

Feedback Statement on Revisiting the Capital Markets Rules applicable to the Institutional Financial Securities Market, including the Introduction of Specific Provisions on Sukuk

Ref: 05-2025

Date: 12 November 2025

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1 Introduction

1.1 Scope

On the 8 July 2025, the Malta Financial Services Authority (the 'MFSA' or 'Authority') published a [Consultation Document on Revisiting the Capital Markets Rules applicable to the Institutional Financial Securities Market, including the Introduction of Specific Provisions on Sukuk](#).

The proposal, which was put forward by the Authority as part of its regulatory development initiatives, sought to revisit the rulebook applicable to the Institutional Financial Securities Market ('IFSM') to: [i] modernise and streamline the rules from a practical aspect and [ii] introduce specific provisions in relation to sukuk.

By virtue of this consultation exercise, the MFSA sought stakeholders' views on the proposed revisions to the Capital Markets Rules applicable to the IFSM. This Feedback Statement highlights the key points of feedback received in relation to the aforementioned consultation and sets out the MFSA's response and position thereto.

The MFSA would like to thank respondents for their valid and detailed observations, all of which were acknowledged and carefully considered.

1.2 Context

The IFSM is a regulated market operated by the Malta Stock Exchange, allowing for listings of wholesale securities with a minimum denomination of at least €100,000 per security. Whilst this initiative seeks to revisit the Capital Markets Rules applicable to the IFSM, the Authority is also seeking to introduce tailored provisions to cater for sukuk.

The MFSA has chosen to adopt a phased approach towards the introduction of Islamic Finance to the local financial market, initially by enacting rules which enable the issuance of sukuk on the local regulated market targeted at professional investors. This is primarily driven by the alignment of sukuk's characteristics with the institutional nature of the IFSM. In revisiting its framework, the Authority has been mindful of issuers' diverse needs, proposing rules that aim to balance regulatory certainty with the structural flexibility required to accommodate a variety of transactions.

To ensure a holistic approach, the Authority has also engaged in discussions with other key stakeholders including the Malta Tax and Customs Administration and the Malta Arbitration Centre, who have respectively provided valuable insights on matters of taxation and dispute resolution.

2 General Feedback

2.1 General Observations

2.1.1 Choice of Regulated Market for Sukuk

Feedback Received

A respondent queried the rationale as to why the provisions on Sukuk are being limited to the Capital Markets Rules applicable to the IFSM, as opposed to Sukuk issuances also being permissible on the Malta Stock Exchange's regulated main market which is accessible to retail investors.

MFSA Position

The MFSA has adopted the decision to initially only allow for the issuance of Sukuk on the institutional regulated market based on: [i] **investor protection concerns** - Sukuk structures can be complex in nature and retail investors might not easily understand the Shariah principles, underlying risks, or differences from traditional bonds; [ii] **market credibility and gradual development** – early issuance targeted at institutional investors may contribute to building track record and confidence in Malta's sukuk framework and once structures and legal certainty are established, the market may potentially gradually open to retail investors, with appropriate safeguards; [iii] **alignment with international practice** – from research carried out by the Authority it was noted that many emerging sukuk markets started with institutional sukuk before expanding to retail offerings. Also, in overseas jurisdictions Sukuk are very often issued with a minimum denomination of at least €100,000 (or its currency equivalent).

2.1.2 Scope and Application

Feedback Received

A respondent suggested that it should be made adequately clear that the provisions of the Rules shall not apply to Securities (including Sukuk) which will not be offered through public subscription, and which will not be admitted to listing.

MFSA Position

The MFSA notes that the "Scope and Application" section of the proposed Rules explicitly states that the "... *Capital Markets Rules relate to the Admissibility to Listing on the IFSM...*". In the Authority's view, it is therefore sufficiently clear that offers of Securities which are not eligible for admissibility to listing would fall outside the scope of the Rules.

2.1.3 Use of Trust Vehicles in Sukuk Transactions

Feedback Received

A respondent observed that it is unclear whether a trust vehicle may be used in the context of a Sukuk transaction since, on one hand, the rules refer to a Trustee and on the other they refer to the memorandum and articles of association of the Issuer which may not necessarily be applicable to trusts.

MFSA Position

The Authority notes that reference to “*equivalent constitutional document*” when referring to the memorandum and articles of association makes any related requirements broad enough to allow for trusts to form part of the structure. In this respect, the term “*equivalent constitutional document*” would also include a trust deed.

2.1.4 Tradability of Sukuk

Feedback Received

A respondent suggested that there should be specific rules to clarify the MFSA’s expectations should there be tradability issues vis-à-vis a Sukuk, given that trading may, in itself lead to non-Shariah compliance in certain circumstances.

MFSA Position

In terms of the proposed Capital Markets Rule 1.36, Shariah compliance is one of the eligibility criteria for the listing of Sukuk, with additional rules in place requiring Shariah certification at both the initial stage as well as on an ongoing basis. In cases where Sukuk no longer remain Shariah compliant, whether due to tradability issues or otherwise, the Issuer is also obliged to publicly disclose this in terms of the proposed Capital Markets Rule 3.50 (previously Capital Markets Rule 3.49). The MFSA is therefore of the view that any such circumstances which arise post-listing would be subject to public disclosure obligations, allowing for standard market correction mechanisms.

2.1.5 Dual Listing

Feedback Received

A respondent recommended that a provision on dual listing may be introduced, requiring a board resolution from the relevant parties approving the application for the dual listing of the Securities (including Sukuk). Additionally, it was recommended that this provision would be accompanied by approval from the foreign market regulator where the primary listing is held.

MFSA Position

Irrespective of whether the application is for a primary or secondary listing, the appropriate corporate authorities sanctioning the listing application are already required (Capital Markets Rule 2.3(vii)), as is approval from the foreign regulator (Capital Markets Rule 2.6(ii)). Nevertheless, the MFSA is proposing a minor amendment to the application form in Appendix 1 to clarify the nature of the listing that is the subject of the application.

2.1.6 Credit Rating of Sukuk

Feedback Received

A respondent recommended that the engagement of credit rating agencies ought to be considered with respect to Sukuk to foster higher levels of investor confidence.

MFSA Position

The MFSA does not require the attainment of a credit rating as part of the admissibility to listing process, irrespective of the type of financial instrument that is the subject of the application. Issuers are naturally not precluded from obtaining a credit rating if they choose to do so, and the Prospectus Regulation requires specific disclosures in such circumstances.

