

(1) Disclosure on the Sharia Supervisory Committee

Disclosure should be made in the Prospectus providing the following details in relation to the Sharia Supervisory Committee of the Sukuk:

- (a) Names of the members of the Sharia Supervisory Committee, their qualifications and experience.
- (b) Constitution of the Sharia Supervisory Committee and mechanism for the appointment, dismissal or change in the members of the Sharia Supervisory Committee.
- (c) Role and responsibilities of the Sharia Supervisory Committee.
- (d) Controls to ensure independence and avoidance of conflict of interest positions.

(2) Disclosure pertaining to Sharia assessment mechanism in relation to matters arising post-issuance of Sukuk

Disclosure should be made in the Prospectus providing the mechanism adopted for Sharia assessments or ad hoc Sharia Determinations to be obtained from the Sharia Supervisory Committee in extraordinary matters that may arise following issuance of the Sukuk, including the following (the **Extra-ordinary Matters**):

- (a) Default in relation the Sukuk.
- (b) Enforcement in relation to the Sukuk assets.
- (c) Amendment to the Sukuk transaction documents and arrangements (including change or amendment in the underlying assets and/or investments) disclosed at the time of Sukuk issuance.
- (d) Restructuring in relation the Sukuk.

If there are no such mechanism for Sharia Determinations in place to deal with the aforementioned Extra-ordinary Matters then any potential consequences of Sharia non-compliance should be immediately disclosed to the Authority, **SCA Sharia Advisory Board** and the Investors.

(3) Mandatory disclosures in relation to Sukuk

The Issuer and/ or the Foreign Issuer (as the case may apply) shall be obliged to immediately provide a mandatory disclosure to the Authority, **SCA Sharia Advisory Board** and the Investors of the Sukuk in respect of the following matters (as and when arisen):

- (a) Any Sharia Determination issued by the Sharia Supervisory Committee relating to the Sukuk.
- (b) Any material or potential material changes in relation to the underlying assets or investments of the Sukuk, including any loss affecting the underlying assets or investments.
- (c) Any changes affecting the Sharia position on tradability of the Sukuk.
- (d) Any occurrence or potential occurrence of an Extra-ordinary Matter (as highlighted in clause (1) above).

(4) Disclosure on the Annual Sharia Review and Annual Sharia Report

- (a) The Issuer and/ or the Foreign Issuer (as the case may apply) shall be obliged to obtain an Annual Sharia Report from the Sharia Supervisory Committee in writing and submit the same to the Authority, **SCA Sharia Advisory Board** and the Investors of the Sukuk. The contents to be covered under the Annual Sharia Report shall include the following:
 - (i) Disclosure on the process and mechanism adopted in relation to the Annual Sharia Review leading to the issuance of the Annual Sharia Report.
 - (ii) Confirmation on the compliance of the Sukuk activities and operations to the Sharia Pronouncement and the Sharia Determinations (in specific) and the principles of Sharia (in general).
 - (iii) Confirmation whether the calculation and distribution of payments to the Sukuk holders is in accordance with the principles of Sharia.
 - (iv) Statement on the Zakah payments in relation to the Sukuk (to the extent applicable).

(v) Disclosure of any adverse findings from a Sharia non-compliance perspective on any of the aspects set out in sub-clauses (i) to (iii) above and the remedial measures to be adopted in consultation with Sharia Supervisory Committee with reporting to SCA and the **SCA Sharia Advisory Board**.

(b) The provisions of clause (4) of Article 4 of the Islamic Securities Regulation of 2018 shall be replaced by the provisions of this clause (4) in relation to Sukuk.

(5) Disclosure on the Zakah policy of the Sukuk

Disclosure shall be made in the Prospectus providing the extent of the Zakah policy adopted in relation to the Sukuk and whether or not arrangements are in place for Zakah payments to be made on behalf of the Investors, on any assets subject to Zakah. If such arrangements exist then disclosure shall be made on the methodology and the entities to which Zakah payments are disbursed.

(6) The provisions of clauses (2) to (4) of this Article shall have a retrospective effect and shall apply to all Sukuk issuances that had been issued by an Issuer and/or a Foreign Issuer (as the case may apply) and are currently outstanding as at the date of this Regulation coming into effect.

ARTICLE 7

REQUIREMENTS AND DISCLOSURES IN RELATION TO ASSET BACKED (SECURITIZATION) SUKUK

In addition to any other obligations contained in the laws or regulations, the Issuer and/ or the Foreign Issuer (as the case may apply) issuing or offering an asset backed (securitization) Sukuk (the **Asset Backed Sukuk**) shall be obliged to make the following Specific disclosures in the Prospectus in order to enable an Investor to understand the various considerations and risks associated with such issuance:

(1) Specific disclosure in relation to the Asset Portfolio

The following disclosures shall be required to be made in relation to the underlying assets or a pool of assets comprised of tangible and intangible assets (including ownership rights, concessions, services) (as case may apply) (the **Asset Portfolio**):

