



Primera Africa Legal
Alfa International Member firm

NEWSLETTER



Contact Us:

Abuja Office

Afri-Investment House

Plot 2669 Aguiyi Ironsi Street,

Cadastral Zone 06,

Maitama Abuja

+234 09 291-7347

Lagos Office

1B Utomi Airie Avenue,

Off Admiralty Way,

Lekki 1, Lagos.

+234(0) 9059 7777 34

+234(0) 9059 7777 35



Author:

Mu'awiya Yunusa

(Associate at Primera Africa Legal)

Mu'awiya was called to the Nigerian Bar in 2014 and has since then been involved in active Legal Practice with a bias for Islamic Banking and Finance, Islamic Family Law, company law practice.



"Justification for sukuk issuance in Nigeria is the need to close the vast infrastructure funding gaps across the country"

SUKUK AS SOURCE OF INFRASTRUCTURE FINANCE IN NIGERIA

This article explores the opportunities that abound in the use of Sukuk instruments for infrastructure finance in Nigeria and also provides an overview of the legal and regulatory framework for the issuance of Sukuk in Nigeria.

SUKUK AS AN ISLAMIC FINANCING INSTRUMENT

Sukuk is a suite of financial instruments that are used for raising funds, and they are considered financial instruments for the purposes of resource mobilization, in both public and private sectors [2]. Sukuk can be defined as "certificates of equal value representing undivided shares in ownership of tangible assets, usufructs, and services or (in the ownership of) the assets of particular projects or special investment activity [3]. Sukuks can be issued under different structures to accommodate the unique nature of different transactions. Some of these structures include:

Salam: a structure based on spot payment with future delivery of asset.

Ijarah: a sukuk structure involving the sale and lease-back of assets in existence e.g. real estate, plant & machinery, aircraft, ships. Other tangible assets can also be structured as a master lease/sub lease.

Mudaraba: a partnership/fund management contract between an investor (Rab-ul-mal) and a manager (Mudarib).

Musharaka: sukuk structure involving a partnership between the Special Purpose Vehicle Entities (SPV) and obligor to jointly own either ready assets or to construct/manufacture assets (real estate/project financing).

Murabaha: sukuk structure based on a cost plus financing contract whereby the asset is delivered now with a deferred payment [4].

The Nigerian Securities and Exchange Commission ("SEC"), [5], the apex regulator of all securities related transactions in Nigeria, explicitly recognizes the following Sukuk structures under Rule 571 of the SEC Rules [6]:

- Sukuk Ijarah – (lease contract)
- Sukuk Musharakah– (sharing contract)
- Sukuk Istisnah– (exchange contract)
- Sukuk Murabahah– (financing contract)

JUSTIFICATION AND ADVANTAGES FOR SUKUK ISSUANCE IN NIGERIA

Nigeria's population of approximately 178 million [7] citizens continues to rise and is expected to reach about 287 million by 2050. The country is urbanising at one of the fastest rates in the world [8] and this has led to development of large-scale urban infrastructure projects, as well as a significant demand for the renewal and modernisation of aging infrastructure, making the Nigerian construction growth one of the fastest in the world [9].

In view of the foregoing, the major justification for Sukuk issuance in Nigeria is the need to close the vast infrastructure funding gaps across the country. Historically, the US, Europe and recently China have been Nigeria's leading funding partners and provided the largest sources of Infrastructure, financing. However, amidst the Eurozone crisis and the political conditions attached to accessing these funds that come with these funding, it is imperative for Nigeria to diversify its sources of funding. It is in this regard that Sukuk is deemed to be relatively advantageous compared to other sources of infrastructure financing, because it is asset-based or project-based, which promotes financial stability by linking the financial sector with other real sectors of the economy [10].

LEGAL FRAMEWORK FOR THE ISSUANCE OF SUKUK IN NIGERIA

The regulatory framework which governs the issuance of Sukuk in Nigeria are derived from a body of legislations which include the Investments and Securities Act (ISA) 2007, the SEC Rules and Regulations 2013 and relevant Bond Laws which are required to be passed by the State and National Assemblies to authorise a sovereign Sukuk bond issuance.

In line with its objective of developing the Islamic capital market in Nigeria, the SEC introduced new rules to regulate the issuance of sukuk in Nigeria on February 8, 2013, pursuant to its powers under Section 313 (6) of the ISA, 2007. Rule 572 of the SEC Rules makes all public companies (including Special Purpose Vehicles), state governments, local governments, and Government agencies as well as multilateral agencies eligible to issue, offer or make an invitation of Sukuk subject to the SEC's approval. The Rules apply to any:

1. Sukuk which are offered by local or foreign entities that are within the regulatory purview of SEC:

2. Sukuk which are denominated in Naira or in foreign currencies; and

3. Sukuk which are listed, convertible, exchangeable, redeemable or otherwise.

[1 1]

Also, in addition to the advisers who advise on bond issuances [12] an issuer of Sukuk must appoint a Shariah adviser who shall:

