Bangladesh Securities and Exchange Commission
Securities Commission Bhaban
E-6/C Agargaon
Shere-e-Bangla Nagar Administrative Area
Dhaka-1207, Bangladesh

Draft Rules

In exercise of the power conferred by section 33(1) of the Securities and Exchange Ordinance, 1969 (Ordinance XVII of 1969), the Bangladesh Securities and Exchange Commission makes, with prior circulation, the following rules, namely:-

CHAPTER I
PRELIMINARY

1. Short title and applicability. –

(1) These rules may be called the Bangladesh Securities and Exchange Commission (Investment Sukuk) Rules, 2019.

(2) These rules shall be applicable for issue of all types of investment sukuk structured in line with the Shari'ah with due approval of the Shari'ah Supervisory Board, either privately placed or being publicly offered, by any issuer including Special Purpose Vehicle (SPV) to the eligible investor or any investor and for matters connected therewith and incidental thereto.

(3) These rules shall also be applicable for appointment or selection of parties involved in issuance of investment sukuk, governance of special purpose vehicle and for matters connected therewith and incidental thereto.

(4) These rules shall read together with other relevant rules of the Commission for issuance or offer of securities, registration of intermediaries, trading of securities and for matters connected therewith and incidental thereto.

2. **Definitions.** –(1) In these rules, unless there is anything repugnant in the subject or context,-

(a) "asset" means Shari'ah compliant asset as verified by the Shari'ah Supervisory Board or any other body recognized by the Commission;

(b) "Investment Contract" means any contract or transaction or scheme to issue securities, whereby a person invests to expect profits or income or return in any form solely from such contract or transaction or scheme;

(c) "Investment sukuk" (hereinafter also referred as "sukuk") means a certificate of equal value which evidences the undivided shares in the ownership of the tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or special investment activity under the shari'ah compliant investment contract;

(d) "issuer" for the purpose of these rules means a company or special purpose vehicle or any other person as defined in the clause (g) of Section 2 of the Securities and Exchange Ordinance, 1969, who has issued or proposed to issue sukuk;

(e) "Issue" for the purposes of these rules means issuance of investment sukuk as an investment contract on any Shari'ah concept;

(f) "Investment Agent" means an institution engaged through execution of investment agency agreement and shall be responsible to facilitate the issue and sale of sukuk under these rules and to invest the issue proceeds in line with the deed of trust to safeguard interest of the holders of Sukuk;

(g) "Originator" for the purpose of these rules means an institution that issues sukuk in line with shari'ah principles and respective rules, directly, or through the use of a Special Purpose Vehicle (SPV) or similar mechanism;

(h) "Prospectus" means offering document covering the disclosure requirements of these rules and the other rules concerned for issuance of securities;

(i) Sharia'a means rulings or guidance of the Holy Quran and Sunnah.

(j) "Shari'ah Advisor" means shari'ah scholar with the appropriate experience and knowledge of Fiqh Al-Muamalat (Islamic Commercial jurisprudence), business, and financial services to opine on the Shari'ah compliance of an Islamic security;

(k) "Shari'ah Compliance" means the mechanism of ensuring compliance of the sukuk structure, relevant features, contracts and various other arrangements, as well as, operations and activities related to the sukuk assets, with Shari'ah principles and rules during the overall lifecycle of the Sukuk issuance;

(l) "Shari'ah concepts" means all the types of investment sukuk allowed in Shari'ah and specially the types of sukuk in line with the AAOIFI Shari'ah Standard 17 issued by Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI), that includes Ijara, Musharakah, Murabahah, Mudaraba, Istisna and any other permitted concept;

(m) "Shari'ah Pronouncement" means a fatwa or certificate or a Shari'ah opinion signed by the Sukuk's Shari'ah Supervisory Board, and such shari'ah pronouncement may be in provisional or in final form following Schedule # A;

(n) "Shari'ah Supervisory Board" means an independent body of at least three shari'ah advisors duly entrusted with the duty of directing, reviewing and supervising the activities pertaining the sukuk issuance in order to ensure shari'ah compliance and rules;

(o) "Special Purpose Vehicle (SPV)" means a legal entity, created with a special financial objectives, recognized under these rules through an approved deed of trust by the Commission and registered under the Trust Act, 1908 only to function under these rules or any other rules of the Commission**;**

(p) "Sukuk- holders" means holders or owners of the sukuk;

(q) "Sukuk assets" means assets underlying the investment sukuk;

(r) "Trustee" means the trustee registered under the respective rules of the Commission and appointed under rule 8 of these rules.

