

Sukuk Standard

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Editor's Note: This standard has been suggested to be used in Borsa Istanbul. It contains essential improvements over previous standards and allows for further development, especially in the values of the relevant indicators, as the Islamic finance industry evolves. Readers are invited to send their comments to the journal editor to pass them to the author.

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Introduction

This introduction provides a general perception of the securitization process.

A *Sukuk originator* would like to carry out some projects, business ventures, and other profitable economic activities, through which he/she/it offers some assets to be used. In contrast, some other assets would be created in the process. Such an undertaking requires more resources than available. The originator wishes to mobilize funds through securitization. He/she/it issues financial instruments (Sukuk) in order to mobilize the required funds. The originator establishes a special purpose vehicle, SPV, to issue the Sukuk. The SPV would be so structured to allow Sukuk holders to share (with or without the originator) the newly created assets, venture, and the results of planned economic activities. The SPV would work as a corporation, in which Sukuk holders are also its shareholders. The SPV issues the Sukuk collects proceeds and carries out the venture/activities while owning the underlying assets created on the way. When the originator intends to acquire the Sukuk assets after a pre-agreed period, the underlying contracts have special provisions to transfer asset titles from the SPV to the originator.

In carrying out its investment activities through some finance and investment contracts, the SPV would appoint managers for specific undertakings. For example, when the SPV wishes to construct some real estate, it contracts with a construction company under the *Istisna'* contract. The SPV may have an investment department headed by an investment manager. Alternatively, it may appoint an investment manager for each undertaking, e.g., manufacturing machinery and equipment, residential housing construction, and the like. Each manager can be appointed based on investment *Wakala* or *Mudaraba*. The relationship between the SPV and such investment managers could be pivotal and treated in some of this standard's articles.

This standard avoids issuing Sukuk as fixed income conventional financial assets or bonds. It, therefore, contains provisions that ensure the issuance of Sukuk as Islamic financial instruments. The standard prohibits selling assets to Sukuk holders by the originator and then lease/purchase them back. It disallows synthetic securitization and avoids strenuous structuring and disingenuous ruses, which would deprive the economy of the real benefits of Islamic finance. Furthermore, rules have been included in this standard to ensure the broadest possible subscription, including small investors.

The following standard details the rules of this securitization process.

Article 1: The Scope of the Standard

1. This standard sets out the terms, conditions, and characteristics to ensure that Sukuk are used to finance the economic activities that support a healthy, equitable, and sustainable economy.
2. In particular, investment is encouraged wherever its feasibility is proven, based on adequately exercised due diligence.

3. The standard applies to all Sukuk issued in the Turkish Republic, under the Capital Market Board jurisdiction, CMB.
4. The standard applies to all Sukuk listed in Borsa Istanbul and continues to be a listing requirement.

Article 2: Securitization Partners

A. The Originator

1. The originator is a public or a private institution that wishes to carry out a project, business venture, and other profitable economic activities. It wishes to mobilize resources fully or partially that cover their finance. Such function is referred to the finance providers or Sukuk holders for a time period equal to the lifetime of Sukuk, after which, the project is transferred to the originator.
2. The originator provides some initial assets to be used in the project, e.g., franchises, land, waterways, and the like.
3. Initial assets remain in the originator's property (with permission to the Sukuk holders to build on it and recognition of the separation of ownership of land from buildings) during the lifetime of Sukuk.
4. The originator may wish to subscribe to some of the issued Sukuk and become a shareholder of the SPV and comanage it with Sukuk holders.

B. The Special Purpose Vehicle, SPV

1. A corporate body, created by the originator, whose capital is equal to the proceeds of Sukuk subscription plus any physical or monetary capital advanced by the originator, in return for its equivalence of Sukuk.
2. It is wholly owned and controlled by Sukuk holders and manages the Sukuk lifetime's investment processes on their behalf.

C. Sukuk Holders and Shareholders Association

1. Those who subscribe to Sukuk
2. They act in the capacity of SPV shareholders in proportion to their subscription.
3. They may exercise full property rights on the assets owned by the SPV.
4. In its capacity as the financial-market authority, the CMB shall issue a decree to compose the Sukuk holders Association, which acts as the general assembly of Sukuk holders.

5. The CMB shall appoint for each Sukuk issue a Sukuk holders Board that takes decisions on behalf of Sukuk holders, with at least five members with the highest Sukuk subscriptions: three from institutional subscribers and two individual subscribers.
6. The total subscription of Sukuk Board members must be above 10 percent. If the top five members (3 institutional and two individual) total share is lower than that, CMB shall add more members until 10 percent is reached.
7. The CMB can call the Sukuk holders to meetings when necessary at the CMB headquarters or virtually through videoconferencing. They shall participate at their own expense. Email/SMS texts circulate their decisions to all Sukuk holders. Decisions are considered confirmed after five working days unless a simple majority of Sukuk holders object.