2.1.7 Fees

Feedback Received

A respondent suggested that both admission to listing and annual fees should be mentioned in the Capital Markets Rules.

MFSA Position

Fees in relation to applications for admissibility to listing and approval of prospectuses will be provided for in the Financial Markets (Fees) Regulations (S.L. 345.28). A cross-reference to this subsidiary legislation has been provided in Capital Markets Rule 1.6.

2.1.1 Beneficial Ownership in Sukuk Transactions

Feedback Received

A respondent recommended that clarity is provided on how beneficial ownership in Islamic structures will be legally recognised, including through the incorporation of certain aspects of AAOIFI Standard 62 as part of the applicable listing conditions.

MFSA Position

While requiring that Sukuk must align with best practices and standards issued by international bodies specialising in Islamic finance, the MFSA will not mandate Issuers to adopt the standards of any specific standard-setting organization, thereby leaving

this decision at the Issuers' discretion. Furthermore, it should also be noted that structures used in Sukuk transactions would be subject to the same ownership provisions, laws and regulations as conventional ones, to the extent that such structures remain Shariah-compliant.

2.1.2 Annual Shariah Compliance

Feedback Received

Two respondents proposed that, in addition to the publication of annual financial statements, a requirement for annual Shariah compliance recertification be included as an ongoing obligation.

MFSA Position

The Authority notes that, by way of Capital Markets Rule 3.48(ii), an annual Shariah compliance recertification is already being proposed as an ongoing obligation for Sukuk listings.

2.2 Definitions

2.2.1 Asset-based Sukuk

Feedback Received

A respondent observed that since the majority of Sukuk issued on international markets are asset-based and not asset-backed, then a definition for "asset-based Sukuk" should be introduced.

MFSA Position

The definition of "Sukuk" within the proposed rules has been deliberately drafted in a neutral manner so as to accommodate both asset-based and asset-backed sukuk structures without indicating bias for either. This notwithstanding, the need for possible further clarity is acknowledged and, if necessary, the MFSA shall issue guidance on this point in due course.

2.2.2 Equity Securities

Feedback Received

A respondent inquired whether convertible securities would also fall within the ambit of the definition of "Equity Securities".

MFSA Position

The MFSA clarifies that whilst the draft Rules include a separate and distinct definition for "Convertible Securities", the definition of "Equity Securities" also provides for "*... any other type of transferable securities giving the right to acquire any of the aforementioned*

securities as a consequence of their being converted or the rights conferred by them being exercised...". Stakeholders should always refer to the full definitions as provided in the Rules when determining the classification of a particular security.

2.2.3 Professional Securities

Feedback Received

A respondent suggested that the proposed new requirement for investors in Professional Securities on the IFSM is unnecessary and ambiguous, arguing that the new definition of "*professionals who possess the experience, knowledge and expertise to make informed investment decisions*" creates a barrier for potential investors and is not aligned with other EU institutional markets.

It was further highlighted that EU securities laws, such as the Prospectus Regulation and MiFID, do not impose such restrictions on investors purchasing securities with a minimum denomination of €100,000, as it is assumed these investors possess sufficient financial knowledge and means.

MFSA Position

The introduction of a definition for "Professional Securities" is intended to refine the scope and application of the Rules beyond just the denomination of the securities listed on the IFSM, to also clarify the types of investors to whom such securities are available to because of the institutional nature of this particular regulated market. In introducing this definition, the MFSA has remained mindful of the approaches adopted in various jurisdictions, as well as the content of existing EU securities law.

The MFSA acknowledges that whilst retail investors with the financial means to invest in securities with a minimum denomination of at least €100,000 are generally assumed to require less protection, this is not necessarily the case in the context of institutional markets. To this end, the Authority is proposing a definition which is sufficiently broad to allow investors who do not themselves have the "*experience, knowledge and expertise to make informed investment decisions*" to acquire Professional Securities as long as they obtain professional investment advice or portfolio management. In the Authority's view, this approach strikes an adequate balance between accessibility to securities listed on the IFSM and consumer protection.

2.2.4 Shariah Adviser

Feedback Received

A respondent recommended that the proposed Rules should specify the professional qualifications for a person to serve as a Shariah Adviser and possibly establish a registration process for Shariah Advisers. It was also suggested that the MFSA

considers establishing a centralised Shariah body to issue rulings and oversee the market from a Shariah-compliance perspective.

MFSA Position

The MFSA will be adopting a decentralised model for overseeing Shariah compliance, primarily to allow for the aforementioned phased introduction of Islamic finance to the local financial market.

The *onus* of selecting an appropriate Shariah Adviser in the case of Sukuk rests with the Issuer, who is mandated to disclose the Shariah Adviser's identity, qualifications and relevant experience in Islamic finance. This provides a sufficient level of transparency and allows potential investors the opportunity to assess the suitability of the Shariah Adviser(s) appointed to the Sukuk issuance, given that professional investors are deemed to have the level of sophistication required for such scrutiny.

That being stated, the MFSA will be amending the definition of Shariah Adviser as follows:

"A natural or legal person of good repute, specialised in Shariah and possessing demonstrable expertise in Islamic jurisprudence, particularly in Islamic finance, who is appointed to provide independent opinions, guidance, and, where applicable, certification on the compliance of financial products, services, or transactions with Shariah principles."

This amendment also takes into consideration additional feedback which will be explained in Section 3.4.7.

2.2.5 Sukuk

Feedback Received

A number of respondents suggested that the proposed definition for Sukuk be refined and aligned with internationally accepted models, to ensure it is sufficiently holistic and encapsulates sukuk with varying features.

MFSA Position

Following careful consideration of feedback received, the MFSA is proposing to amend the definition of Sukuk as follows:

"Securities of equal value which represent undivided shares in the ownership of [i] tangible assets, usufruct and services or [ii] the assets of particular projects or special investment activity, and which comply with the principles and provisions of Shariah."

2.2.6 Trustee

Feedback Received

A respondent noted that an authorisation or registration regime for trustees should be considered, considering the roles, duties and responsibilities of trustees are significant and far-reaching in the financial services industry compared to other sectors. It was suggested that if the MFSA has a separate regime on this matter, a cross-reference in the 'Definitions' section would be useful.