(2) Unless otherwise repugnant for any purpose, words and expressions used herein and not defined, but defined in the Trust Act, 1882 (Act No. II of 1882), the Registration Act, 1908 (Act No. XVI of 1908), the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969), ব্যাংক-কোম্পানী আইন, ১৯৯১ (১৯৯১ সনের ১৪ নং আইন), বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন আইন, ১৯৯৩ (১৯৯৩ সনের ১৫ নং আইন), আর্থিক প্রতিষ্ঠান আইন, ১৯৯৩ (১৯৯৩ সনের ২৭ নং আইন), কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন), ডিপজিটরি আইন, ১৯৯৯ (১৯৯৯ সনের ৬ নং আইন), বীমা আইন, ২০১০ (২০১০ সনের ১৩ নং আইন) and Rules and Regulations made under the above Acts and Ordinances shall have the same meanings respectively assigned to them in the said Acts and Ordinances.

CHAPTER II
SUKUK GOVERNANCE AND MANAGEMENT STRUCTURE

3. Organs of Governance.-

(i) Any Sukuk insurance has the following organs of governance:

(a) Body entrusted with governance.- The Board of Directors or equivalent or other relevant committee of the originator or issuer is entrusted with the governance of Sukuk issuance;

(b) Body entrusted with Management.- The management team of originator or issuer or any other team assigned by deed of trust is entrusted with the management of an originator's operations for sukuk;

(c) Sukuk's Shariah Advisory Board (SSB).- The body formed by originator or issuer, as the case may be, under these rules to supervise the shari'ah compliance and the shari'ah pronouncement issued by SSB are binding on the originator or issuer and other stakeholders, in respect of all matters relating to the sukuk issuance, and the sukuk assets during the entire lifecycle of the sukuk;

(d) Trustee.- (i) An entity appointed by the originator to serve as an intermediary between the originator and the Sukuk holders, to hold Sukuk assets on behalf of the Sukuk holders and to safeguard the interest of the both parties;

(e) Auditor: Auditor includes financial auditor and shari'ah auditor as the

Commission assigns their role in the rules;

(f) Other organs: It includes investment agent, servicer or any other party as assigned by deed of trust of sukuk.

(2) All the organs of governance of the Sukuk issuance shall be responsible for compliance with the requirement of the rules in their respective area of responsibilities.

(3) The originator's responsibilities in line with the requirements of these rules shall be considered as the collective responsibilities of those charged with governance and the management of the originator, in their respecting areas of functioning.

CHAPTER III
ELIGIBILITY AND REQUIREMENTS FOR ISSUE OF INVESTMENT SUKUK

4. Conditions to be fulfilled for Issue of Investment Sukuk.- An issuer that intends to issue Sukuk shall fulfill the following conditions namely:-

(1) An investment sukuk shall be constituted in the form of a trust as a special purpose vehicle (SPV) under the Trust Act, 1882 (Act. No. II of 1882) and registered under the Registration Act, 1908 (Act No. XVI of 1908).

(2) Before registration of the trust as an SPV, the draft trust deed shall be approved by the commission.

(3) Prior to issuance of Sukuk, the issuer or the originator, as the case may be, has appointed an Investment Agent and formed a Shari'ah Supervisory Board (SSB) in line with the rules.

(4) The draft structure of the investment sukuk along with the relevant legal deeds shall be authenticated by the Shari'ah Supervisory Board based on the provisional shari'ah pronouncement on the sukuk structure.

(5) Requirements for filling application for issuance of sukuk shall comply the process outlined in rule 10 of these rules.

(6) Any other condition as may be specified by the Commission.

5. Naming of Investment Sukuk.-

(1) Where an investment sukuk is structured based on single Shari'ah concept, the Sukuk shall be named according to that shari'ah concept.

(2) Where the sukuk are structured using multiple Shari'ah complaint transaction types, the sukuk shall be named after the main transaction type, and the application of the multiple Shari'ah compliant transaction types shall be disclosed in the principal terms and conditions of the sukuk.

6. Shari’ah Supervisory Board and Shari’ah Pronouncement.-

(1) The issuer or originator shall appoint, for every sukuk issuance, a shari’ah supervisory board (SSB) as an independent body from the originator or issuer:

Provided that if the issuer or originator already has a shari’ah Board, duly meeting the requirement of these rules, the same may additionally be appointed as SSB for one or more of the sukuk issuance:

Provided further that necessary regulatory approval, if required, shall be obtained by the issuer or originator in this respect.

