
POLICY NOTE

Dec. 8, 2025

Comments on the Draft SEC Guidelines on the Issuance and Disclosure of *Sukuk*

Prepared by:



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Markets and Securities Regulation Department
SECURITIES AND EXCHANGE COMMISSION
SEC Headquarters
7907 Makati Avenue, Salcedo Village
Bel-Air, Makati City

Subject: COMMENTS ON THE SECOND EXPOSURE DRAFT OF THE PROPOSED GUIDELINES ON THE ISSUANCE AND DISCLOSURE OF SUKUK

Ladies and Gentlemen:

Geronimo Law, a Makati-based firm with an active corporate and financial law practice, respectfully submits these comments on the Second Exposure Draft of the Proposed Guidelines on the Issuance and Disclosure of Sukuk (“**Draft Sukuk Guidelines**”).

These comments intend to: (i) clarify whether the Draft Sukuk Guidelines accommodate both “with recourse” and “without recourse” sukuk structures, (ii) resolve the uncertainty on whether an Asset-Backed Sukuk is governed by the Securitization Act of 2004 (R.A. No. 9267), and (iii) address the fixed remediation period in the event of non-payment.

I. The Draft Sukuk Guidelines should clarify whether sukukholders have recourse to the Originator or Obligor in the event of default

It appears that the Draft Sukuk Guidelines recognize flexibility in accommodating both “with recourse” and “without recourse” sukuk structures. “**With recourse**” means that in the event of default, sukukholders may pursue the Originator’s or Obligor’s general assets for payment. Conversely, “**without recourse**” means the sukukholders rely primarily on the assets or cash flows specifically segregated to back the sukuk, legally isolating them from the Originator’s or Obligor’s financial distress.

This flexibility in accommodating both “with recourse” and “without recourse” sukuk structures is **merely implied** in **Section 17(a), paragraphs (i) and (ii)**, which distinguish Asset-Backed Sukuk and Asset-Based Sukuk. **Section 17(a)(i)** defines **Asset-Backed Sukuk** where the Special Purpose Entity (SPE) and sukukholders have legal ownership of the underlying asset. This structure generally implies a “without recourse” mechanism as the sukukholders rely on the legally segregated asset, supported by the requirement that the credit rating only covers the “sukuk and the underlying asset.” On the other hand, **Section 17(a)(ii)** defines **Asset-Based Sukuk** where the Originator/Obligor still holds the asset and sukukholders only have a beneficial interest. This structure implies a “with recourse” arrangement, evidenced by the mandatory credit rating requirement that includes the “obligor/originator’s creditworthiness.”

However, there is still **ambiguity** on whether the Draft Sukuk Guidelines can accommodate both “with recourse” and “without recourse” sukuk structures due to the following clauses:

1. **Section 14(f)** on recourse mechanisms require that the disclosure detail the “precise mechanisms for pursuing **recourse to the obligor** and the disposition of assets following

default.” This requirement applies universally across all sukuk structures, meaning even in a “without recourse” Asset-Backed Sukuk, the issuer must still explain how recourse to the Obligor might be pursued. This mandatory disclosure potentially implies that some form of claim against the Obligor is necessary or expected regardless of the sukuk structure.

2. There is no explicit statement on the recourse status in each type of sukuk structure in **Section 17(a), paragraphs (i) and (ii)**. While the credit rating requirements imply the recourse status (Asset-Backed is without recourse to Originator and Asset-Based is with recourse to Originator), Section 17(a) does not explicitly state the recourse status of each sukuk structure. Moreover, Section 17 pertains merely to credit rating requirements. Clearer definitions regarding recourse status could be better situated in a separate provision dedicated to the legal or structural nature of the sukuk.

To eliminate this ambiguity, we recommend the following amendments in **Sections 5, 12, 13 and 14**:

a. Proposed Amendment in Section 5

We recommend adding clear definitions for Asset-Backed and Asset-Based Sukuk that explicitly state their inherent recourse status.

Proposed Amendment	Proposed Definition	Rationale
Add Definition of “Asset-Backed Sukuk” in Section 5	Asset-Backed Sukuk – Sukuk where the SPE and the sukukholders possess legal ownership of the underlying assets. Such Sukuk shall be structured on a “without recourse” basis to the originator or obligor for payment, relying primarily on the performance and value of the legally isolated underlying assets for repayment and enforcement.	Establishes the legal consequence of asset isolation and clarifies the “without recourse” nature implied by Section 17(a)(i).
Add Definition of “Asset-Based Sukuk” in Section 5	Asset-Based Sukuk – Sukuk where the obligor/originator retains legal ownership of the underlying asset, and the SPE and sukukholders only possess a beneficial ownership/interest over the asset. Such Sukuk inherently carry recourse to the originator/obligor as repayment depends significantly on the general creditworthiness of the originator/obligor, whose credit rating is mandated under Section 17(a)(ii).	Explicitly confirms the “with recourse” nature implied by Section 17(a)(ii).

b. Proposed Amendment in Section 12

Given that Section 12 focuses specifically on the “Source of Payments and Recourse,” it is a structurally logical place to insert the explicit definitions of recourse.