MFSA Position

The MFSA is the competent authority responsible for the authorisation and supervision of trustees operating in or from Malta, pursuant to a comprehensive legal and regulatory framework. Whilst the suggestion put forward is duly acknowledged, the Authority prefers to retain the proposed definition of "Trustee" to allow issuers the flexibility of appointing a trustee which is not necessarily established or authorised in Malta.

2.2.7 Originator

Feedback Received

Several respondents suggested that clarity be provided vis-à-vis the role of the Issuer and that of the originator within the context of Sukuk transactions. It was recommended that this could possibly be achieved through the adoption of a simple definition for the latter, by adequately describing the role of the originator in such a transaction.

MFSA Position

Whilst cognisant of the definitions for "originator" which stem *inter alia* from the Securitisation Regulation (Regulation (EU) 2017/2402) and the Securitisation Act (Cap. 484 of the laws of Malta), the MFSA shall be onboarding feedback received in this respect and will be including the following definition for "Originator":

"For the purposes of Sukuk, means an entity seeking financing and the beneficiary of the proceeds of Sukuk."

3 Chapter 1 – Conditions for Admissibility to Listing

3.1 Validity

Feedback Received

A respondent suggested that a resolution from the board of directors should be included as one of the conditions for the admissibility to listing, given that this serves as the foundational prerequisite for the originator entity to initiate the sukuk arrangement.

MFSA Position

The Authority notes that the condition included in the draft Capital Markets Rule 1.8(ii) is specifically intended to refer to this. In order to provide additional clarity, the MFSA will be amending the draft Rule as follows:

"ii) be duly authorised, through a resolution of the governing body of the Issuer, or otherwise in any other manner as may be specified in the Issuer's memorandum and articles of association or equivalent constitutional document; and"

3.2 Asset-Backed Securities

3.2.1 Conditions for all Professional Securities

Feedback Received

Whilst referring to the proposed Capital Markets Rule 1.14, a respondent observed that the vast majority of sukuk are asset-based i.e. with recourse to the originator. It was therefore suggested that asset-based securities should be combined with asset-backed securities wherever the latter appear in the Rules.

MFSA Position

The MFSA asserts that asset-backed and asset-based securities carry distinct risk profiles and should neither be combined nor used interchangeably. Whilst the MFSA may grant an exemption to Issuers of asset-backed securities from historical financial information requirements due to such securities being directly backed by specific assets, this exemption would not be applicable to asset-based securities. Unlike asset-backed securities, asset-based securities do not provide recourse to a specific asset in the event of an Issuer's default. This makes access to historical financial information even more critical for investors in such instances as it allows them to properly analyse the historical performance of the originator on which their return on investment is generally contingent.

3.2.2 Supplementary Rules for Asset-Backed Securities

Feedback Received

A respondent noted that the draft Capital Markets Rule 1.20 is unclear as to whether Special Purpose Vehicles ('SPVs') established in other jurisdictions would be eligible for the listing of sukuk on the IFSM.

MFSA Position

The Authority wishes to clarify that the draft Rule does not preclude SPVs incorporated in foreign jurisdictions from applying for the admissibility to listing of asset-backed securities on the IFSM, irrespective of whether these are Sukuk or not. It is important to note that, consistent with the processing of all applications for admissibility to listing, applications by Issuers established in foreign jurisdictions are of course without prejudice to any other relevant conditions being satisfied and remain subject to the MFSA's review and approval process.

3.3 Convertible Securities

3.3.1 Timing of Listing

Feedback Received

In relation to the proposed Capital Markets Rule 1.28, a respondent sought clarity on whether at the time of issuance of convertible Sukuk, the securities into which they are convertible could be unlisted and would subsequently be listed just before the Sukuk's maturity and redemption.

MFSA Position

As drafted, the proposed Rule requires that at the time of admissibility to listing of the convertible Sukuk, the securities into which the Sukuk will be converted would also need to be either already listed or otherwise simultaneously listed. Therefore, to clarify, the MFSA notes that the listing of the securities into which the Sukuk would be converted would need to occur prior to the maturity and redemption of the listed Sukuk.

3.3.2 Shariah Screening

Feedback Received

A respondent noted that for convertible Sukuk to be redeemed into shares, there will be a need to apply the Shariah screening parameters before redemption, to determine whether the Sukuk originator remains compliant at the time of redemption. This assessment is generally carried out by a Shariah Adviser who shall be responsible for such verification and certification.

MFSA Position

In view of this additional *ad hoc* task and to cater for any similar circumstances, the Authority is proposing to amend the draft Capital Markets Rule 1.31(iv) to read as follows:

"iv) such other functions as may be required by the Issuer or stipulated by the MFSA from time to time."

3.4 Sukuk**3.4.1 Conditions Impacting Tradability of Sukuk****Feedback Received**

A respondent highlighted that, in accordance with Shariah principles, the tradability of a listed Sukuk may only be permissible once certain conditions are satisfied. These include: (i) the receipt of the Sukuk proceeds, (ii) the closing of the subscription period, (iii) the allotment of Sukuk to investors, and (iv) the utilisation of the Sukuk proceeds for their intended purpose. It was suggested that this sensitivity be expressly reflected in the Rules.

MFSA Position

The Authority is of the view that conditions relating to tradability are more appropriately embedded within the Sukuk documentation and that such conditions would be duly endorsed by the Shariah Adviser to provide assurance of Shariah compliance. Consequently, the Authority does not consider a dedicated rule on tradability within the IFSM framework to be necessary.

3.4.2 Tax Treatment**Feedback Received**

A respondent noted the need to ensure that the applicable legal and regulatory framework provides a level playing field between Sukuk and conventional bond issuances. The respondent observed that Sukuk structures often rely on asset transfers (e.g. sale and leaseback of real estate) to give rise to Shariah-compliant obligations, which in certain jurisdictions may trigger additional tax liabilities. Reference was made to international practice, such as the UK, where measures have been introduced to prevent Sukuk issuances from being subject to unfavourable tax treatment compared to conventional bonds.

MFSA Position

The Authority acknowledges the importance of ensuring that Sukuk issuances are not placed at a disadvantage compared to conventional bond issuances, particularly in relation to tax treatment of asset transfers which may form part of Sukuk structures.

