

GUIDANCE NOTE ON ISSUANCE OF SUKUK WAKALA BI AL-ISTITHMAR IN LABUAN INTERNATIONAL BUSINESS AND FINANCIAL CENTRE

1.0 Introduction

- 1.1 In line with the initiative to develop Malaysia as an International Islamic Financial Centre (MIFC) as well as to enhance the development of the Islamic financial market, the Guidance Note on Issuance of Sukuk Wakala Bi Al-Istithmar has been introduced to facilitate and promote the issuance of sukuk in Labuan International Business and Financial Centre (Labuan IBFC).
- 1.2 The Guidance Note on Issuance of Sukuk Wakala Bi Al-Istithmar¹ (Guidance Note) clarifies the requirements for the issuance of sukuk structured based on the Shariah principle of Wakala Bi Al-Istithmar in Labuan IBFC.
- 1.3 Sukuk Wakala Bi Al-Istithmar refers to certificates of equal value granting the certificate holder's undivided ownership in the investment assets pursuant to their investments through the investment agent.
- 1.4 In addition to this guidance note, please also refer to the Explanatory Note on Issuance and Subscription of Sukuk in Labuan IBFC.

2.0 Legal Provision for Sukuk Issuance in Labuan IBFC

- 2.1 The issuance of sukuk in Labuan IBFC is subject to the provisions of Part III of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

3.0 Eligible Issuers

- 3.1 Any person², through the establishment of a Labuan company or registration of a foreign Labuan company under the Labuan Companies Act 1990, may make an offer or invitation to subscribe for sukuk in or from Labuan IBFC.

¹ Refers to investment agency sukuk.

² "Person" includes a corporation, partnership, a body of persons, corporate or unincorporated and a corporation sole.

- 3.2 An offer or invitation to subscribe for sukuk by a Labuan company or a foreign Labuan company to residents of Malaysia must be made through a Labuan Islamic bank licensee or a Labuan bank licensee (as the arranger for the offer of sukuk) unless otherwise allowed in writing by Labuan FSA.

4.0 Approval Requirements

- 4.1 Any person who makes an offer for subscription or purchase or issues an invitation to subscribe for or purchase sukuk (subsequently referred to as offer for subscription of sukuk) in or from Labuan IBFC, must obtain prior written approval from Labuan FSA under Section 13(1) of the LIFSSA, unless the offers or invitations of sukuk are excluded from the approval requirements of Labuan FSA as specified under Section 13(5) of the LIFSSA.
- 4.2 Section 13(5) of the LIFSSA stipulates that the following offers or invitations of sukuk are excluded from the requirement for prior written approval of Labuan FSA³:

For an offer or invitation of sukuk, where:

- (i) The first time investment of each of the initial sukuk holders is not less than two hundred and fifty thousand ringgit or the equivalent in any other currency and they are in possession of sufficient information to make a reasonable evaluation of the offer or invitation; or
 - (ii) The first time investment of each of the initial sukuk holders is less than two hundred and fifty thousand ringgit or the equivalent in any other currency and the number of persons to whom the offer or invitation is communicated does not exceed fifty and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer or invitation.
- 4.3 A resident of Malaysia who makes an offer for subscription of sukuk in or from Labuan IBFC, is subject to the requirements of the Capital Markets and Services (Amendment) Act 2015 and the Foreign Exchange Administration Rules issued by Bank Negara Malaysia⁴.

³ For the issuance of sukuk that falls under Section 13(5) of LIFSSA, Labuan trust companies as the resident secretary of the Labuan company shall notify Labuan FSA not later than 30 calendar days after the issuance of the sukuk in Labuan IBFC.

⁴ Please refer to Notice 2 – Borrowing and Guarantee under Bank Negara Malaysia’s Foreign Exchange Administration Rules.

- 4.4 A non-resident who makes an offer for subscription of sukuk in or from Labuan IBFC is required to register the disclosure document with the Securities Commission Malaysia as specified in the Capital Markets and Services (Amendment) Act 2015.