I. advise on all aspects of the Sukuk including documentation and structuring;

ii. issue shariah certification which outlines the basis and rationale of the structure and mechanism of the Sukuk issue, the applicable Shariah principles used for the Sukuk issue and relevant shariah matters relating to the documentation of the Sukuk issue;

iii. ensure that the applicable shariah principles and any relevant resolutions and rulings endorsed are complied with; and

iv. Apply *ijtihad* (reasoning) to ensure all aspects relating to Sukuk issuance are in compliance with shariah principles. [13]

The FMDQ OTC Securities Exchange, a SEC-registered self-regulatory OTC securities exchange has also issued its listing rules for Sukuk. To be eligible for listing under the FMDQ Listing Rules, the Sukuk must meet the criteria outlined below:

1. Must be issued through Auction, Private Placement, Syndication, Reverse Enquiry and such other method as may be permitted by FMDQ and the SEC.

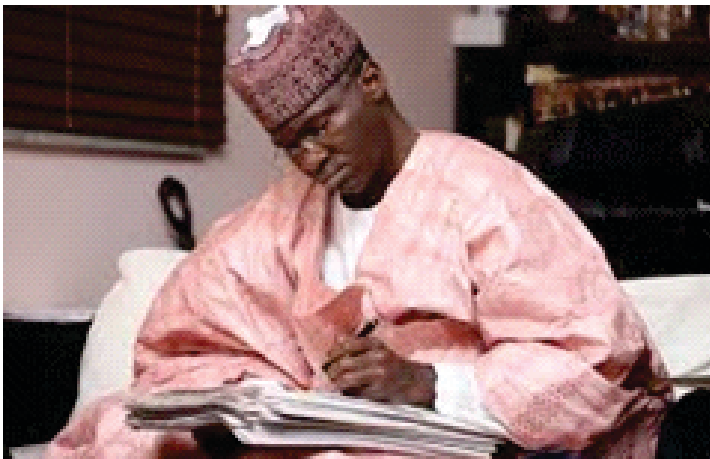
2. Must be issued within the framework of the below named structures:

- a) Sukuk Ijarah.
- b) Sukuk Musharakah.
- c) Sukuk Mudharabah
- d) Sukuk Murabahah (Memorandum Listing)
- e) Such other Sukuk structures as may be approved by the Commission.

3. All Sukuk expressly prohibited by Shari'ah law

and in accordance with the AAOIFI Standards from being traded would automatically qualify for Listing under the Memorandum Listing, and shall be admitted to the FMDQ Platform and be declared non-tradable.

4. The minimum size of the single Issue shall be N1,000,000,000.00 (one billion naira) and where the Sukuk is issued under a Programme through a Shelf Registration, the minimum size of the Programme shall not be less than N5,000,000,000.00 (five billion naira).



FED GOVT. ISSUE \$100 BILLION SUKUK BOND FOR ROAD CONSTRUCTION

Offer for Subscription

DEBT MANAGEMENT OFFICE
NIGERIA

Pursuant to the Debt Management Office (Establishment) Act 2003 and the Local Loans (Registered Stock and Securities) Act, CAP 117, LPN 2004

DEBT MANAGEMENT OFFICE

on behalf of the

FEDERAL GOVERNMENT OF NIGERIA

Offers for Subscription and is authorized to receive applications for the

Federal Government of Nigeria Savings Bond

at the following interest rates:

2-Year FGN Savings Bond due September 20, 2019: 13.8174% per annum
3-Year FGN Savings Bond due September 20, 2020: 14.8174% per annum

Opening Date:	September 11, 2017
Closing Date:	September 15, 2017
Settlement Date:	September 20, 2017
Coupon Payment Date:	December 20, March 20, June 20, September 20

SUMMARY OF THE OFFER

STATISTICS

ISSUER:
Federal Government of Nigeria ("FGN")

UNITS OF SALE:
 \$1,000 per unit subject to a minimum
 Subscription of \$15,000 and in multiples of
 \$1,000 thereafter, subject to a maximum
 subscription of \$50,000,000.

INTEREST PAYMENT:
Payable Quarterly

REDEMPTION:
Fuller repayment on the maturity date

1. Qualifies as securities in which investors can invest under the Trustee Investment Act.
2. Qualifies as Government securities within the meaning of Company Income Tax Act ("CITA") and Personal Income Tax Act ("PITA") for Tax Exemption for Pension Funds, amongst other investors.
3. Listed on the Nigerian Stock Exchange.
4. Qualifies as a liquid asset for liquidity ratio calculation for banks.

SECURITY

Backed by the full faith and credit of the Federal Government of Nigeria and charged upon the general assets of Nigeria.

INTERESTED INVESTORS SHOULD CONTACT THE STOCKBROKING FIRMS APPOINTED AS DISTRIBUTION AGENTS BY THE DEBT MANAGEMENT OFFICE. PLEASE VISIT www.fico-issc.de FOR THE LIST OF DISTRIBUTION AGENTS.