In this regard, the MFSA has initiated discussions with the Malta Tax and Customs Administration with a view to addressing any potential disparities in the treatment of Sukuk transactions for tax purposes.

3.4.3 Role of the SPV as Issuer and Trustee

Feedback Received

A respondent highlighted that, unlike conventional bonds, a Sukuk SPV performs a dual role: it issues the Sukuk to investors while also acting as Trustee of the underlying Sukuk assets on behalf of those investors. The respondent suggested that the Rules should expressly cater for this feature, which is specific to Sukuk issuances.

MFSA Position

Whilst noting the dual role of a typical Sukuk SPV, a trustee authorised by the MFSA is limited to acting solely in the capacity of a trustee, and therefore cannot simultaneously act as an issuer of securities in terms of the Maltese [Trust and Trustees Act](#) (Articles 43(4)(i)(a) and (b) refer). As such, an SPV established in Malta is not permitted to assume both functions.

The Authority also recognises that, in certain jurisdictions, Trustees may be authorised to carry out additional activities, including the issuance of securities. To ensure a level playing field between trustees established in Malta and those established abroad, Capital Markets Rule 1.30 shall be amended as follows, to require the appointment of an independent third-party trustee, separate from the SPV:

“1.30 An Issuer seeking Admissibility to Listing of Sukuk must appoint an independent third-party Trustee or other appropriate independent party representing the interests of the Sukuk holders and with the right of access to appropriate and relevant information relating to the assets underlying the Sukuk.”

This approach preserves the integrity of the local trustee framework whilst ensuring investor protection and consistency in the treatment of domestic and foreign structures.

3.4.4 Ongoing Shariah Compliance and Annual Certification

Feedback Received

A respondent proposed that the Shariah Adviser be formally required to conduct an annual review of the Sukuk structure and operations, with the obligation to confirm that the Sukuk continues to comply with Shariah principles. The respondent further

suggested that, where any breach of Shariah requirements is identified, the Shariah Adviser should be obliged to disclose such concerns.

MFSA Position

The requirement for the Shariah Adviser to provide an annual assurance with respect to Shariah compliance is already reflected in Capital Market Rule 3.48(ii), which has been slightly revised to provide for an *“Annual Shariah recertification for the outstanding period of the Sukuk, issued by the Shariah Adviser(s).”* Through this mechanism, Sukuk arrangements will be subject to periodic scrutiny, with the Shariah Adviser mandated to confirm continued conformity or to flag any deviations from Shariah parameters. The Authority is of the view that this addresses the concern raised whilst ensuring consistency and transparency in the treatment of Sukuk issuances.

3.4.5 Post-Issuance Shariah Oversight

Feedback Received

A respondent observed that the need for Shariah determinations may continue beyond the initial issuance of a Sukuk. Situations such as changes in the underlying asset or activity, as well as extraordinary events including default, enforcement, or restructuring, may require fresh Shariah input. It was therefore suggested that the framework should provide for mechanisms that allow the Shariah Adviser to issue *ad hoc* rulings in such circumstances.

MFSA Position

The Authority recognises that Shariah oversight is not limited to the issuance stage but may also be necessary during the tenor of a Sukuk, particularly in response to unforeseen developments. To accommodate this, Capital Market Rule 1.31(iv) has been amended to clarify that the Shariah Adviser may undertake *“such other functions as may be required by the Issuer or stipulated by the MFSA from time to time.”*

3.4.6 Wording of the Shariah Certification

Feedback Received

A respondent proposed that Capital Market Rule 1.31(ii) be amended to expressly state that the Shariah certification should confirm compliance of Sukuk structure with the principles and rulings of Shariah *“...as interpreted by the relevant Shariah Adviser(s).”* The intention behind this suggestion was to clarify that the certification reflects the interpretation and judgment of the appointed Shariah Adviser(s).

MFSA Position

The Authority acknowledges the point raised; however, it is of the view that the role of the Shariah Adviser inherently involves interpretation when issuing a certification. A Shariah certificate cannot be provided without such interpretative assessment, and it necessarily reflects the position of the Adviser who issues it. For this reason, the

Authority considers that the additional wording is not necessary, as the interpretation of the Shariah Adviser is already implicit in the certification process. The proposed Rule will therefore be retained without any changes.

3.4.7 Fit and Proper Criteria for Shariah Advisers

Feedback Received

Some respondents proposed that a simple “fit and proper” test be applied to Shariah Advisers, whether appointed as natural or legal persons. It was suggested that Shariah Advisers should be qualified to issue Shariah pronouncements and that the Authority could provide guidance on minimum standards. Respondents further highlighted that issuers should bear responsibility for ensuring that any appointed Shariah Adviser satisfies these criteria.

MFSA Position

Within the local financial services industry, fitness and properness is typically assessed across four criteria: competence, reputation, independence, and time commitment. Through the revised definition of a Shariah Adviser, the Authority has already embedded baseline expectations addressing the first three dimensions. The Authority considers Time Commitment to be less pertinent vis-à-vis the role of a Shariah Adviser.

The Authority also believes that the responsibility for ensuring that any appointed Shariah Adviser satisfies these criteria should rest with the Issuer. Accordingly, Issuers will be required to disclose in the prospectus: the identities of the Shariah Advisers, and details on their qualifications and experience. This disclosure ensures transparency and allows investors to assess the suitability of the Shariah Advisers, thereby introducing a market-based safeguard. The Authority considers this particularly relevant in view of the target investor base, which is expected to comprise of professional and institutional investors.

This approach places accountability on the Issuer whilst maintaining a regulatory safeguard through disclosure requirements. Where necessary, the Authority retains the power to intervene if the information provided is misleading or incomplete.

3.4.8 Ongoing Shariah Monitoring and Recertification

Feedback Received

A respondent queried the requirement for ongoing Shariah monitoring and annual recertification by the Shariah Adviser, suggesting that leaving the decision on whether to impose ongoing Shariah monitoring to market participants might provide greater flexibility and foster innovation.

MFSA Position

The Authority considers that periodic recertification is a necessary safeguard to ensure continued alignment of Sukuk structures with Shariah principles and to maintain investor confidence. To this end, the framework provides that a Shariah Adviser must be appointed at application stage (to issue the initial certification), and also thereafter to issue an annual recertification for the tenor of the Sukuk. The Authority believes that this approach offers an appropriate level of oversight without imposing excessive constraints.