- (a) Detailed description of the Asset Portfolio and confirmation that the ownership and interests in each of the assets constituting the Asset Portfolio have been / shall be duly transferred from the Originator to the Trustee.
- (b) Disclosure on the Sharia compliance of the Asset Portfolio.
- (c) Disclosure on the commercial eligibility of the Asset Portfolio, including statement of the market value or fair value of the Asset Portfolio and the price at which the Asset Portfolio is being acquired by the Trustee.
- (d) Declaration of the anticipated cashflows from the Asset Portfolio.
- (e) Ability of the Asset Portfolio to generate revenues in line with the anticipated cashflows.
- (f) Declaration that the assets comprising the Asset Portfolio do not have any third-party interest or claim or suffer from any other encumbrance.
- (g) If the assets can be added, removed or substituted from the Asset Portfolio then description on the circumstances under which such actions can occur.
- (h) Describe any material direct or contingent claim that parties other than the holders of the securities have on the assets. Also describe any material cross-collateralization or cross-default provisions relating to the assets.
- (i) On-going Sharia parameters to ensure Sharia compliance of the Asset Portfolio.
- (j) Purification requirements and mechanism for tainted income from the Asset Portfolio.
- (k) Such other disclosures as required by SCA.

(2) Specific disclosure in relation to the Originator

The following disclosures shall be required to be made in relation to the owner from whom the Asset Portfolio under the Sukuk is being acquired (the **Originator**):

- (a) Description of the Originator of the Asset Portfolio.
- (b) Confirmation on the effective legal and Sharia transfer of the Asset Portfolio (i.e true sale) from the Originator into the SPV holding the Asset Portfolio on behalf of the Sukuk holders (the **Trustee**).
- (c) Confirmation that the Originator has no control or equity interest over the Trustee.
- (d) If the Originator is the service agent of the Asset Portfolio then confirmation of the service arrangement is at arm's length basis and on market terms and its abilities to comply with the requirements pertaining to the service agent set out in section 3 below.
- (e) Description if the Originator has first right of refusal for the purchase of the Asset Portfolio from the Trustee at a fair or market value.
- (f) Disclosure of the mechanisms implemented by the Trustee to comply with Sharia requirements and comply with the directions of the Sharia Supervisory Committee in cases of Sharia non-compliance.
- (g) Such other disclosures as required by SCA.

(3) Specific disclosure in relation to the Servicing Counterparty

The following disclosures shall be required to be made in relation to the service counterparty of the Asset Portfolio if different from the Originator (the **Servicing Counterparty**):

- (a) Description of the Servicing Counterparty.
- (b) Description of the roles and obligations of the Servicing Counterparty.
- (c) Confirmation of adequate controls, processes and mechanisms to administer the Asset Portfolio.
- (d) Mechanism for the replacement or substitution of the Servicing Counterparty.
- (e) Grounds for termination of the Servicing Counterparty.
- (f) Ability of the Servicing Counterparty to comply with Sharia requirements and comply with the directions of the Sharia Supervisory Committee in cases of Sharia non-compliance.
- (g) Such other disclosures as required by SCA.

(4) Specific disclosure in relation to the Trustee

The following disclosures shall be required to be made with regard to the Trustee in relation to the Sukuk (the **Trustee**):

- (a) Description of the Trustee and the ownership and control structure in relation thereof in order to provide for independence and transparency.
- (b) Description on the trust arrangements in relation to the Trustee.
- (c) Description on the operations and management of the Trustee.
- (d) Description of how payments will be treated or serviced by the Trustee in relation to the Sukuk.
- (e) Details on how the on-going valuations of the Asset Portfolio will be determined and ascertained by the Trustee.
- (f) Such other disclosures as required by SCA.

(5) Specific ancillary disclosures in relation to the Sukuk

The following ancillary disclosures shall be required to be made in relation to the Sukuk:

- (a) Description of any events or performance triggers that would alter the basic terms of each Sukuk issue or class of Asset Backed Sukuk or the asset pool composition or the flow of funds.
- (b) Description of any optional or mandatory redemption or termination features for each class of Asset Backed Sukuk.
- (c) Description of any Sharia compliant enhancement arrangements for the Sukuk or the Asset Backed Sukuk being offered and briefly describe what protection or support is provided by such enhancement or arrangement.
- (d) Description of the mechanism adopted in respect of losses to the Asset Backed Sukuk not covered by any enhancement arrangements.

ARTICLE 8
PENALTIES

- (1) If the provisions of this Regulation or the decisions or controls issued hereunder are violated, the Authority may impose any of the following sanctions (in addition to pursuing other remedies available under the law):
 - (a) Issue a written warning to the violator and ordering it to stop the violation within a timeframe set by the Authority.
 - (b) Impose the payment of a fine of no more than the maximum limit provided for in the Law and the regulations issued in this regard.
 - (c) Suspend or cancel the listing of Sukuk in accordance with the provisions of this Regulation.
 - (d) Require the adoption of necessary corrective measures that are necessary to safeguard the interest of the Sukuk holders.

- (2) The Authority may announce or publish the imposition of administrative sanctions and the details of the corrective measures adopted (as referred to in clause (1) above), as it deems appropriate, at the sole cost and liability of the violator.

ARTICLE 9
PUBLICATION AND COMING INTO FORCE

This Regulation shall be published in the Official Gazette and shall become effective on the day following the date of its publication.