Current Provision	Proposed Amendment	Rationale
Section 12 (Introductory Clause):	Section 12 (Introductory Clause): The disclosure shall clearly and prominently set out the ultimate	By mandating the explicit statement of recourse status here, it immediately anchors the investor’s understanding

<p>The disclosure shall clearly and prominently set out the ultimate source(s) of funds used to make distributions to sukukholders. It shall also include the following information:</p>	<p>source(s) of funds used to make distributions to sukukholders, <u>and shall explicitly state whether the Sukuk is structured on a “with recourse” or “without recourse” basis.</u> It shall also include the following information:</p>	<p>of recovery rights at the beginning of the section dedicated to payments and recourse.</p>
<p>Section 12(b):</p> <p>An explanation that the performance of the underlying assets depends entirely on the efforts of the sukuk obligor/originator.</p>	<p>Section 12(b):</p> <p><u>For Asset-Based Sukuk,</u> an explanation that the performance of the underlying assets depends entirely on the efforts of the sukuk obligor/originator must be included. <u>For Asset-Backed Sukuk, the disclosure shall detail the contractual arrangements and mitigations used to minimize performance reliance on the originator/obligor, consistent with the objective of asset isolation.</u></p>	<p>This revision resolves the ambiguity caused by the current universal statement by tailoring the disclosure to the specific structure: confirming operational reliance for Asset-Based Sukuk, and requiring clarification of minimized reliance for Asset-Backed Sukuk.</p>

c. Proposal for Amendment in Section 13

Section 13 should be amended to explicitly connect the disclosure of legal ownership and transfer mechanisms to the resulting recourse structure:

Current Provision	Proposed Amendment	Rationale
<p>Section 13(f):</p> <p>The mechanisms for the transfer of the asset into the sukuk structure at the time of issuance and the transfer of the asset out of the sukuk structure at redemption.</p>	<p>Section 13(f):</p> <p>The mechanisms for the transfer of the asset into the sukuk structure at the time of issuance and the transfer of the asset out of the sukuk structure at redemption. <u>For Asset-Backed Sukuk, the disclosure shall confirm that the mechanisms for the transfer of the asset into the sukuk structure at issuance achieve effective legal isolation constituting a “true sale” such that the assets are beyond the reach of the originator’s creditors.</u></p>	<p>Explicitly links the transfer mechanism to the legal “true sale” standard required for asset isolation in “without recourse” Asset-Backed structures.</p>
<p>Section 13(g):</p> <p>The precise legal interests of the issuer and sukukholders in the asset, without solely relying on terms such as “legal ownership”, “beneficial ownership” or “usufruct right”.</p>	<p>Section 13(g):</p> <p>The precise legal interests of the issuer and sukukholders in the asset, without solely relying on terms such as “legal ownership”, “beneficial ownership” or “usufruct right”. <u>For Asset-Backed Sukuk (without recourse), disclosure must establish clear legal ownership by the SPE/sukukholders. For Asset-Based Sukuk (with recourse), disclosure must clearly state that legal ownership is retained by the</u></p>	<p>Ensures that the disclosure of ownership interest directly dictates and confirms the structural recourse status for the investor.</p>

	<u>obligor/originator, and describe the beneficial interest held by the sukukholders.</u>	
Section 13(h): Any limitation of the rights of the Issuer and sukukholders in the asset.	Section 13(h): Any limitation of the rights of the Issuer and sukukholders in the asset, <u>including the effect of such limitations on the enforcement of the sukukholders’ rights in a “with recourse” or “without recourse” scenario.</u>	Highlights the critical risk in Asset-Backed structures where limitations on asset rights are the primary vulnerability for recovery.

d. Proposed Amendment in Section 14(f)

Section 14(f) mandates universal disclosure of the mechanism for pursuing recourse to the Obligor, which is structurally inconsistent with Asset-Backed Sukuk. This clause should be qualified depending on the type of sukuk structure.

Current Provision	Proposed Amendment	Rationale
Section 14(f): The precise mechanisms for pursuing recourse to the obligor and the disposition of assets following default shall be disclosed.	Section 14(f): The precise mechanisms for pursuing recourse to the obligor <u>shall be disclosed in the case of an Asset-Based Sukuk. For Asset-Backed Sukuk, the disclosure shall clearly detail the absence of recourse against the originator/obligor’s general assets and shall describe the enforcement rights and disposition procedures solely related to the underlying assets following default.</u>	This revision maintains the disclosure obligation depending on the recourse status of the specific Sukuk being issued.

II. Draft Sukuk Guidelines should clarify whether the Securitization Act of 2004 (R.A. No. 9267) is applicable in the case of Asset-Backed Sukuk

The Draft Sukuk Guidelines do not explicitly reference or exclude the applicability of the Securitization Act of 2004 (R.A. No. 9267). This omission creates an ambiguity that needs to be clarified, since an Asset-Backed Sukuk is structurally equivalent to conventional securitization.