5.0 Eligible Investors

- 5.1 Any person may subscribe to the sukuk issued in or from Labuan IBFC.
- 5.2 Residents of Malaysia may subscribe to the sukuk issued in or from Labuan IBFC, subject to the requirements under the Foreign Exchange Administration Rules issued by Bank Negara Malaysia⁵.

6.0 Characteristics of Sukuk Wakala Bi Al-Istithmar in Labuan IBFC

- 6.1 The issuance of Sukuk Wakala Bi Al-Istithmar in Labuan IBFC has the following characteristics:
- 6.1.1 The maturity of the sukuk can be of varying tenor of either within a year or more;
 - 6.1.2 The sukuk holders are the principal (muwakkil) who are investing their funds;
 - 6.1.3 The special purpose vehicle (SPV)⁶, as the issuer of the sukuk, acts as the wakeel (agent) and trustee⁷ to the sukuk holders. The SPV holds the underlying assets on trust for the sukuk holders;
 - 6.1.4 The originator is the entity that will receive the proceeds from the sukuk issuance. The originator may also be the obligor who is contractually obliged to honour the financial obligations of the SPV established to issue the sukuk;

⁵ Please refer to Notice 3 – Investment in Foreign Currency Asset under Bank Negara Malaysia’s Foreign Exchange Administration Rules.

⁶ The SPV refers to the Labuan company established or foreign Labuan company registered for issuing the sukuk.

⁷ Under section 25 of LIFSSA, every Labuan company which offers sukuk pursuant to subsection 13(1) shall appoint a Labuan trust company as a trustee for the sukuk holders. Labuan FSA may approve any other person to act as a trustee together with the Labuan trust company for the sukuk holders.

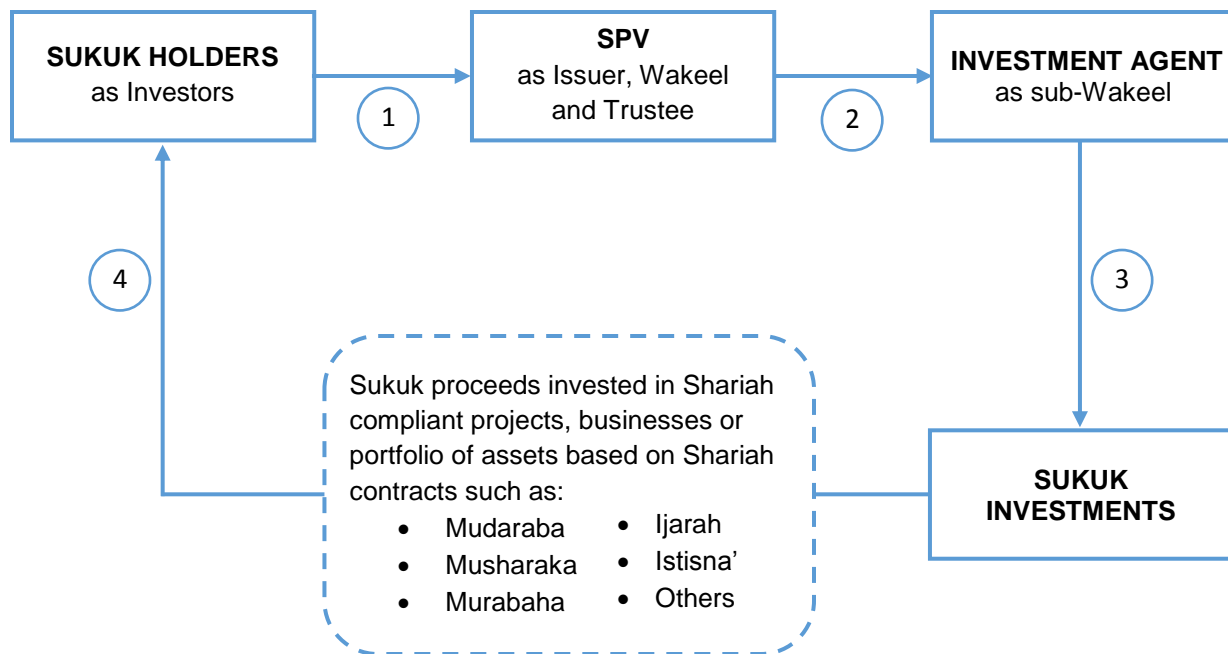
- 6.1.5 The proceeds of the sukuk issuance can be utilised to acquire or invest in Shariah-compliant projects, businesses or portfolio of assets comprising, among others:
- (a) Ijara (leased) assets;
 - (b) Murabaha receivables;
 - (c) Istisna' receivables;
 - (d) Shariah-compliant shares;
 - (e) Sukuk certificates;
 - (f) Rights that can generate income; and
 - (g) Any other assets approved by the Shariah adviser as underlying assets for the sukuk issuance.
- 6.1.6 The sukuk assets shall be identified and properly documented;
- 6.1.7 To ensure that the sukuk are not debt instruments and therefore tradable, at least 33% of the underlying assets of the sukuk must be tangible assets (such as Ijara contracts, shares and sukuk)⁸. This is in line with the minimum percentage of tangible assets prescribed by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI);
- 6.1.8 The sukuk structure shall be endorsed by a Shariah adviser to ensure compliance with Shariah principles;
- 6.1.9 The SPV shall monitor the issuance and implementation of the sukuk throughout its duration including any Shariah parameters to be complied with;
- 6.1.10 The sukuk assets will be managed and serviced by the appointed investment agent (sub-wakeel). The trustee may appoint the originator as the investment agent for the sukuk assets;
- 6.1.11 If any of the underlying assets ceases to be Shariah compliant during the duration of investment, they shall be substituted with other Shariah compliant assets as agreed upon by both parties;
- 6.1.12 Income generated from the sukuk assets may be distributed to the sukuk holders on a periodic basis;

