# Oman heralds a new framework for Sukuk issuances and new listing categories

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The past few weeks have seen frenetic activity in key legislative developments being released in Oman. Hot on the heels of the publication of Oman's new Sukuk Regulations on 5 April 2016 came the introduction of new listing categories on the Muscat Securities Market (MSM).

## Why are the Sukuk Regulations significant?

The Capital Market Authority (CMA) Decision 3/2016 issued on 5 April 2016 introduced the CMA's long-awaited Sukuk Regulations (the Regulations).

These Regulations mark the culmination of more than three years of drafting, re-drafting and consultation with industry players both locally and internationally. The CMA has worked hard behind the scenes to take on board comments of key stakeholders to achieve the objectives of having a framework which will further promote capital market issuances in Oman.

As an interim measure pending release of the Regulations, an amendment to the Capital Markets Law was promulgated in November 2014 (Sultani Decree 59/2014) which added licensing and regulation responsibility of SPVs to the CMA as well as the identification of the terms and conditions of financial trusts and issuance, listing and trading of Sukuk instruments and their Shariah supervision.

The absence of a dedicated Sukuk regulatory framework, along the lines of the Regulations, did not hamper the ability of the Government of Oman to launch its debut Sukuk in 2015, nor the ambitions of a number of key corporations in planning their issuances. However, those of us who are working on structuring Sukuk transactions for a range of Omani issuers drawn from a broad spectrum of industries and sectors welcome a more formal legislative basis, which brings more certainty for both issuers and investors.

## What are some of the key features of the Sukuk Regulations?

### The SPV

The ability to issue through an Omani limited liability company SPV with significantly lower minimum capital requirements, rather than through a joint stock company which requires minimum paid-up capital of OMR 500,000 (approximately USD 1,300,000).

Not only must the SPV be a company registered at the Ministry of Commerce and Industry, but the CMA must also grant a separate licence to the SPV (terms and conditions have yet to be disclosed), which will mean a fee of OMR 1,000 with further fees on renewal of the licence every five years.

## The prospectus

The Regulations refer to issuances taking place with a "draft prospectus as per the form prepared by the CMA". Currently, no such form exists for Sukuk issuances and the current practice to date has been to adapt the model form of prospectus for equity issuances. This is not ideal and there are a number of areas of uncertainty in trying to fit bond and Sukuk issuances within that framework. It remains to be seen whether a new dedicated model form will be released for Sukuk issuances but this would certainly assist issuers.

The Regulations mention no requirement that the prospectus must be issued in Arabic form, thus providing a greater degree of flexibility to potential issuers in terms of both the cost and timing of a launch. In practice, however, the CMA is still insisting that the Arabic prospectus is filed and signed by the various advisers and the issuer.

## Credit rating

The CMA may request a credit rating of the obligor but this is not a strict requirement.

## Sukuk programmes

The Regulations anticipate both standalone Sukuk issuances as well as programmes. This marks a positive development and one designed to encourage issuers to have the programme establishment completed with the flexibility to take advantage of favourable market conditions and issue quickly and regularly.

## Shariah Supervisory Board

There appears to be no requirement for the beneficiary/obligor to have its own Shariah Supervisory Board, hence issuers may be able to engage the services of an independent Shariah consultancy firm. Further clarification will be required from the CMA as to how this is reconciled with annual reporting obligations confirming that the Sukuk is Shariah-compliant. The requirement of an annual certification by a Shariah Supervisory Board introduces further obligations on the issuer which were not included in previous drafts of the Regulations.

## Financial trust

The formal introduction into Oman law of the detailed requirements for constituting financial trusts in the context of Sukuk transactions.

## Subscription by Omanis only

The CMA may restrict subscription and trading to Omani nationals in certain circumstances and further clarity will be required on these provisions.

# What else?

## New listing categories on the Muscat securities market

The other key development of the past few days relates to a further amendment of the Executive Regulations of the Capital Market Law of 1998. Decision No. 5/2016 came into force on 6 June 2016.

One of the notable features is the introduction of a new "Bond and Sukuk Market" on the MSM. The CMA intends to have existing and future bonds and Sukuks listed on the MSM to be placed into this new category over time and we therefore expect the CMA to disclose the associated transitional arrangements.

The Bond and Sukuk Market does not yet have US Dollar capability but we understand that this facility is being developed quickly. It remains to be seen what additional administrative requirements will be implemented by the MSM and whether privately placed bonds and Sukuk will be subject to public disclosure requirements or whether there will be an equivalent of a Third Market framework where bonds are traded OTC.

Together with the Bond and Sukuk Market, there are a number of other new categories also being introduced, such as "Under Monitoring Market" and a "Rights Issue Market".

The new and updated categories are also intended to serve as an upgrade and to facilitate the review of market information in line with the CMA's mandate to promote capital markets in Oman.

# What next in relation to Sukuk issuances?

The Regulations refer to further forms and directives to be issued by the Executive President of the CMA to prescribe their implementation and we will continue to consult with the CMA as to the implications for potential issuers, arrangers and investors.

Whilst not all industry recommendations have made their way into the Regulations – for example, the disapplication of the prohibition on issuing bonds in excess of issued share capital (in the context of Sukuk issuances), or related party approval exemptions (as the SPV will likely be a subsidiary of the Obligor), the Regulations do provide a number of key concessions not previously available under Oman law.

The Regulations therefore mark a significant and positive step forward in the promotion of Sukuk issuances in a market that has grown by more than 50% over the past year alone. There is certainly more to come and these legislative developments signal the much needed steps being taken to facilitate issuances in and from the Sultanate of Oman.

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