3.4.9 Recertification, Identification and Ownership of Underlying Assets

Feedback Received

Respondents provided differing views on the treatment of underlying assets in Sukuk structures. One respondent suggested that the framework should more clearly define the types of permissible assets, noting that these could include movable and immovable property, usufruct rights, greenfield or brownfield projects linked to Shariah-compliant activities, as well as other tangible or intangible assets that meet Shariah requirements.

Another respondent, however, proposed removing Capital Markets Rule 1.36(ii), which requires that *“the assets underlying the Sukuk must be clearly identified and legally owned or leased by the originator, and/or Issuer or a Special Purpose Vehicle acting on its behalf”*. This respondent argued that the Rule is too restrictive, given that some Sukuk are structured around ownership shares, asset pools, or the broader business of the obligor, and that in asset-based Sukuk the SPV may hold only an ownership interest (such as through an unperfected sale) while legal title remains with the obligor or beneficiary.

MFSA Position

The MFSA acknowledges that the validity of Sukuk rests *inter alia* on the Shariah compliance of their underlying assets. However, it does not consider it appropriate to mandate or restrict the categories of assets that may be utilised, provided they meet Shariah requirements. Flexibility in this regard is considered important to cater for the diversity of Sukuk structures and evolving market practices.

At the same time, the Authority views the requirement under Capital Markets Rule 1.36(ii) as a necessary safeguard. The rule is not intended to prescribe full legal ownership in all cases but rather to ensure a demonstrable link between the Sukuk and its underlying asset –whether through full or partial ownership, or through leasing arrangements by a party integral to the structure. Such a connection is vital to maintain the credibility of the Sukuk and for providing clarity for investors. Accordingly, the Authority is of the view that Capital Markets Rule 1.36(ii) should be retained, however with a slight revision as follows:

"ii) the assets underlying the Sukuk must be clearly identified and owned or leased by the originator, obligor and/or Issuer or a Special Purpose Vehicle acting on its behalf".

3.4.10 Default Resolution Mechanisms and Cooling-Off Period

Feedback Received

A respondent suggested that the Rules could be strengthened through the inclusion of explicit default resolution mechanisms, such as procedures for asset liquidation, and by providing for a cooling-off period for retail investors.

MFSA Position

The Authority does not generally require default resolution mechanisms for conventional securities, and for reasons of neutrality, such requirements are also not deemed necessary for Sukuk. In addition, the nature of resolution mechanisms for Sukuk can vary significantly depending on their underlying structure and terms. Accordingly, the Authority does not consider it appropriate to prescribe uniform requirements in this regard.

3.4.11 Amendments to Sukuk Terms and Conditions

Feedback Received

A respondent proposed the deletion of the provision in Capital Market Rule 1.37 which requires Sukuk issuers to obtain Sukuk holders' approval, and to provide disclosure of material information and a Shariah opinion, prior to any revision or waiver of the Sukuk terms. The respondent argued that the process for amending the Sukuk's terms should not differ from that applicable to conventional bonds. It was suggested that, in the interest of flexibility and innovation, market participants should be free to determine the level of approval required and the procedure to be followed for amending Sukuk terms.

MFSA Position

Whilst Sukuk share certain features with conventional bonds, they also entail distinct structural and Shariah-related considerations that necessitate additional safeguards. The requirement for Sukuk holders' approval and the disclosure of material information, including confirmation from the Shariah Adviser, is intended to ensure that investors are fully informed and that any amendments remain consistent with Shariah principles.

The Authority considers these safeguards essential for maintaining transparency, protecting investor interests, and upholding market integrity. Accordingly, the provision in Rule 1.37 will be retained.

3.4.12 Definition of Majority for Sukuk Holder Approvals

Feedback Received

A respondent proposed that Capital Market Rule 1.37(i), which requires Sukuk holders' approval for any revision or waiver of the Sukuk terms and conditions, should be clarified to define "majority" as not less than 66.67% of the invested amount.

MFSA Position

The Authority acknowledges the concern raised regarding inclusion of such definition in the provision. Nonetheless, it is of the view that prescribing a fixed threshold within the Rules may reduce the necessary flexibility for issuers to structure their Sukuk in a manner that best reflects the characteristics of the issuance and the investor base. Matters such as voting thresholds are typically addressed in the terms and conditions of the prospectus, allowing the Issuer to specify the most appropriate standard while ensuring transparency for investors. As a result, the Rule will remain drafted in general terms, requiring the "approval of Sukuk holders," with the expectation that the detailed mechanics of majority approval are to be clearly set out in the offering documentation.

4 Chapter 2 – Approval of Prospectuses and Admissibility to Listing

4.1 Approval Process

Feedback Received

A respondent observed that Chapter 2 of the Rules could be further expanded to provide clarity on the approval processes of prospectuses (e.g. clear power for the MFSA to approve prospectuses, how and when the approval will be granted, the turnaround time, etc.). It was suggested that if the MFSA has a separate rule or regulation on this matter, a cross reference would be useful.

MFSA Position

The MFSA clarifies that the proposed revised Rules form part of a holistic framework which governs the approval of prospectuses and admissibility to listing, *inter alia* including the Financial Markets Act and any regulations issued thereunder. In view of numerous references to these other components of the framework throughout the Rules, including in the definition for "Admissibility to Listing" itself as well as the "Scope and Application" section, the Authority asserts that there are sufficient cross-references as per the current drafting.

4.2 Sukuk Documents & Disclosures

4.2.1 Requirement for External Legal Opinions

Feedback Received

A respondent suggested that the documentation requirements for Sukuk issuances should be expanded to include a legal opinion from an external lawyer involved in the preparation of the transaction documentation.

MFSA Position

The submission of external legal opinions is not typically required by the MFSA in respect of conventional securities. Therefore, the Authority is of the view that imposing such an obligation specifically for Sukuk would create an additional regulatory burden and may risk undermining the principle of maintaining a level playing field between Sukuk and conventional issuances.

The Authority considers that investor protection and compliance safeguards are already adequately addressed through the mandatory appointment of a Shariah Adviser, whose role includes certifying that the Sukuk documentation and structure are in conformity with Shariah principles. In this light, the MFSA does not deem it appropriate to introduce an additional requirement for external legal opinions.