Article 3: General Requirements

In order that securitization fulfills its economic objective on the one hand and satisfy Shariah rules, on the other hand, the following conditions must be met:

1. Real ownership transfer:
 - 1.1. Since the SPV carries out investment and creates assets in the process, the SPV continues to be the owner of all underlying assets during its lifetime, except for those temporarily provided by the originator.
 - 1.2. It is not allowed to tie Sukuk return to a distant bundle of assets through what is similar to interest/income swaps or to anchor return to some index.
 - 1.3. Sukuk holders shall maintain the authority to exercise property rights on the underlying assets during the Sukuk lifetime.
 - 1.4. To ensure the real transfer of the ownership of the underlying assets, they should not represent liabilities to the seller or any other concern, nor should they carry seniority over other creditors. Such underlying assets must not appear on or off any party's balance sheet other than the SPV on behalf of Sukuk holders.
- 1.5. Proper asset composition:
 - 1.6. Real and non-debt Shariah-compliant financial assets should always dominate the underlying assets.
 - 1.7. They should include at least 51 percent of real assets. The ratio should be raised by .025 percent every year until it reaches 75 percent.
 - 1.8. Sukuk shall not be used in any manner as a means to trade present for future money.
 - 1.9. The underlying assets should be productive. Based on due diligence, they should earn a rate of return that is satisfactory to Sukuk holders.

Article 4: General Rules

1. Sukuk Issuance

1.1. No Sukuk may be issued to buy assets that will be sold in any manner and on any future date to the seller.

2. Sukuk with Wakala:

2.1. Sukuk may be issued for financing new projects or expanding new ones. The prospectus may include an agency to the originator given by the Sukuk holders to construct the project or its expansion and manage it on behalf of the Sukuk holders,

2.2. Wakala Sukuk may contain a commitment from the originator to buy the Sukuk assets at a future date (s) to redeem the Sukuk value.

2.3. Sukuk must be issued based on an underlying contract which must:

2.3.1. Satisfy its pillars and conditions,

2.3.2. Produce its legal effects and consequences,

2.3.3. Be implemented in a way that fulfills its Shariah objective and;

2.3.4. Be void of conditions that contradict its essence and Shariah objectives.

2.4. The scale of Sukuk sale and distribution

2.4.1. The SPV must open the door for subscription to all investors, regardless of subscription size or subscriber's nature (whether they are natural or legal entities).

2.4.2. Subscription should be available through bank branches, PTT offices, and similar outlets, without minimum limits.

2.4.3. When Sukuk subscriptions are allocated, and in cases of oversubscription, preference should be given to small investors. Their subscription applications should be given priority to large-size and institutional investors.

2.5. The activities:

2.5.1. Issuance and trading of Sukuk are not allowed if their proceeds are meant to be used in unlawful activities or if some of the Sukuk assets were unlawful.

2.5.2. Issuance, trading, or redemption of Sukuk must not involve or boil down to the sale of spot money against deferred more money; consequently,

2.5.2.1. It is not permitted for the asset title transfer from the seller to be fictitious, i.e., it does not involve a real and legal transfer of ownership.

- 2.5.2.2. It is not permitted for the assets sold to Sukuk holders in Sukuk of ownership of leased, or to be leased tangible assets to be unsalable according to the official laws, or to remain as the property of the seller, appearing in accounting terms on or off the seller's balance sheet.
- 2.5.3. It is not permitted that the investment Sukuk documents stipulate that the Sukuk originator (as Mudareb, managing partner or investment agent) owes the Sukuk sale proceeds or the Sukuk assets value to the Sukuk holders and not managing the Sukuk assets on a trust basis.
- 2.5.4. It is not permitted that the Sukuk prospectus or contracts state that the Sukuk holders shall not have the right of recourse to the Sukuk assets or to legitimately or legally dispose of them off as regular asset owners do. Such ownership rights must be clearly stated for the Sukuk holders in the prospectus.
- 2.6. The return on Sukuk must be the actual and compelling return on investing the Sukuk underlying assets. It is neither a financial liability nor a commitment upon the Sukuk originator.
- 2.7. Shariah rules and precepts stipulate Sukuk proceeds are to be utilized throughout the investment for the purpose for which the Sukuk have been issued.
- 2.8. Sukuk may be nominal, i.e., each carries the Sakk holder's name, with their title transferrable by registration in a special record kept by the SPV. Alternatively, title transfer can be effected by writing on Sukuk the name of every new holder. Sukuk may also be for their bearer, so their title is transferred then by changing hands.
- 2.9. When Sukuk proceeds are intended to finance project development, care must be taken to ensure that:
 - 2.9.1. Purposes and activities for each project must be legitimate and in line with the Shariah precepts, considering Article IV, (para 5.21) of this standard, which prohibits investment activities that harm the environment.
 - 2.9.2. The SPV shall provide a financial account for each project that is both distinguishable and independent of the accounts of other projects, which constitute liability on the Sukuk originator, who is the beneficiary of the Sukuk issuance proceeds.
 - 2.9.3. A financial statement is issued for each project per AAOIFI Accounting Standards.
 - 2.9.4. Project accounts are controlled by a qualified financial controller(s) appointed by the SPV.
 - 2.9.5. Each project is audited by the internal Shariah auditor, under the SPV-SB supervision, to ensure its activities, profit distribution, and loss sharing comply with the Shariah rules. The CMB shall vet the audit report.
3. For the protection of the Sukuk holders' rights,