(2) The issuer or originator shall, before the issue of sukuk, obtain provisional Shariah Pronouncement before structuring the sukuk and final shari’ah pronouncement before issuance of prospectus from the Shari’ah Supervisory Board.

(3) The Shari’ah Pronouncement must be signed by each Shari’ah Advisor ascertaining that the basis on which the sukuk are structured is Shari’ah compliant.

(4) The Shari’ah Pronouncement must contain at least such information and certification and in the form and manner as notified by the Commission from time to time including, at least, the following;

(a) Sukuk structure;
(b) how the structure is free from *riba*;
(c) sukuk contracts and documentation;
(d) description of sukuk assets and continuous compliance requirement;
(e) trading conditions of sukuk;
(f) whether and to what extent the return to Sukuk holders is attributable to the underlying assets;
(g) whether and to what extent the ownership of underlying assets, belongs to the Sukuk holders;
(h) whether and to what extent the related agreements and contracts, separately and collectively, are consistent with the concerned Shari’ah principles; and
(i) exceptions, reservations, and qualifications regarding Shari’ah compliance, if any, and details thereof.

(5) The engagement letter or agreement executed with the Shari’ah Advisors among other things, must clearly define the roles and responsibilities of both the parties, dispute resolution mechanism and such other clauses as specified by the Commission from time to time.

(6) The Shari’ah Advisor may not remain engaged throughout the tenor of the Issue, if the Shari’ah Pronouncement states so. Where an issuer opts to engage a Shari’ah Advisor for a longer period, the term of engagement shall be at the discretion of the issuer or originator.

(7) The issuer shall ensure that all relevant documents, contracts, details and information required by the Shari’ah Advisor for understanding of the transaction, concepts,

structure etc. and framing or review of the Shari'ah Pronouncement are provided and adequately explained to the Shari'ah Advisor.

(8) The SSB shall be held accountable for due care with regard to its shari'ah pronouncement, SSB reports and other responsibilities as per these rules to the Commission, sukuk-holders, the originator or issuer, and the Central Shari'ah Board, if formed by Commission.

(9) The Commission may take opinion about the Shari'ah pronouncement from any national body or recognized body supervising the shari'ah priciples or shari'ah education.

(10) The Shari'ah pronouncement must have a bangla version to be attached with prospectus.

7. Eligibility of Shari'ah Advisor. - Sharia'a Advisor(s) shall meet the following fit and proper requirements:

(1) The Sharia'a scholar must have Dawr-e-Hadith (Takmil) or Kamil or Post Graduate Degree in Islamic Studies, Arabic, Fiqah or Islamic Law, Islamic Economics or Islamic Banking with profound knowledge in Arabic language:

Provided that shari'ah scholar having PhD or M.Phil or Takhassus or higher specialized degree in Fiqah or Islamic Jurisprudence shall be a preferable qualification to be an advisor.

(2) Sharia'a Advisors must have 5 years experience as a Member of any reputed 'Darul Ifta' or Fatwa Board or Shari'ah Board in giving Shariah rulings or Fatwa on Islamic Commercial issues or Islamic Law or Islamic Finance or related areas or financial matters.

(3) Shari'ah Advisors must be a person of integrity and sound track record in social, economic and financial dealings.

8. Appointment and Independence of Trustee.-

(1) The originator shall appoint a Trustee for each investment sukuk, who is the trustee of a debt security registered under rule 9 of the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012, shall be eligible to function as trustee of all investment sukuk except for sukuk issued as asset backed securities under the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সম্পদ ভিত্তিক সিকিউরিটি ইস্যু) বিধিমালা, ২০০৪;

(2) For investment sukuk, which is issued also as asset backed securities, the originator shall appoint a trustee, who is the trustee registered under the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সম্পদ ভিত্তিক সিকিউরিটি ইস্যু) বিধিমালা, ২০০৪;

(3) The originator shall perform a due diligence of the trustee before appointment, duly considering:
   (a) understanding and demonstrable compliance with Shari'ah principles and rules;
   (b) independence and objectivity;
   (c) non-affiliation or connected person with the issuer or the originator in any form;
   (d) creditworthiness and financial stability; and
   (e) sound credential in its roles.

