

01 Highlight on Sukuk Regulations

02 مبادرة حماية البيانات الشخصية

03 Soy Extranjero y Deseo Comprar Propiedad en Egipto. ¿Qué Debo Hacer?

04 Contrats de travail et contrats de consultance

05 Islamic Inheritance Rules

www.hegazylaw.com

1095 Corniche El Nile Street
4th & 5th Floors, Suites 35 & 43
Garden City, Cairo, Egypt

Tel.: +202 27 93 49 39

Fax: +202 27 93 49 44

Email: info@hegazylaw.com

HEGAZY
AND PARTNERS

NEWSLETTER



January
2021
Issue

Mohamed Hamza
Senior Associate

[Click to Email](#) 



01 Highlight on Sukuk Regulations

Prime Minister's Decree No. 17 of 2018 was promulgated on the 14th of March, 2018, and entered into effect on the 15th of March 2020 to amend particular provisions of the Capital Market Law No. 95 of 1992 ("Capital Market Law"), including detailed provisions for Sukuk ("Sukuk") whereby followed by many decisions issued by the Board of Directors of the Financial Supervisory Authority (the "Authority"), in addition to the issuance of a guidebook approved by the Authority in the context of the desire to work, develop and raise the efficiency of non-banking financial markets.

Prime Minister issued Decree No. 1760 of 2020 to add a new provision to the Executive Regulations of the Capital Market Law, related to Sukuk, and added five new types of Sukuk contracts to the current four types. Therefore, Sukuk contracts now have become nine types as follows: "Istisna'a, investment agency, Salam, Muzaraa, and Musaqat, Murabaha, Ijara, Musharaka, and Mudaraba."

Sukuk are of great importance in financing companies, entities, and public juristic persons. In addition to providing financial approaches to investors, which is reflected in strengthening the financial market, keeping pace with international changes in the financing markets field,

"Sukuk have more than one competitive advantage over other financing approaches."

and creating added value for the national economy.

Sukuk have more than one competitive advantage over other financing approaches. Most notably, financing through Sukuk is the least burdensome, in addition to sharing in profits, as the issuing company sets a specific return for the Sukuk holders to be paid for the duration of the Sukuk. They also share the loss if the project suffers losses, so it is a balanced financing instrument between stocks and bonds. In addition to its compatibility with Islamic Sharia which represents an advantage that attracts a wide range of investors, who prefer this type of investment.

Also, the issuer of Sukuk has the advantage of separating its financial performance from the new project funded through Sukuk. This means that the issuing company may not have a good financial performance, however, the company has strong and successful feasibility studies to issue it. Sukuk is based only on the feasibility studies and credit ratings of the issuance and not the company, unlike bonds and other financing instruments.

So Sukuk are very attractive to companies, especially in the public business sector.

As for the investors, Sukuk are more secure than stocks and bonds. As stocks are famous for their high risk. However, Sukuk give the holder regular returns according to the expected cash flows from the issuance based on the feasibility study. Moreover, the Sukuk holder is considered a partner in the transaction which includes participating in profit and loss, so it is compliant with Islamic Sharia. We believe that this helps to secure financing apart from bank loans, either through increasing current loans to companies or aiming to diversify sources of financing due to the lack of liquidity in companies, especially the real estate sector, as a result of the current Coronavirus crisis.

On the other hand, there are many investment funds, especially foreign ones, that prefer to subscribe to such financial instruments, in addition to the availability of an element of flexibility compared to bank loans.

Sukuk are distinguished from bonds in their evaluation, supervising, and follow-up by more than one party, starting with the Central Committee for Sharia Supervision, the Sharia sub-committees, the Authority, and the Egyptian Stock Exchange.

Despite the activation of Sukuk as a financing instrument since 2018, the interest in them clearly began during the current and preceding period, which justifies the extent to which companies need new liquidity methods in the light of the Coronavirus crisis.

Law No. 17 of 2018, which was followed by the issuance of Prime Minister Decree No. 2479 of 2018 concerned with amending some provisions of the

Capital Market Law and its Executive Regulations, enacted the rules and provisions governing the legal framework and contractual formulas for issuing Sukuk, the parties to the issuance process, their roles, provisions for issuing and procedures for Sukuk.