4.2.2 Disclosure on Profit Distribution and Shariah Non-Compliance

Feedback Received

A respondent suggested that enhanced disclosure requirements relating to the mechanics of profit distribution, as well as remedies in cases of Shariah non-compliance, would strengthen the framework and bring it further in line with international best practice.

MFSA Position

The Authority agrees that clear disclosure of both profit distribution methods and the treatment of Shariah non-compliance is central to transparency and investor protection. While Capital Market Rules 2.7(iii) and (viii) on additional disclosure requirements for Sukuk already capture these aspects, the Authority considers it appropriate to refine the provisions for greater clarity. The Rules will therefore be amended to state that issuers must include:

- **Rule 2.7(iii):** *a description of the mechanisms for the purification of proceeds or substitution of assets should the Sukuk or underlying assets cease to be compatible or compliant with Shariah; and*
- **Rule 2.7(viii):** *a statement of the method and conditions for distributing the expected returns or profits to Sukuk holders, including the rate and basis for any*

payment calculations, the profit-sharing ratio, and the schedule of distribution dates.

4.2.3 Disclosure of Shariah Fatwas

Feedback Received

A respondent recommended that, in addition to the general disclosure requirements applicable to Sukuk, the Rules should expressly mandate the publication of the fatwa issued by the Shariah Adviser in relation to each Sukuk.

MFSA Position

The Authority agrees that disclosure of the Shariah Adviser's fatwa is a key element in enhancing market confidence and transparency for Sukuk issuances. Accordingly, this requirement has been incorporated within Capital Markets Rule 2.7(xi), which now provides that Issuers must disclose *"the ruling or opinion (fatwa) given or referred to by the Shariah Adviser(s) when certifying the Shariah-compliant nature of the Sukuk."*

4.2.4 Introduction of Standard Templates

Feedback Received

A respondent suggested the introduction of standardised templates or checklists to facilitate compliance and improve the consistency of Sukuk disclosures. It was proposed that such templates could be aligned, where relevant, with established international guidance, such as that issued by AAOIFI and IFSB.

MFSA Position

Introducing bespoke disclosure templates for Sukuk would create an expectation for similar tools across all categories of securities, which may not be practical or proportionate. The Authority therefore does not intend to prescribe standardised disclosure templates. Instead, issuers are expected to ensure that disclosures meet the applicable regulatory standards, while remaining free to draw on international guidance, such as AAOIFI or IFSB principles, in shaping their disclosure practices.

4.2.5 Disclosure of Tradability Limitations

Feedback Received

A respondent recommended that, where the Shariah Adviser identifies specific limitations on the tradability of Sukuk instruments in the secondary market (for instance, restrictions to trading at par value), these restrictions should be clearly disclosed in the prospectus. The respondent further suggested that the rationale behind such limitations should be explained to ensure that investors are fully informed.

MFSA Position

The Authority notes that such disclosures fall within the scope of the Prospectus Regulation, which requires issuers to provide “a description of the material risks that are specific to the securities being offered and/or admitted to trading.” In this context, any tradability limitations identified by the Shariah Adviser would need to be explicitly presented as part of the risk factors in the prospectus, together with the relevant explanation. This approach ensures that prospective investors are adequately informed of potential constraints on secondary market activity while maintaining alignment with the broader EU prospectus framework.

4.2.6 Disclosure Obligations for Obligor

Feedback Received

A respondent suggested that, in cases where the Sukuk obligor is distinct from the Sukuk issuer, disclosure requirements should extend to the obligor. Specifically, it was suggested that information ordinarily required in relation to the issuer—such as business description, financial statements, and ongoing disclosures—should also be made available in respect of the obligor.

MFSA Position

The Authority recognizes that effective investor protection requires the disclosure of relevant information not only concerning the issuer, but also the obligor, where these are distinct entities. To this end, the Authority is proposing the introduction of Capital Markets Rule 2.8, which provides as follows:

“To the extent that such disclosures are not already required in terms of the Prospectus Regulation, the obligor must disclose information about itself as though it were the Issuer of the Sukuk.”

4.2.7 Disclosure of Sources of Payment and Investor Recourse

Feedback Received

A respondent emphasised the importance of clear and prominent disclosure regarding the ultimate sources of payment for Sukuk distributions, both during the life of the Sukuk and in enforcement scenarios. It was suggested that investors should be explicitly informed whether recourse lies primarily with the Sukuk obligor’s creditworthiness and performance, or with the performance, credit quality, and disposal value of the underlying assets. The respondent further noted that, where references are made to underlying assets as a source of payment, these should be accompanied by transparent statements highlighting any contractual limitations on disposal or enforcement against such assets, as well as clarifications on how such limitations affect investor rights in cases of default.

MFSA Position

The Authority is of the view that these matters are already adequately addressed under the proposed Capital Markets Rules and the Prospectus Regulation. Specifically, Capital Markets Rule 2.7(vii) requires disclosure of the method and conditions for distributing expected returns or profits to Sukuk holders, including the calculation basis, profit-sharing ratio, and payment dates. Capital Markets Rule 2.7(viii) further obliges disclosure of the underlying assets or projects linked to the Sukuk, including their nature, ownership, valuation, substitution arrangements, and the manner in which they generate returns. Taken together, these provisions provide a robust disclosure framework that safeguards investor understanding of both the sources of payment and the extent of recourse available (which is often dependent on whether the Sukuk is asset-based or asset-backed) under a Sukuk issuance.

4.2.8 Disclosure of Governing Law and Enforcement Risks

Feedback Received

A respondent reiterated the need for transparency regarding the interpretation and enforcement of Sukuk contracts, particularly in circumstances involving default, enforcement, restructuring, or insolvency. Given that Sukuk arrangements often involve legal constructs that may be untested in court, the respondent noted that there is a risk of uncertainty as to how national courts might interpret such provisions. It was suggested that the offering documentation should clearly state the governing law and jurisdiction for contract interpretation. Furthermore, in jurisdictions where courts are not bound to apply Shariah principles, disclosure should clarify that courts would apply national law rather than Shariah principles.

MFSA Position

Whilst the Prospectus Regulation already requires disclosure of *“the legislation under which the securities have been created”*, the Authority considers it appropriate to strengthen this requirement within the Sukuk framework. Accordingly, the Authority is proposing the inclusion of Rule 2.7(xii), requiring:

“Disclosure of the governing law and jurisdiction applicable to the interpretation and enforcement of the Sukuk contracts and documents, provided that such disclosures shall include any related risks, mitigating measures, and any arbitration arrangements established for resolving disputes.”