(4) The trustee appointed under these rules shall perform the roles outlined in these rules and the respective rules for its registration.

(5) The Board of trustee as approved by the Commission shall carry out the role of trustee outlined in the respective rules.

(6) The Board of Trustee has the right to take control over the sukuk assets in case of any default or non-compliance of the of issuer or originator or any other related party to the management of sukuk and liquidate the assets in favour of the sukuk holders with due approval of the Commission.

9. Special Purpose Vehicle (SPV) and Sukuk Assets.- The trustee, with due assistance of the originator as needed, shall ensure that :

(i) "Sukuk assets" are transferred to the SPV in a manner where such transfer is absolute and creates a legal impediment for the originator, or its creditors to have any legal rights over such assets including in the event of bankruptcy of the originator;

(ii) all rights and obligations relating to the sukuk assets shall be legally and beneficially transferred to the SPV in line with the Shari'ah principles and rules;

(iii) the originator of the sukuk shall neither have effective control on the management of the SPV nor shall maintain direct or indirect equity stake in the SPV;

(iv) the SPV must not have any recourse to the originator for compensation of losses generated from the sukuk assets, unless there is a Shari'ah compliant arrangement for credit enhancement in the structure of sukuk transaction duly approved by SSB;

(v) in case where the originator is also an agent or investment agent providing management services with regard to the sukuk assets, such relationships shall be kept on an arm's length basis, and shall not result in transfer of control of sukuk assets, which in all cases shall rest with SPV, duly exercised by the Trustee under the contractual terms and instructions of the sukuk holders.

10. Requirements for filing application for a public offer of sukuk.-

(1) Issuance of Sukuk shall meet the requirements in the following rules in case of submitting application to the commission:

(a) In case of investment sukuk structured as an asset backed securities (ABS), the issuer or originator shall fulfill the requirement of these rules and the requirements of Securities and Exchange Commission (Asset Backed Securities) Rules, 2004, as appropriate, if it is placed under private placement or public offer;

(b) In case of investment sukuk structured as like a debt securities, the issuer or originator shall fulfill the requirement of these rules and the requirements of Bangladesh Securities and Exchange Commission (Private placement of Debt securities) Rules, 2012, as appropriate, where issued under private placement;

(c) In case of investment sukuk structured as like a debt securities, the issuer or originator shall fulfill the requirement of these rules and the requirements of Bangladesh Securities and Exchange Commission (Public issue) Rules, 2015, as appropriate, where sukuk is issued through public offer;

(2) The prospectus or offer document for issuance of investment sukuk shall fulfill the requirements of Schedule # B of the rules and the rules concerned as mentioned in the sub-clause (1) above.

CHAPTER IV
MISCELLANEOUS

11. Trading and Listing of Sukuk :

(1) The originator shall ensure the listing of the sukuk under respective listing regulations in line with the requirements of the Shari'ah principles.

(2) In case of un-listed sukuk or traded in the OTC or Alternative Trading Board (ATB), the originator shall ensure the complice of Shari'ah principles.

(3) In case of no-tradable sukuk under Shari'ah priciples shall not be allowed to be listed or traded in the exchange platform.

12. Underwriter of the Sukuk Issuance and Credit Enhancement: (1) The originator shall ensure the appointment of underwriters for sukuk issuance is made subject to the terms and conditions dulu in compliance with the Shari'ah requirements.

(2) The provision of underwriting is optional in case of sukuk issuance.

(3) Arrangement of credit enhancement or collateral or guarantee or any other purchase undertaking is allowed subject to the compliance of Shari'ah principles.

13. Utilization of Sukuk Proceeds.-

(1) Sukuk proceeds shall be placed with the trustee or SPV until such proceeds are used for the intended pupose and /or temporarily invested in line with contractual terms and Shari'ah principles:

Provided that the SSB shall reports to the trustee and the Commission for any of its deviation of its intended objectives in the deed of trust, or if deviation is allowed by SSB, reasons thereof, to the Commission and the sukuk holders.

(2) Sukuk proceeds or investments shall be governed by a prudent investment policy duly adopted by the originator and the trustee in the Investment Agency Agreement.

