

**FRA Decree No. 176 for the year 2018 regarding the requirements for establishing and licensing Sukuk companies.**

**Source: Board of Directors resolution no. 176 of 2018, Issue No. 283 of the Official Gazette dated 16 December 2018**

This Decree has introduced for the first time in Egypt Sukuk companies, which are Joint Stock companies established with a minimum capital of 10 million Egyptian Pounds, or its equivalent in foreign currency, and that have as an only objective the issuance of Sukuk. Their purpose is to finance companies or entities (the “**Beneficiary Entities**”) that invest in projects in various fields.

Sukuk are financial instruments with equal value that are issued to represent a joint ownership of existing or future assets, benefits, rights or projects.

**The Sukuk Companies Responsibilities**

Sukuk companies shall act as an agent for the sukuk holders, therefore they are responsible for all the activities related to the issuance of Sukuk including owning and managing assets, benefits, rights or projects on behalf of the Sukuk-holders. They shall enter into an issuance contract - by virtue of which the Sukuk are issued - with the relevant beneficiary entity and the sukuk-holder. Such contract shall organize the relation between the parties in terms of the Sukuk, the period of such investment including the expiration of the Sukuk and the possibility of their trade and redemption; the expected revenues; the distribution method and the duties of the parties respectively.

Sukuk companies shall also be responsible for the credit rating of the sukuk, and shall ensure the payment of the sukuk’s interests and value on its expiration in accordance with the provisions of the issuance prospectus.

Therefore, the Decree has obliged Sukuk companies to exert a prudent man’s diligence when determining and managing the assets, benefits, rights or projects owned by it on behalf of the sukuk-holders. To avoid conflict of interest, Sukuk companies shall be independent from the Beneficiary Entity and any of its related parties.

**Establishment Requirement and Corporate Governance**

Beside the requirements indicated above, the Decree has provided certain other requirements to establish such companies in accordance with other FRA decrees regarding the

regulations of licensing and rules of share-ownership in non-banking financial companies. The Decree states that at least 50% of the Sukuk companies' capital shall be owned by juridical persons, and at least 25% of its capital shall be owned by financial institutions.

Sukuk companies is also required to have an independent headquarter inside of Egypt where the equipment, technological infrastructure and information systems necessary for the activity are found.

It is worth mentioning that the FRA has also regulated the governance of Sukuk companies and has provided strict professionalism conditions and expertise requirements in connection with the board of directors' members.

The Chairman of the Board of Directors shall hold one of the local or international professional certificates related to the fields of finance, investment or business administration, and which shall be approved by the Authority. The majority of the members of the Board of Directors including the Chairman of the Board of Directors or the Chief Executive Officer shall have an experience of no less than three years in the fields of issuing and offering different kinds of securities. These three-years may be decreased to only two years for those who have passed the training courses in the field of securities markets adopted by the FRA. In addition, the executive managers of Sukuk companies shall have a previous experience of no less than two years in the field of share issuance and other securities offerings. Further, the Chairman of the Board of Directors or the Chief Executive Officer as well as the directors shall pass the interview provided by the FRA.

### **The Retransfer of the Sukuk Ownership to the Beneficiary Entity.**

The ownership of the sukuk is transferred back again to the Beneficiary Entity, after the prior approval of the FRA, in the following cases:

- A. The FRA 's non-approval of the issuance prospectus based on a potential harm or disruption of the market stability or the prospective investors' interests.
- B. The non-completion or the lack of coverage of the sukuk issuance.
- C. Early redemption of the sukuk;
- D. Voluntary dissolution of the project or asset, provided that sukuk-holders group has approved such dissolution; or
- E. Final redemption of the sukuk.

Regarding A & B, the subscribers are refunded in full within two days of the date set for the end of the covering of the subscription or offering period, and within the period specified in

the issuance prospectus or in the information memorandum in the other cases where the issuance was not completed.

## **FRA Decree No. 172 for the year 2018 concerning the Rules and Procedures for Issuing and Offering Short Term Bonds.**

**Source: Board of Directors resolution no. 172 of 2018, Issue No. 284 of the Official Gazette dated 17 December 2018**

This Decree has given the investors multiple and various kinds of financial instrument in Egypt by adding the short term bonds to the financial instruments. For the purpose of the Decree, short term bonds means short term debt instruments which include bonds, financing sukuk, or any other short term financial instruments (“**Short Term Bonds**”). They are considered as short term financial instruments for their term shall not exceed two years. Further, the issuance can be done in one of two ways, either independently or through a program. In the first case, the term of the issuance shall not be less than 7 days and shall not exceed 12 months as opposed to the short term bonds issued in accordance with a program, which term shall not exceed two years.

### **I. The Juridical persons allowed to issue Short Term Bonds**

Article (2) of the Decree determines the companies or the other entities allowed to issue or offer Short Term Bonds as follows:

1. Joint Stock companies and Limited by Shares companies.
2. Subject to the approval of the FRA, the companies authorized to operate in non-banking financial activities.
3. Banks subject to the supervision of the Central Bank of Egypt, provided that the latter approves such issuance.
4. International and Regional financial institutions authorized to offer and issue financial debt instruments within the Arab Republic of Egypt, or to guarantee the obligations of the issuer of such financial instruments, by virtue of the bilateral or international treaties to which the Arab Republic of Egypt is a party. Such financial institutions include the European Bank for Reconstruction and Development, the International Finance Corporation and other Arab and international institutions.
5. Small and medium companies as defined in the Rules of the listing and delisting of securities in the Egyptian Stock Exchange, or by the Egyptian Central Bank.