4.2.9 Mechanisms for Addressing Non-Compliance

Feedback Received

With respect to Capital Market Rule 2.7(iii), which requires *“a description of the mechanisms for the re-allocation of assets or proceeds should the Sukuk cease to be compatible or compliant with Shariah,”* stakeholders expressed differing views.

One respondent argued that the loss of Shariah compliance should constitute an event of default, requiring the Sukuk to be wound up immediately, as its continuation would undermine the Islamic investors’ objective of earning a Halal return. The same respondent suggested, however, that this clause could alternatively allow for the substitution of existing assets with Shariah-compliant assets of equal or higher value, particularly where the originator seeks to dispose of an asset.

Another respondent recommended the removal of this requirement altogether, reasoning that in practice the originator, beneficiary or obligor may not always be in a position to provide such mechanisms. This respondent noted that the risk of loss of Shariah compliance is generally addressed in disclosure documents by way of risk factors, rather than through operational mechanisms.

MFSA Position

The Authority acknowledges the divergent views expressed. The MFSA agrees that flexibility should be provided to allow for the substitution of assets with Shariah-compliant assets of equal or higher value, as this option aligns with Shariah sensitivities while also supporting the practical functioning of Sukuk structures. Accordingly, Capital Markets Rule 2.7(iii) will be revised to require:

“a description of the mechanisms for the purification of proceeds or substitution of assets should the Sukuk or underlying assets cease to be compatible or compliant with Shariah.”

At the same time, the Authority recognises that in certain circumstances issuers may not be able to provide such mechanisms. In such cases, issuers will be permitted to satisfy this requirement by including appropriate risk disclosures in the prospectus, clearly outlining the potential implications of a loss of Shariah compliance.

4.2.10 Refinancing of Sukuk

Feedback Received

A respondent commented on Capital Market Rule 2.7(iv), which requires issuers to provide *“detailed information of the existing Sukuk issue to be refinanced by the proposed issue, where applicable.”* The respondent noted that the proceeds of a new Sukuk issue cannot be directly applied towards the repayment of an existing Sukuk,

since each Sukuk must have its own distinct investment plan. It was therefore suggested that the Rule be deleted. The respondent nevertheless acknowledged that an originator may, prior to the maturity of an existing Sukuk, issue a new Sukuk and apply the proceeds towards redeeming the earlier Sukuk, provided that the two issuances remain independent.

MFSA Position

The intent of Capital Market Rule 2.7(iv) is not to prescribe the mechanics of refinancing, but rather to ensure adequate disclosure where refinancing is envisaged. The Authority recognises that a new Sukuk issue may be structured either by assuming the underlying asset of the redeemed Sukuk or by being backed by a different asset altogether. The disclosure requirement therefore serves to enhance transparency for investors, irrespective of whether the new issuance is linked to the prior Sukuk or structured independently. The MFSA therefore considers it appropriate to retain the provision, as it provides useful safeguards without conflicting with Shariah principles.

4.2.11 Disclosure of Underlying Assets and Substitution Arrangements

Feedback Received

A respondent provided comments on Capital Markets Rule 2.7(ix) (previously Capital Markets Rule 2.7 (viii)), which requires issuers to disclose information on the assets or projects underlying the Sukuk. The respondent proposed that, where the structure allows for assets to be varied or substituted during the life of the Sukuk, the arrangements and parameters governing such substitutions should be clearly disclosed, including the methodology for valuing the substituted assets.

It was further suggested that the disclosure should specify the precise legal interests of both the issuer and Sukuk holders in the underlying assets, rather than relying solely on broad terms such as “legal ownership,” “beneficial ownership,” or “usufruct right,” which may be interpreted differently across jurisdictions.

MFSA Position

To address this feedback and to further strengthen the disclosure requirements for Sukuk issuances, Capital Markets Rule 2.7(ix) has been revised to require disclosure of *“the underlying assets or projects associated with the Sukuk and related contracts, including their nature, ownership, valuation, substitution arrangements, and how they generate returns.”*

5 Chapter 3 – Continuing Obligations

5.1 Exercise of Rights & Meetings

Feedback Received

A respondent noted that whilst the contents of this section of the Rules are generally provided for in the prospectus pertaining to the securities in question, the Authority may also consider the inclusion of a specific rule requiring the originator of the security to clearly disclose information related to the rights of securities holders in the offering documents.

MFSA Position

The MFSA notes the proposed Capital Markets Rules 3.7 to 3.12 are intended to set out the Issuer's disclosure requirements in relation to securities holders' rights on an ongoing and continuing basis. At offering stage, disclosures on the rights attaching to the securities, including any limitations and the procedures for the exercise of these rights are already required in terms of the Prospectus Regulation. Accordingly, the Authority prefers not to duplicate existing requirements in the Rules.

5.2 Audit Committee

Feedback Received

A respondent inquired on the mechanisms the MFSA intends to employ to verify compliance with the proposed Rules on the audit committee.

MFSA Position

On an ongoing basis post-listing, the Issuer is expected to keep the market informed by publicly disclosing any changes to its board of directors and, implicitly, its audit committee. Whilst part of the MFSA's supervisory work incorporates the review of company announcements issued by listed entities, the Authority also carries out various forms of additional supervisory interactions to ensure compliance with the relevant Capital Markets Rules.

5.3 Corporate Governance

Feedback Received

A respondent inquired how the MFSA intends to instil a check and balance mechanism to gauge the level of corporate governance practices in licensed institutions, such that this does not merely become an annual reporting requirement.

MFSA Position

It should be clarified that whilst it is possible for an Issuer to also be a licensed institution (e.g. a financial institution), this is not necessarily the case. When approving applications for admissibility to listing and, or prospectuses, the MFSA as competent authority is not licensing the Issuer in any way, but rather it would be approving the security in question as being suitable for listing and/or the prospectus as meeting the requirements of the Prospectus Regulation.

In terms of checks and balances, as stated in the previous response the MFSA carries out various forms of supervisory interactions on an ongoing basis to ensure that Issuers remain compliant with the relevant Capital Markets Rules.