- 3.1. The Sukuk originator is responsible for the validity, accuracy, and comprehensiveness of all data, information, documents, and declarations in the Sukuk prospectus. Intentional concealment or misrepresentation shall trigger the liability of the Sukuk originator.
- 3.2. Investment Sukuk shall place no liability on the Mudareb, the partner, or the investment agent for any taxes imposed on the Sukuk returns or for any currency-exchange price differences except in negligence or contract violation cases.
- 3.3. The International Fiqh Academy, IFA, resolutions, the Islamic Financial Services Board, IFSB, and the AAOIFI Shariah and Accounting Standards shall be the binding reference for whatever general rules and principles not covered in this Sukuk standard. The IFA resolutions shall take precedence to AAOIFI and IFSB standards.
4. securitization rules
 - 4.1. All assets not owned by the originator are permissible to securitize, except for prohibited financial products, debt transactions, and gambling assets, irrespective of whether the asset manager is involved in their production, marketing, transporting, selling, and buying or is acting as an intermediary in these activities.
 - 4.2. While Sukuk must be based on a genuine Islamic finance and investment contract, contracts converting Sukuk to common shares in money (except during Sukuk liquidation), debt or gambling payoffs, are prohibited. Furthermore, assets purchased from third parties cannot be securitized if they will be resold to their original seller or his/her/its proxy.
5. Activities resulting in non-securitizable assets:
 - 5.1. Interest-based lending and borrowing.
 - 5.2. Conventional financing,
 - 5.3. Conventional investment,
 - 5.4. Conventional insurance,
 - 5.5. Credit cards receivables,
 - 5.6. Receivables of Murabaha and other debts regardless of their origin,
 - 5.7. Deferred transactions in gold, silver, or currencies,
 - 5.8. Trade in pork or its by-products,
 - 5.9. Trade in all kinds of liquors and alcohol,
 - 5.10. Trade in narcotics for a non-medical purpose,
 - 5.11. Trade in tobacco or its products,

- 5.12. Trade in pipes, shisha, and other smoking tools and material,
- 5.13. Trade in vaping tools and material,
- 5.14. Gambling, and all pure-risk trading,
- 5.15. Dealing in pornography, permissive and other materials that contravene Islamic ethics and values in any manner, such as by publication or distribution of acts of obscene nature through any means,
- 5.16. Transactions involving ghabn, gharar, or Reba or contradicting Shari'ah and its Maqassed (the ultimate consequences of transactions as determined by economists)
- 5.17. Entering into impermissible debt-based transactions, such as discounting debt instruments and taking a commission on the mere act of guarantee,
- 5.18. Inhuman and unethical dealing in human-related objects, such as human trafficking, trading in human organs and prostitution,
- 5.19. Producing or trading in weapons against the law of the land,
- 5.20. Hotels, tourist resorts, and similar establishments that provide or deal in prohibited products and services; or market them or act as agents in such deals,
- 5.21. Activities which are harmful to the environment,
- 5.22. Materials which jeopardize, whether alone or when mixed with other elements, the health of living beings (humans, animals, and plants),
- 5.23. Biological research projects which conflict with principles and fundamentals of Shariah, such as human cloning or setting embryo's sex through non-Shariah means,
- 5.24. Hereditary or genetic engineering to change humans' nature or physique, unless it is meant for medical purposes such as treating disabled organs to restore their original function.

Article 5: Special Purpose Vehicle, SPV

1. The Sukuk originator shall define/establish a particular purpose vehicle, SPV, with legal and financial independence (from the Sukuk originator).
2. The property and control of the SPV shall be transferred to Sukuk holders, following closing and allocation of subscription.