## II. Issuance Requirement

The FRA has listed certain requirements that any company or entity wishing to issue Short Term Bonds (the “**Issuer**”) shall meet. Most importantly, the Issuer shall obtain a credit rating certificate issued from one of the credit rating institutions approved by the FRA, provided that such rating shall not fall below (BBB-) or its equivalent. As for small and medium companies, a credit grading certificate is required and which shall not fall below the limit approved by the FRA. The Decree provides that Issuers are exempted from obtaining such credit rating certificate in the following cases:

1. The Issuer is one of the banks whom are under the supervision of the Egyptian Central Bank, and subject to its approval.
2. The Issuer is an international or regional financial institution with a credit rating.
3. The Issuer has a credit rating that is valid for at least one year for the independent issuance or for the first year of the issuance program.
4. The Issuer's obligations are guaranteed by a local or international financial institution with a credit rating or a company that has obtained a credit rating certificate that is valid for one year, or has been exempted from obtaining a credit rating.
5. The Issuer has issued the Short Term Bonds on behalf of another entity with a credit rating certificate valid for one year or was exempted from the credit rating requirement.

Further, Issuers shall prepare financial statements for at least two years that precede the issuance in accordance with the Egyptian Auditing Standards with the report of the authorized financial advisor attached.

In addition, the Decree has obligated the Issuer to issue Short Term Bonds in Egyptian Pounds, unless the Issuer has enough revenues in foreign currency to cover the Short Term Bond holders dues on the due time. In this event, the issuance may be made in foreign currency.

Moreover, each Short Term Bond's nominal value cannot fall short of 100 Egyptian Pounds and its multiples, or its equivalent in foreign currency as the case may be. In relation to small and medium companies, the issuance value shall not exceed the company's net assets.

The FRA has indicated that the interest rate on Short Term Bonds shall be fixed or variable. In call cases, such rate shall be determined by either the Board of Directors in a Joint Stock company, or the Supervisory Board in a Limited by Shares Company or by the competent authority in other juridical persons.

### **III. The Issuance Process of Short Term Bonds**

This Decree has regulated the process of the issuance of the Short Term Bonds. It has provided that Short Term Bonds shall be issued by a resolution of the Board of Directors in Joint Stock companies or of the Supervisory Board in Limited by Shares companies, and which shall be based upon the approval of the company's General Assembly or of the competent authority in other juridical persons.

After the issuance, Short Term Bonds must be deposited at Misr for Central Clearing, Depository and Registry "MCDR", and shall be marketed according to the relevant regulations.

The Decree has indicated that one of the entities operating in the field of promotion and underwriting of securities shall adopt the management of the issuance, in addition to this, one of the banks authorized by the Central bank of Egypt or one of the holding financial companies undertaking the investment banking activity, shall act as the payment agent.

Subject to notifying the FRA, the Issuers may, within the two-year period of the issuance program, authorize multiple issuances in accordance with the general terms and conditions, and other disclosing policies specified in the program previously approved by the FRA, provided that:

- A. The total of the issuances must not exceed, at any given time, the maximum limit previously approved by the Authority;
- B. The due date for all issuances by virtue of the program must not exceed the program's validity period; and
- C. No violations of the terms and conditions of the previous issuances has occurred.

Finally, Short Term Bonds may be listed on the Egyptian Stock Exchange, in accordance with the listing and delisting rules in the Egyptian Stock Exchange and Issuers may offer them through a private or a public offering by virtue of an offering prospectus or an information memorandum.

### **IV. Private Offerings**

As indicated above, Short Term Bonds may be offered through a private offering. However, the FRA has strictly specified the investors allowed to subscribe in the offered Short Term Bonds.

The Decree has indicated that only qualified investors are the investors entitled to subscribe in the offered Short Term Bonds, and has added that the qualified investors shall be financial institutions eligible to investment or individuals with financial wherewithal.

For the purpose of this Decree, the financial institutions eligible to investment are meant to be the following:

- Banks under the supervision of the Egyptian Central Bank;
- Insurance companies;
- Public juridical persons;
- Insurance and pensions funds, and private insurance funds;
- Investment funds, including debt instruments funds and money market funds; and
- companies identified by the FRA among the companies operating in the non-banking financial activity sector;

while the individuals with financial wherewithal means the following:

- Natural persons with experience not less than three years in the field of credit and trust management, funds management and working in any bank or insurance company or financial institution either Egyptian or foreign.
- Natural persons holding securities or debt instruments (financial instruments) which its value exceeds five hundred thousand Egyptian Pounds in at least two Egyptian Joint Stock Companies other than the Issuer.
- Companies with a paid capital not less than one million Egyptian pounds.

It is worth mentioning that Short Term Bonds subject to the Decree are governed by the Capital Market law in the matters in which the Decree is silent.