[Court orders Evans to get legal representative by May 17](#)

[Justice Adedayo Akintoye of an Igbo sere High Court, Lagos, on Wednesday ordered the suspected kidnap kingpin, Chukwudumeme Onwuamadike, a.k.a Evans to engage a counsel by May 17.](#)

[Zenith Bank shareholders task new MD on corporate governance](#)

[Zenith International Bank Plc shareholders on Wednesday urged the incoming Managing Director, Mr Ebenezer Onyeagwu, to improve on the bank's corporate governance for sustainable growth and development.](#)

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Over the last decade (the first issuance of sovereign Sukuk bonds in Nigeria was in 2013 by Osun State Government), the Federal Government of Nigeria, state governments, government-owned enterprises and private sector companies have been involved in the successful issuance of Sukuk Bonds. These Bonds have, in some instances, been oversubscribed by the Nigerian public and the proceeds dedicated to infrastructure financing projects across the country.

Sukuk Bonds have been utilized for notable infrastructure projects in Nigeria, such as:

1. Construction of Luxurious Apartments in Ikoyi-Lagos by Lotus Capital Ltd using N1 billion Private Sukuk of Al-Istisna.

2. Construction of 26 Schools by Osun State Government using Ijarah Sukuk of N11.4 billion.

3. Construction of Roads by FGN using Ijarah Sukuk of N100 billion

Sukuk Bonds may also be used for any of the following infrastructure projects^[14]:

Sample projects

i. Mass Housing- Musharaka (Joint Ventures) (Suitable contract)

ii. Road, Railway and Airport construction- Istisna (Construction Financing) (Suitable contract)

iii. Non-oil export- Murabahah (Suitable contract)

iv. Construction of Schools, hospitals etc- Ijarah (Suitable contract)

v. Acquisition of meters for DISCOs, and equipment for generating companies-Murabaha and Ijarah (Suitable contract)

REFERENCES

1 Sukuk in Takaful Investment Its 2013 Mohammed Al Sharaf, MBA, Business Development Manager – Thomson Reuters available at <http://www.takafulprimer.com/pdf/summit2013/mohammed-sukukintakaful-investment.pdf> accessed 25/1/2019

2 AAOIFI SS17

3 B. Aquil, and I. Mufti, "Innovation in the Global Sukuk Market and Legal Structuring Considerations", in Ali (ed.), Islamic Finance, loc.cit., p. 101

4 The Securities and Exchange Commission is the government agency mandated to regulate and develop the Nigerian capital market.

5 Rule 571, SEC Rules and Regulations on Sukuk Issuance in Nigeria

6 Nigerian Population Commission website: www.population.gov.ng accessed 25/1/2019 at 3:36 pm.

7 Solow R. (1956). A Contribution to the Theory of Economic Growth, Quarterly Journal of Economics, 70: 65-94.

8 Global Construction Perspectives and Oxford Economics Report available at www.globalconstruction2020.com accessed 25/1/2019.

9 Report of the Technical Committee on the prospect of alternative Finance (SUKUK) for Nigeria

10 Rule 570(1) of the SEC Rules

11 Advisors are the Issuing Houses, brokers, reporting accountants, rating agencies legal advisers to the sukuk bond etc

12 Rule 574 of the SEC Rule

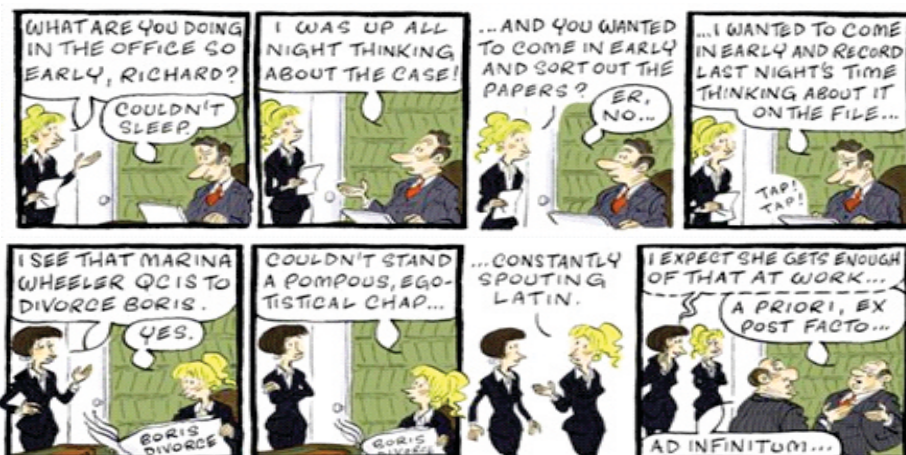
13 Ibid p. 10[1]

14 Solow R, op cit p.26

CONCLUSION AND RECOMMENDATION

Nigeria as an emerging economy in Africa has the potential to be among the 20 largest economies in the world ^[15] but its lack of infrastructure has deprived its citizens of massive development opportunities. A number of emerging African countries such as Gambia, Senegal and Kenya etc, have in recent years utilized Sukuk bonds to build infrastructure and achieve their development goals. An increase in the use of funding generated from Sukuk may therefore become the solution to Nigeria's long-term infrastructure development quagmire.

Legal Humor



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