⁸ In this regard, examples of intangible assets include Murabaha receivables or Istisna' receivables.

6.1.13 Depending on the nature of the underlying sukuk assets, upon maturity of the sukuk, the originator may purchase the sukuk assets at an agreed exercise/purchase price;

7.0 Structure of Sukuk Wakala Bi Al-Istithmar

7.1 An example of a Sukuk Wakala Bi Al-Istithmar structure is described in the diagram below:



1. The sukuk holders appoint SPV as Wakeel to the sukuk holders to invest the sukuk proceeds in sukuk investments. The SPV declares a trust over the sukuk proceeds and sukuk investments.
2. The SPV, in its capacity as wakeel to the sukuk holders, appoints the investment agent as its sub-wakeel to invest the sukuk proceeds on behalf of the sukuk holders.
3. The investment agent invests the sukuk proceeds in the sukuk investments as agreed in the business plan.
4. Returns generated from the sukuk investments may be distributed to the sukuk holders on a periodic basis. Upon maturity, the dissolution amount will be paid to the sukuk holders.

8.0 Advantages of Sukuk Wakala Bi Al-Istithmar

- 8.1 The issuer of Sukuk Wakala Bi Al-Istithmar can benefit from the structure of the sukuk as follows:
- 8.1.1 Flexibility in selection of the underlying assets as in a Wakala Bi Al-Istithmar structure, the underlying assets can consist of a pool or portfolio of assets. It is thus possible for the issuer to mix and match different types of assets which, by themselves, may not comply with the tangibility criteria.
 - 8.1.2 The issuer (being also investment agent for wakala investment assets) has greater control over the sukuk proceeds in management decisions or utilisation of funds. This may increase the efficiency and effectiveness of the operational aspects of the investment.
- 8.2 Sukuk Wakala Bi Al-Istithmar offers the following advantages to sukuk holders:
- 8.2.1 Depending on the nature of the underlying assets, the sukuk may be structured to provide pre-agreed returns of profit to the sukuk holders.
 - 8.2.2 Sukuk holders are able to invest their funds in assets which are managed by the wakeel on a trust basis. Sukuk holders can capitalise on the expertise of the wakeel to select and manage investments on their behalf so that the portfolio may generate the expected rate of return.

Labuan Financial Services Authority
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