Article 6: The SPV Founding Stage

1. The SPV performs the following functions:
 - 1.1. Acts for Sukuk holders as trustee as well as investment agent,
 - 1.2. Carry out or review the underlying Sukuk feasibility study

- 1.3. Appoints a transitory Sukuk management, to be later confirmed by Sukuk holders,
- 1.4. Issues the Sukuk prospectus,
- 1.5. The prospectus must include the SPV articles of association,
- 1.6. Receives the subscription proceeds
2. The SPV shall contract with trustees/agents to perform the following functions as described in the prospectus
 - 2.1. Acquires the initial underlying assets from the originator,
 - 2.2. Makes and implements plans for project/venture implementation and asset creation,
 - 2.3. Collects investment returns,
 - 2.4. Issues at quarterly audited financial statements, to be reviewed and approved by its board of directors,
 - 2.5. Distributes returns to Sukuk holders,
 - 2.6. May appoint experienced staff to help discharge some of its responsibilities,

Article 7: Shariah Supervision

1. A Shariah Committee shall supervise the SPV: its own SPV Shariah Board, SPV-SB, or the financial-market regulator's (Capital Markets Board, CMB) level, CMB-SB.
2. An SPV-SB/CMB-SB shall be composed of a minimum of 3 members, two-third of which are Islamic economics scholars and one third are Shariah scholars.
3. Scholarship of members require the following qualifications:
 - 3.1. A Ph.D. in their subject (Shariah /Fiqh Almuamalat; economics /Islamic economics),
 - 3.2. Occupying the position of a professor,
 - 3.3. Teaching at the graduate level in accredited universities,
 - 3.4. Publishing in peer-refereed journals,
 - 3.5. Knowledge and honesty, without subscribing to opinions justifying ruses and non-Shariah compliant products (like tawarruq, 'Eina, and debt-sale).
 - 3.6. CMB shall make a list of Islamic economics and Shariah scholars who fulfill the above conditions through public announcements or contact with relevant institutions. CMB shall exclude those who occupy more than one appointment. Both lists must be ordered by academic seniority and updated quarterly.

- 3.7. The CMB-SB members shall be appointed by the CMB from the most senior members on its lists for four years renewable once.
- 3.8. Each member shall serve only in his/her original position and his/her CMB-SB membership only.
- 3.9. The CMB-SB shall appoint the SPV-SB members. Each member shall serve in one SPV only.
- 3.10. No one shall occupy membership in both CMB-SB and SPV-SB simultaneously.
4. The CMB-SB shall oversee all decisions made by the SPV-SB's and maintain the right to final judgment. The former shall have absolute seniority over the latter.
5. The CMB-SB/SPV-SB functions:
 - 5.1. All Sukuk issuers in Turkey must send their Sukuk proposals and the necessary documentation to the CMB-SB for the required endorsement of their structure, contracts, and prospectus.
 - 5.2. The SPV-SB shall, under the supervision of the CMB-SB, shall
 - 5.2.1. ensure that Sukuk issuance, trading, and redemption have all been in line with the Shariah rules and this standard.
 - 5.2.2. Ensure that Sukuk proceeds use to comply with the purpose of issuance and that the distribution of the Sukuk returns from issuance to redemption has been in line with the Shariah rules.
 - 5.2.3. Monitor and audit the SPV and all involved in Sukuk issuance. All activities, projects, and deals financed by the Sukuk issuance proceeds must comply with the Shariah rules as confirmed by periodical reports to the Sukuk holders' association.
 - 5.3. To act as a mediator in cases of conflict between Sukuk holders, management, and any other parties involved. Its decisions are final and subject to appeal at the CMB-SB only. The CMB-SB shall set rules of appeal.
6. The SPV-SB shall appoint one or more Shariah auditors to carry out the auditing and submit its reports to the Sukuk Association Board of Directors through the CMB.
7. The Sukuk Shariah Committee shall notify the Capital Markets Board, CMB, in the Country of any violations (of Shariah or otherwise).

Article 8: Sukuk Prospectus

1. The Sukuk Prospectus shall be prepared in coordination with the Shariah Committee and all relevant parties and shall include the following:
 - 1.1. The articles of association of the SPV,