Asset-Backed Sukuk is defined by the Draft Sukuk Guidelines as a structure where the SPE and sukukholders have legal ownership of the underlying asset. This requires the Originator to transfer the asset to the SPE to achieve asset isolation, making the sukuk “without recourse” to the Originator’s general assets.

This mechanism perfectly mirrors the definition and core principle of securitization established by the Securitization Act. Under that Act:

- Securitization is defined as the process where assets are sold on a without recourse basis by the Seller (Originator) to the SPE;
- The issuance of Asset-Backed Securities (ABS) by the SPE depends on the cash flow from the assets so sold;

- The transfer of assets must be a “true sale” that results in the assets being legally isolated and put beyond the reach of the Originator or Seller and its creditors.

Because Asset-Backed Sukuk relies entirely on the “true sale” and legal isolation of the underlying assets, it fundamentally falls under the scope and objectives of the Securitization Act. Therefore, unless the SEC intends to recognize a separate regulatory regime for *Shari’ah*-compliant securitization, the Act may be deemed applicable.

We recommend adding a new section containing one of the following two options:

1. Option 1: If the Securitization Act is Deemed Applicable

If the SEC determines that the Asset-Backed Sukuk structure is legally a form of securitization under the Securitization Act, the guidelines must mandate compliance with the Act to ensure the validity of the structure’s most critical features, *i.e.*, true sale of underlying assets from the Originator to the SPE, asset isolation, and without recourse to the Originator.

The proposed amendatory language is as follows:

SECTION 21. SECURITIZATION ACT OF 2004 DEEMED APPLICABLE. – Asset-Backed Sukuk structures shall be considered a form of securitization and must comply with the relevant provisions of the Securitization Act of 2004 (R.A. No. 9267) and its Implementing Rules and Regulations.

2. Option 2: If the Securitization Act is Deemed Not Applicable

If the SEC intends for the Draft Sukuk Guidelines to establish a distinct, self-contained regulatory regime for *Shari’ah*-compliant asset-backed financing, this must be explicitly stated to prevent uncertainty and potential conflicts with R.A. No. 9267.

The proposed amendatory language is as follows:

SECTION 21. SECURITIZATION ACT OF 2004 NOT DEEMED APPLICABLE. – Asset-Backed Sukuk issued in compliance with these Guidelines shall not be regulated under the Securitization Act of 2004 (R.A. No. 9267).

III. Draft Sukuk Guidelines should allow flexibility on the remediation period in the event of non-payment

The Draft Sukuk Guidelines establish a rigid and potentially unrealistic standard for curing delays related to payments. Section 14(h) dictates that the non-payment of sukuk principal or profit on the due date constitutes an event of default without any materiality threshold, and while a remedy period is allowed, it “shall not exceed seven (7) business days from the date payment is due.”

A mandatory maximum cure period of seven (7) business days is impractical for corporate issuers, especially when dealing with complex or large-scale financing instruments. Such a short period may not allow sufficient time for the Originator or Obligor to resolve common operational or short-term liquidity issues that cause a brief delay in payment. Furthermore, external factors (such as delays in international fund transfers, banking system failures, or administrative errors) could immediately trigger an event of default, even if the issuer is fundamentally solvent and capable of

making the payment. Allowing only seven (7) business days increases the risk of premature acceleration and restructuring.

To allow for operational realities while maintaining investor protection, the guidelines should permit greater flexibility in defining the remediation period, allowing the Issuer and the Trustee to negotiate and disclose a more realistic time frame in the Trust Deed.

We propose amending Section 14(h) of the Draft Sukuk Guidelines as follows:

Current Provision	Proposed Amendment	Rationale
<p>Section 14(h):</p> <p>Non-payment of sukuk principal or profit on due date shall constitute an event of default and shall not be subject to any materiality threshold. A remedy period may be allowed but shall not exceed seven (7) business days from the date payment is due.</p>	<p>Section 14(h):</p> <p>Non-payment of sukuk principal or profit on due date shall constitute an event of default and shall not be subject to any materiality threshold. A remedy period may be allowed, <u>provided that the precise mechanism and duration of this period are clearly stipulated in the Trust Deed, taking into consideration the complexity of the underlying transaction and the nature of the assets, and disclosed to sukukholders.</u></p>	<p>This revision preserves the requirement that non-payment constitutes an immediate default but removes the unrealistic seven (7) business day cap, allowing the Issuer and Trustee to contractually agree upon a more practical cure period, subject to regulatory oversight. This aligns the treatment of payment defaults with the flexibility permitted for other covenant breaches.</p>

Should you have further questions and clarifications, you may contact us below:

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For your consideration.

Thank you.

Respectfully yours,



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Subject: Comments on the Second Exposure Draft of the Proposed Guidelines on the Issuance and Disclosure of Sukuk

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Thank you.

Regards,

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