5.4 Third Country Issuers

Feedback Received

A respondent inquired how the MFSA intends to verify the eligibility of the exemption provided for in the proposed Capital Markets Rules 3.44 and 3.45.

MFSA Position

The Authority believes that such circumstances are best discussed with the MFSA, to ensure alignment and provide certainty early on in the process. To this end, the proposed Rules shall be extended to include the following clarification:

"... In such cases, the MFSA must be consulted at an early stage."

5.5 Additional Requirements for Sukuk

5.5.1 Asset Reporting and Valuation Methodologies

Feedback Received

A respondent welcomed the requirement under Capital Market Rule 3.48(i) for issuers to publish annual reports on the performance of assets underlying the Sukuk, noting that this enhances transparency. However, it was remarked that the framework does not provide explicit guidance on asset valuation methodologies such as the use of independent appraisals. The respondent considered that independent appraisals or similar valuation safeguards would be important for mitigating risks associated with the underlying asset.

MFSA Position

The Authority is of the view that transparency on the condition and value of the underlying assets is central to the credibility of Sukuk structures. In light of the feedback received, Capital Market Rule 3.48(i) has been revised as follows to provide further clarity:

"3.48(i) Annual reporting on the condition, operation, and revenue performance of the assets underlying the Sukuk."

Furthermore, in order to address situations where material developments may significantly alter asset values or compromise security for Sukuk holders, an additional safeguard has been introduced through a new Rule:

"3.49 Notwithstanding Capital Markets Rule 3.48(i), a professional valuation of the underlying asset shall be made available to the public, in a timely manner, if a material event occurs that could significantly affect the assets' value and/or its capacity to provide adequate security for the Sukuk."

5.5.2 Disclosure of Changes to Shariah Advisers

Feedback Received

Two respondents proposed that the framework should require Sukuk holders to be informed in the event of the resignation or termination of a Shariah Adviser. The respondents emphasised that such notifications (including reasons underlying the change) should not be limited to the MFSA but should also reach investors to ensure transparency and continued confidence in the Shariah oversight of the Sukuk.

MFSA Position

Whilst disclosure to the MFSA is already embedded in Capital Markets Rules 1.33 and 1.34, which govern the termination and resignation of Shariah Advisers, the Authority agrees that a market-facing disclosure obligation should also be introduced. To this end, the Authority shall be extending Capital Markets Rule 3.50 (previously Capital Markets Rule 3.49), to provide as follows:

"iii) any matters relating to the replacement of the Shariah Adviser(s), whether due to resignation or termination by the Issuer, including the reasons for such resignation or termination."

6 Chapter 4 – Compliance and Enforcement

Feedback Received

A respondent observed that the MFSA retains strong supervisory powers, including the authority to suspend or delist non-compliant securities and impose sanctions for breaches. However, in their view, the framework could explicitly reference cross-border harmonisation to facilitate international listings, if there is a plan to do so in the future.

MFSA Position

The MFSA acknowledges the importance of cross-border harmonisation and is in fact already appointed as the competent authority for various securities-related legislation which is harmonised at a European level. Furthermore, the Financial Markets Act, which serves as the primary legislation governing applications for admissibility to listing, also includes several provisions on cooperation arrangements between the MFSA and other regulatory bodies.

7 Chapter 5 – Sponsors

7.1 Registration Process

Feedback Received

A respondent noted that the rules provide a foundational registration regime and supervisory framework for sponsors. Nevertheless, it was suggested that such registration and supervisory framework can be further enhanced by providing clarity on the processes relating to rejecting applications, revoking registration, as well as an appeals mechanism for such rejection and revocation. It was recommended that should the MFSA have a separate rule or regulation on this matter, a cross reference in this chapter of the Rules would be useful.

MFSA Position

The MFSA clarifies that Chapter 5 of the Capital Markets Rules applicable to the IFSM is supplementary to the requirements laid down in the FMA and the relevant regulations issued thereunder, which provide the legal basis for such sponsor-related matters. Provisions on granting, rejecting and cancelling registration of sponsors are adequately provided in the aforementioned legislation. In this regard, the MFSA understands that the cross-reference provided in Capital Markets Rule 5.1(ii) is sufficient in clarifying this link.

7.2 Financial Information

Feedback Received

A respondent recommended that the proposed Capital Markets Rule 5.25(vii) is clarified to also refer to generally accepted auditing standards.

MFSA Position

The MFSA has noted this suggestion and shall be amending the Rule to read as follows:

“vii) the required historical financial information has been prepared in line with the applicable accounting standards and audited in line with generally accepted auditing standards;”

7.3 Other General Observations

Feedback Received

A respondent expressed several concerns regarding the mandatory appointment of a Sponsor for applications for admissibility to listing on the IFSM, citing the following principal points of contention: [i] misalignment with the IFSM's institutional nature, [ii] overlap with existing regulatory oversight, and [iii] feedback from the MFSA's previous consultation on the Sponsors' Regime. It was also recommended that any proposals in this regard are aligned with international practices to ensure the attractiveness of cross-border listings.

MFSA Position

The MFSA would like to clarify that feedback received from stakeholders under the separate consultation exercise on the Sponsors' Regime has been duly assessed and the respective MFSA positions are set out in the [Feedback Statement](#) published on 02 October 2025. The relevant rules in the Capital Markets Rules applicable to the IFSM have also been updated to reflect these positions, as applicable. In doing so, the MFSA has sought to retain a proportionate and risk-based approach.

With regard to points [i] and [ii] identified by the respondent, the MFSA notes that Issuers need not be regulated entities such as credit or financial institutions, for example, and therefore not all Issuers would necessarily already be subject to regulatory oversight prior to an application for admissibility to listing. The Authority re-asserts the importance of Sponsors within the context of listing applications on regulated markets, particularly in providing their guidance and expertise to Issuers on the applicable legal and regulatory framework and in ensuring that documentation submitted as part of the application meets the requirements and expectations from a regulatory perspective.

8 Conclusion

Having considered stakeholder feedback, the MFSA will be making the necessary amendments to the proposed Capital Markets Rules applicable to the IFSM, in line with the above stated positions. The Authority reiterates its commitment to adopting a proportionate and practical approach towards implementing this initiative, including via the publication of dedicated guidance and further industry outreach where appropriate and applicable.

Any queries or requests for clarifications in respect of the above should be addressed by email on spi_consultations@mfsa.mt