- 1.2. A proper feasibility study of the project or the venture to be financed by the Sukuk proceeds, which should include:
 - 1.2.1. Ample description of the project, venture, or economic activities to be financed by Sukuk proceeds,
 - 1.2.2. A summary of the feasibility study that includes
 - 1.2.2.1. The cost of setting up or developing projects, ventures, economic activities, management phases, potential risks hedging instruments, Shari'ah-compliant guarantees, and expected profits specified under relevant scenarios,
- 1.3. An endorsement and technical review of the feasibility study by an independent financial adviser, certified by CMB,
2. A sustainability report that attests that all projects, ventures, and activities financed by Sukuk proceeds are:
 - 2.1. Environment-friendly,
 - 2.2. Equity, growth, and stability-enhancing,
 - 2.3. Defining the underlying Shariah contracts, their rules, conditions, and legal consequences. In particular, all parties' rights and obligations, including Sukuk holders, originator, Sukuk holders Association Board and SPV management, must be identified, and the role of ISB/HSB as an arbiter in cases of conflicts.
 - 2.4. The legal procedures, contracts, and other evidence underlying asset titles would be transferred effectively to Sukuk holders.
3. An expert opinion to be issued/approved by the SPV-SB/CMB-SB endorsing the Sukuk structure and documents.
4. The SPV-SB members and their scholarly qualifications, unless Shariah matters are referred to the CMB-SB,
5. An undertaking of the SPV-SB to discharge its responsibilities in:
 - 5.1.1. supervising and auditing the projects, ventures, and activities where the Sukuk proceeds are invested,
 - 5.1.2. Submitting periodical reports every quarter to Sukuk holders and publishing them on an open-access website.
6. A stipulation that Sukuk holders must be summoned to consider appropriate actions. It would be mandatory in cases of a flagrant infringement of Shariah rules, procrastination, or refusal of

the project, venture and activities manager(s) to follow the Shariah committee's instructions or to remedy any violations.

7. A clear explanation of Sukuk holders' participation in profit and loss per the underlying finance/investment contract, in proportion with the number of Sukuk each holds.

8. The nominal value per Sakk, its subscription value, and term to maturity

8.1. A report on the fair value of the Sukuk assets by one of the chartered financial advisers of the CMB, in the Country, in case the Sukuk were issued against existing assets.

8.2. The prospectus should include:

8.2.1. the text of any agreements that places any commitments on the Sukuk holders and the SPV,

8.2.2. The mechanism for profit distribution and loss sharing,

8.2.3. Dates of subscription offering and closing, and rules governing the case of failing to meet the subscription percentage specified in the prospectus, without prejudice to the CMB instructions, in the Country,

8.2.4. How Sukuk are allocated among subscribers in the case of oversubscription while giving priority to small investors,

8.2.5. The Sukuk tradability and redemption of each type of the Sukuk, as permitted by the Shariah principles, based on the underlying assets and contracts,

8.2.6. Reasons that trigger early maturity of the Sukuk, treatment of cases of default and settlement of Sukuk holders' rights,

8.2.7. Any other data required by the CMB, in the Country or by the Sukuk Shariah Committee,

8.3. The prospectus may not include any clause that violates the issuance contract's provisions or its Shariah legal consequences.

8.4. The SPV shall verify the accuracy of all data and information included in the issuance prospectus, either directly or through commissioning an expert.

Article 9: Sukuk Tradability

1. Sukuk with underlying assets that are dominated (51 percent or more of total assets) by cash balances, debt, or monetary assets cannot be traded.

2. Once the composition of securitized assets reaches that state, they must be reconstituted into an asset collection dominated by real assets.

Article 10: Credit Rating

1. When the Sukuk underlying assets include financial assets (like debt resulting from Shariah-compliant transactions) and their returns partially hinge upon some parties' creditworthiness, the credit rating would be required.

1.1. Credit rating would measure the possibilities of recovering the finance principal and returns. It must reflect, at least, the minimum ability to meet the commitments contained in the public prospectus.

Article 11: Investment Rating

1. Sukuk management may also involve investment actions, which would require due diligence in order to ensure profitability.

2. Investment rating would be based on the original feasibility study review and the update of information and the projections until the Sukuk maturity.

3. It must reflect the ability to provide a rate of return that is competitive with what is available in the market.

Article 12: Subscription Coverage

1. Underwriting:

1.1. The SPV may itself undertake the function of underwriting. Alternatively, it may appoint a Turkish Sukuk underwriter certified by the CMB to guarantee the subscription.

1.2. Sukuk proceeds must be used for the same purpose for which the Sukuk were issued and per the underlying contracts.

1.3. In cases of insufficient subscription and suspension of issuance, all amounts paid by the subscribers must be repaid to them during the period determined by the prospectus.

1.4. The SPV must appoint the necessary qualified staff to handle its administrative and financial matters, including the distribution of returns and the payment of the redemption value upon the maturity of Sukuk, as per the provisions contained in the prospectus.

Article 13: Listing and Trading

1. Listing

1.1. Sukuk put to an initial public offering. IPO must be listed and traded in the stock market; however, they can be listed and traded in other markets, with the CMB's permission, defining the listing regulations and procedures, in conformity with Shariah rules.

1.2. The Sukuk listing request must be submitted with the necessary data and documentation by the SPV. According to the CMB regulations, in the case of non-listing, they shall be sold over the counter.