14. Management of Sukuk Assets.-

(1) Sukuk assets that are acquired using sukuk proceeds shall be clearly identified in the prospectus or offer document of the sukuk.
(2) Sukuk assets must generate cash flow or flow of economic benefits for the sukuk holders and for payment of profit or principal.
(3) Sukuk assets shall be transferred from the originator to the SPV free of any legal impediments.
(4) Sukuk assets shall be transferred at fair value or a value reasonably close thereto.
(5) Any disposal or change in the sukuk assets shall be justified from business perspective in the best interest of the sukuk holders.
(6) The sukuk assets shall not be relocated from one location to another without proper justification and jeopardizing the interests of the sukuk holders.
(7) Sukuk assets shall be registered in the name of SPV, identifying sukuk holders as their legal owners or beneficiaries, as applicable:

Provided that if the originator is in default in case of payment of contractual payment obligations to the sukuk holders for three continuous installments or six months, whichever is earlier, the ownership of the asset will be transferred in full to the SPV or the trustee shall take control over the assets to start the process of liquidation.

(8) The trustee, by virtue of control of SPV, shall have the right to sell or dispose of the sukuk assets in case of default for the benefits of the sukuk holders; and
(9) Any damage or material changes that happen to the sukuk assets during the sukuk issuance lifecycle shall be immediately reported to the sukuk holders and other relevant stakeholders.

15. Restructuring and Termination of Sukuk.- Any restructuring and termination of sukuk shall take place with due approval of the Board of Trustee, SSB and the Commission.

16. Financial reporting, reports and disclosure.- (1)The financial reports of the issuer or SPV of investment sukuk shall be prepared taking into consideration relevant standards of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) for Shari'ah principles and the International Financial Reporting Standards (IFRS).
(2) The annual audited financial reports need to be submitted to the Commission within sixty (60) days of year end and shall be audited by any of the panel of auditors approved by the Commission.
(3) The annual financial statements need to be approved by SSB and Board of Trustee.
(4) The Trustee shall submit a half-yearly performance report to the commission.

17. Contravention.– If any issuer or any other person related with the issue violates any of the provisions of these rules or furnishes false, incorrect, misleading information or suppresses any information, the Bangladesh Securities and Exchange Commission may take appropriate actions under the Securities and Exchange Ordinance, 1969 (XVII of 1969).

Schedule # A

Shari'ah Pronouncement

{(rule 2(1)(m)}

In the name of Allah, the Beneficent, the Merciful

To the Stakeholders and Investors of ……….. (Name of the Investment Sukuk)

We have reviewed the principles and contracts relating to the transactions and applications related to the sukuk to be issued. We have also conducted our review to form an opinion as to whether the institution has complied with the Sharia'a Rules and Principles as well as the specific fatwas, rulings and guidelines issued by us;

The institution's management is responsible for ensuring that the institution conducts its business in accordance with Shari'ah Rules and Principles. It is our responsibility to form an independent opinion, based on our review of the operations of the institution;

We conducted our review which included examining a detailed examination of the sukuk structure, the relevant documentation and procedures adopted by the institution;

We planned and performed our review so as to obtain all information and explanations necessary in order to provide sufficient evidence to give reasonable assurance that the institution has not violated Shari'ah Rules and Principles;

In our opinion the contracts, transactions, assets, and dealings entered into by the institution related to the sukuk, are in compliance with the Shari'ah Rules and Principles.

Additional opinion of the SSB, as per rules and other considerations

Names, signatures, date

Schedule # B

Minimum Contents of Information Memorandum or Prospectus or Offer Document
{(rule 10(2)}

The Information Memorandum for the issue of sukuk shall contain at least the following information and disclosures:

(i) Brief of the issuer, originator, trustee, and other organs of the sukuk issuance;

(ii) Issue date;

(iii) size of the Issue;

(iv) type of sukuk;

(v) mode of Issue ;

(vi) purpose of the Issue and utilization of the proceeds thereof and the sukuk assets;

(vii) salient features of the instrument like its offer price, denomination, tenure, expected rate of return, its structure, payment schedule, profit distribution, profit/loss sharing mechanism, etc.;

(viii) in case of secured sukuk, nature and amount of the security backing the instrument and nature of charge(s) established in favor of the Investment Agent or trustee to the Issue;

(ix) details of recourse mechanism, credit enhancements, options, if any;

(x) name and contact detail of the Shari'ah Advisors ;

(xi) Final Shari'ah Pronouncement;

(xii) Other Issues as per the rules applicable;

(xiii) Credit Rating of Investment Sukuk and the Originator;

(xiv) Details of the mechanism for final settlement;

(xv) Additional requirements of the rules for concerned issuance of securities;

(Xvi) Any other matters as per the instructions of the Commission.