1.3. In all cases, the listening and trading of Sukuk shall be subject to the rules and resolutions issued by SPV-SB/CMB-SB.

1.4. The Sukuk originator may redeem the Sukuk upon their maturity and pay their value to their holders by purchasing the then-existing Sukuk assets. He may also purchase these assets before the Sukuk's maturity at a value defined according to the Shariah guidelines outlined in the prospectus.

Article 14: Sukuk Holders Rights

1. Sukuk holders in their capacity as SPV shareholders and through their Sukuk holders Association and its Board, shall:

1.1. Work together to protect their shared interests, including:

1.1.1. Litigation against the Sukuk originator, or any other parties, in cases that are not resolvable by the ISB/HSB,

2. The SPV Articles of Association shall determine the guidelines and procedures of convening the Sukuk holders Association general meeting, including the call for convening, the eligibility criteria for attendance, the arrangements, and venue of the meeting, the voting process as well as the SPV's relationship with the beneficiary from Sukuk issuance.

3. The SPV must establish a cumulative reserve to protect Sukuk holders from the investment risks. The reserve shall be financed through the deduction of a certain percentage of the SPV's realized profits, after deduction of the Mudareb's or the investment agent's profit share, until the reserve reaches a specific limit during the term of the Sukuk.

3.1. The prospectus shall define how to form the reserve, utilize it, and distribute the remaining balance among Sukuk holders upon the Sukuk's maturity.

Article 15: Issuance Rules

1. The SPV shall handle Sukuk issuance and control their underlying assets in the name of Sukuk holders.

2. The SPV financial liability must be independent of the liability of the Sukuk originator. It shall act as the Sukuk holders' trustee in holding the Sukuk assets' title, invests the Sukuk proceeds in designated outlets, and contracts with investors for this purpose.

2.1. The Sukuk originator may become a shareholder in the SPV, against his/her holding of some Sukuk.

3. The originator may not wholly own the SPV. His/her share of the SPV capital (the total value of Sukuk) should not exceed 5 percent.

3.1. The SPV may be managed by the Sukuk originator, under the supervision of the Sukuk Association Board.

Article 16: Sukuk Guarantees

A. General

1. Sukuk holding is an investment in real ownership. Sukuk holders bear the risk of the Sukuk underlying assets. Sukuk do not represent debt liability upon their issuer towards their holders. As a consequence,

1.1. Sukuk holders bear the risk and gain the returns of the underlying assets.

1.2. A guarantee is taken to cover the value of the underlying assets against destruction, damage, or loss of value; without any misconduct, negligence, or breach of the issuance conditions on the guarantor's part.

B. Investment Sukuk Guarantee

1. Neither the SPV nor the investment managers are permitted to guarantee Sukuk holders the face value of their Sukuk or a return on their investment under one of the following investment contracts

1.1.1. Mudaraba,

1.1.2. Musharaka or

1.1.3. Investment Wakala,

1.2. Such guarantees render the Sukuk as well as their underlying contracts null and void.

1.3. Investment managers shall be liable to Sukuk holders for any loss in the Sukuk assets' value unless they prove that the loss was due to reasons beyond their control and which they could neither anticipate nor avoid. In such cases, the burden of proof rests on the manager.

1.4. Investment Sukuk holders may accept a binding promise, documented from an independent third party to purchase the Sukuk assets at a specific time or upon Sukuk maturity. The investment manager may also undertake to buy the Sukuk assets at:

1.4.1. The market value,

1.4.2. The value agreed upon at the time of executing the purchase,

1.4.3. The net assets value,

1.4.4. A fair value or the value determined by agreed market experts at the time of sale.

1.4.5. At the value paid by the Sukuk holders for purchasing them in leased asset Sukuk

C. Finance and Ijarah Sukuk Guarantee

1. It is not permissible to issue Sukuk based on Murabaha, Istisna' or Salam

2. Ijarah Sukuk's originator cannot guarantee the assets or usufructs he has sold to the Sukuk holders. Furthermore, he cannot assume responsibility for their total loss, damage, or value depreciation after delivering them to the Sukuk holders or their representative because of liability shifts with ownership transfer.

3. It is permitted to appoint the seller of the assets or the usufructs as a service agent for the Sukuk holders against a fixed fee plus an incentive. It is permissible if assets are bought from a third party or constructed on Wakala

D. Guarantees by Investment Managers

Investment managers guarantee the value of the Sukuk assets under their management. In cases of breach of the agreement (breach of the requirements of trust, negligence, or misconduct in respect to making the appropriate investment decisions which should typically be expected of an investment expert) or the investment rules stipulated by the Sukuk holders. The guarantee shall be of the capital alone and per the general rules of guarantees.

Article 17: Sukuk Companies

1. Trade-finance Sukuk companies

1.1. The SPV contracts to purchase local or foreign merchandise on Istisna' and to sell on Salam,

1.2. Deliveries of Istisna' merchandise are synchronized with deliveries of Salam merchandise,

1.3. Proceeds are used to pay for Istisna' installments,

1.4. Salam payments replenish cash balances,

1.5. Cash balances can be minimized through synchronization,

1.6. Hopefully, the SPV reaches a high rate of cash turnover on the asset side, in addition to merchandise stocks kept for short periods until delivery dates,

1.7. Useful in domestic and foreign trade finance,

1.8. The attainment of low cash balances could make trade Sukuk negotiable and attract more liquidity by issuing more Sukuk.

1.9. Suppliers' credit (selling on Salam and buying on Istisna') in addition to volume discounts offer chances for higher profitability.

2. High-Value Assets Finance

2.1. SPV's can be established to specialize in obtaining high-value assets from construction and manufacturing companies and selling them to ultimate users.

2.2. Examples of such assets include office buildings, residential compounds, passenger planes, cargo ships, tankers, railroad trains, wagons, and similar assets.

2.3. The SPV contracts with construction and manufacturing companies to supply the high-value assets,

2.4. Based on Istisna' or Ijarah or forward ijarah contracts,

2.5. The SPV issues Sukuk to finance the purchase of assets to be supplied,

2.6. The SPV would have already obtained orders for such assets from real-estate, transport, and shipping companies,

2.7. The SPV can distribute the net return on Sukuk holders and continue its activities, with more Sukuk issued as needed,

2.8. The assets of the SPV would include real assets under construction and manufacturing. Their real liabilities would include the same to be delivered, the ratio of cash and monetary obligations would be sufficiently limited to allow Sukuk tradability,

2.9. Since Sukuk are tradable, Sukuk holders can opt to continue holding Sukuk or opt-out through their sale,

3. Infrastructure Sukuk Companies

3.1. A government department or an Islamic financial institution can establish an SPV to mobilize resources to finance infrastructure through Sukuk issuing.

3.2. The government provides the SPV with a franchise to build the infrastructure, operate it for a certain period, and then transfer the title to it to the government, under a BOT arrangement.

3.3. The infrastructure's net earnings would be the fees (the value of infrastructure services sold minus the total fixed and variable cost amortized over the franchise's lifetime).

3.4. Net earnings would be distributed to shareholders up to Sukuk maturity.

3.5. It is important to stress that environmental considerations must be observed in such undertakings.

4. Agricultural Sukuk companies

4.1. To expand agriculture by land reclamation, increase gardening and forestry areas producing fruit, nuts, and lumber,

4.2. The government can provide pieces of unexploited public land to SPV's for a nominal rent, on a permanent or a temporary basis, provided it is cultivated with crops or fruit/lumber trees within a specific time limit,

4.3. The government may add an incentive to grant a percentage of the land offered after reclamation is complete,

4.4. The SPV issues Sukuk to mobilize sufficient resources for land reclamation, gardening, and forestry,

4.5. The Sukuk holders would gain the annual net return, plus the land's capital appreciation when offering partial title transfer.

4.6. In the end, more forestation, in particular, should help the environment.

5. Wakala Investment Sukuk Companies

5.1. Based on the investment Wakala contract,

5.2. Their proceeds used as capital, paid to the investment agent to invest it against a commission,

5.3. Sukuk holders are

5.4. Entitled to the investment return

5.5. Liable for investment risks, in proportion to their Sukuk number,

5.6. The investment agent is entitled to:

5.7. A guaranteed fixed commission payable,

5.8. An agreed incentive set in relationship to the profit exceeding a certain threshold,

6. Musharaka Sukuk

6.1. Based on the Musharaka contract,

6.2. Proceeds used as the Sukuk holders' share in the Musharaka capital, whose other partners,

6.3. Sukuk holders are:

6.4. Entitled to a common share in the investment return

6.5. Liable for investment risks in proportion to their Sukuk number,

Article 18: Conflict Resolution

1. In cases of conflicts among Sukuk holders, manager, investors, and other parties, the CMB-SB is the sole arbiter between all parties,

2. CMB shall set the rules of litigation and appeals to the CMB-SB,

3. Parties can refer their conflicts to Turkish courts only when such referrals are instructed or permitted by the CMB.

Article 19: Definitions

1. Islamic Shariah Rules

Shari'ah rules are derived from the Quran, the Sunnah, and other Shariah sources whose authority is derived from the Quran and the Sunnah.

2. Sukuk

2.1. Sukuk: Plural of 'Sakk,' lexically means a certificate, a deed, or security².

2.2. In Islamic Finance terminology, 'Sukuk' refers to certificates or legal instruments (securities) of equal value, nominal or for-the-bearer certificates.

2.3. They represent undivided shares in ownership of assets (the Sukuk assets): tangible assets, usufructs, debts, money, services, financial rights, or a mixture of some or all of these kinds, but subject to certain conditions upon issuance and after subscription.

3. Sukuk distinguished from bonds

3.1. Sukuk are tradable instruments so long as they do not represent debt or money alone.

3.2. They cannot be deemed as debt for their owners on their issuer at the issuance stage;

3.3. They are issued based on one of the Shariah contracts, and the rights and obligations of all contractual parties are well defined in the prospectus and the Sukuk contracts.

3.4. Moreover, Sukuk have the following features:

3.5. They provide management rights to their holders,

3.6. Their holders share the profit and the liquidation value of the assets they represent. In case of loss, he is also liable for loss to the proportion of the Sukuk he holds based on the Fiqh maxim "liability is an obligation accompanying gain."

3.7. Sukuk's ability for redemption and trading is subject to the conditions of the tradability of the assets they represent.

3.8. Sukuk can either be issued for a limited period during or after which they can be redeemed.

4. Sukuk distinguished from shares

² From the word 'Sakk' were developed later the English word (check) and the French word (cheque) and their likes.

4.1. While a Sakk is a common undivided right in a collection of underlying (securitized) assets, a share is a common right in the ownership of a specific legal company's assets.

4.2. The latter right remains effective as long as the company itself remains in existence.

4.3. In contrast, Sukuk can be issued for specific periods after which they can be redeemed or without specifying a duration for redemption.

5. Green Sukuk or Climate Sukuk;

5.1. All Shariah-compliant investments must not harm the environment,

5.2. Sukuk, whose proceeds finance further environmental improvements, like clean air, forestation, recycling of waste, renewable energy, and the like, may be named green Sukuk.

6. Equity (social justice) Sukuk;

6.1. All Shariah-compliant finance should not be involved in actions that disadvantage the poor,

6.2. Sukuk, whose proceeds contribute to narrowing the differences between the rich and the poor, are considered equity Sukuk. Examples include providing low-cost housing, food sustenance, unskilled employment, and the like.

7. Bonds (as compared to Sukuk)

7.1. A Bond is a certificate or a deed (security) that represents a guaranteed interest-bearing debt owed by its issuer (the debtor /borrower) to its bearer (the creditor /lender). A bond thus represents a financial right for its bearer (the lender). Its amount is guaranteed by the bond issuer (the borrower) to be repaid at a specific future time.

7.2. It is the reality of the financial papers that matters and not their terminology. Therefore, terming bonds as 'investment certificates' does not change the prohibition of their acquisition and trading.

7.3. Similarly, terming Sukuk that have fulfilled all Shariah conditions as 'Islamic bonds' does not render them prohibited,

7.4. The name (Islamic bonds) itself is not accurate in economic terms as it is self-contradictory.

8. CMB,

CMB is the governmental unit responsible for supervising financial markets in Turkey. It consequently supervises the issuance of Sukuk.

9. Issuance Prospectus

The issuance prospectus is the information document, which includes all of the data, terms, conditions, and the Sukuk issuance and redemption provisions.

10. Sukuk underlying Assets

They are the Sukuk issuance proceeds and what they may be converted into tangible assets, usufructs, services, cash, debts, or other financial rights.

11. Issuance (underlying) Contract

The Shariah contract is based on which Sukuk is issued.

12. Trading Sukuk

It is the sale of Sukuk to parties other than their issuer at the agreed price.¹ This sale is subject to the Shariah rules of the tradability of Sukuk underlying assets as outlined in the prospectus.

13. Redemption

It is the sale of the Sukuk underlying assets to the Sukuk originator, subject to the rules and conditions of Sukuk's tradability as outlined in the prospectus.

14. The Market

It is the authorized securities and commodities exchange in the Country.

15. Underwriting

It is the undertaking by some party to promote Sukuk subscription and subscribe at a determined price to the Sukuk not subscribed to, which binds the underwriter alone and not the Sukuk originator.

16. Sukuk Originator

It is the party seeking finance from the Sukuk subscription proceeds to establish a project, a venture, or an economic activity.

17. The Issuer:

The same as the SPV.

18. Sukuk Owners (Sukuk holders)

They are the Sukuk subscribers and buyers who own the Sukuk assets and reap their gains and bear their losses in proportion to the number of Sukuk held by every one of them. They represent the seller in Murabaha or Istisna, the buyer in Salam, the buyer of the leasable assets or services or usufructs, the capital provider in Mudaraba, Musharaka, or Wakala in investment.

Article 20: Date Of The Standard Issuance

This standard was issued in ----, reviewed, and revised in ----.