As a complement to the legislative framework governing Sukuk, several resolutions were issued by the Authority's Board of Directors regarding Sukuk, which dealt with the following:

1. Resolution No. 50 of 2019 regarding the terms and conditions related to the beneficiary that wishes to issue Sukuk by itself, determining the minimum and maximum value of the Sukuk issued by the authorized entities, the conditions and procedures to be followed to approve the issuance of Sukuk to international and regional financing institutions, the conditions and rules for registering Sukuk that offer a private subscription on one of the stock exchanges in Egypt, and the terms and conditions of trading of Sukuk outside stock exchanges.
2. Resolution No. 61 of 2019 regarding the regulations of the formation and membership of Sharia supervisory committees for issuance of Sukuk compliant with the provisions of Islamic Sharia.
3. Resolution No. 188 of 2018 regarding accounting standards for companies issuing Sukuk and beneficiary companies, including auditing standards that are adhered to by auditors.
4. Resolution No. 176 of 2018 regarding the requirements for establishing and licensing of Sukuk company.



02 مبادرة حماية البيانات الشخصية

صدر القانون رقم 151 لسنة 2020 بتاريخ 15 يولية بنفس السنة ضمن مبادرة و اتجاه الدولة لتعزيز القوانين الخاصة بحماية البيانات الشخصية للمواطنين. تُعد هذه المبادرة خطوة جيدة و منفردة، فإنها الأولى من نوعها في هذا المجال، الا وأن تطبيقها قد يواجه بعض الصعوبات

يختلف هذا القانون عن أي قوانين أخرى تخص سرية المعلومات أو غيرها من مشاكل مشابهة من حيث أن هذا القانون خاص بالبيانات الشخصية داخل أو خارج حدود جمهورية مصر العربية. وتنص المادة الخامسة من دباجة هذا القانون أن المحكمة المختصة لنظر الدعاوى بموجب هذا القانون هي المحكمة الاقتصادية

نرى أيضاً في هذا الصدد أن المشرّع قد عرّف عدد من المصطلحات بهذا القانون لتفادي أي لبس قد ينشأ، بما في ذلك مصطلحات مثل "البيانات الشخصية"، "معالجة البيانات الشخصية الحساسة"، "المتحكم" و"المعالج

في ثاني فصل من القانون نجد أن المشرّع قد وضع شروط لجمع البيانات الشخصية ومعالجتها وذلك لحماية حقوق مستخدمي الإنترنت. ونرى أن أهم تلك الشروط هي إعطاء ذوي الشأن الحق لتصحيح أو تعديل أو محو أو إضافة أو تحديث تلك البيانات كيفما يشاءون وذلك لضمان أعلى مستوى من مصداقية وصحة تلك المعلومات. تلك الحقوق تعطي مستخدمي الإنترنت القدرة أن يحافظوا على سرية هويتهم و تصعب إنتهاك حقوقهم الشخصية و تعوق أنشطة الجرائم الإلكترونية

هذا واشترط المشرّع على كل من يجمع البيانات الشخصية أو يعالجها أو يحتفظ بها عدة شروط، وهي تتلخص في أن يكون هذا الجمع للبيانات لأغراض مشروعة ومعلنة للشخص المعني، وأن تكون صحيحة وسليمة ومؤمنة، وألا يتم الاحتفاظ بها لمدة أطول من المدة اللازمة لتحقيق الغرض المنوط المادة رقم 3

نرى أيضاً في هذا الصدد أن المشرّع قد خصص فصلاً بالقانون لكل إلترام من الإلتزامات المذكورة اعلاه، أخذاً بالإعتبار أن نصوص هذا القانون جديدة. حيث أنه تم تقسيم فصول القانون إلى التزمات المتحكم بالبيانات و المعالج الذي يعالجها موضعاً شروط التحكم والمعالجة مما يشمل

الإلتزام بإخطار و إبلاغ الشخص المعني بوضوح. أيضاً تم تعيين مسؤولين عن حماية البيانات واجراءات إتاحة البيانات، والبيانات الحساسة، والبيانات الشخصية عبر الحدود، والتسويق الإلكتروني والتراخيص والتصاريح والاعتمادات

جدير بالذكر أن القانون قد وضع عقوبات باهظة حيث أنه تم تعيين مخالفة لا تقل عن مئة ألف جنيه مصري كحد أدنى و عقوبة حبس مدتها لا تقل عن ستة أشهر و ذلك لضمان حماية البيانات و لردع أي مسيء أو مستغل لتلك البيانات. العقوبات ليست مقتصرة على هذا القانون الجديد فقط حيث أنها لا تغني عن العقوبات المذكورة بالقانون الجنائي وباقي القوانين ومع عدم الإخلال بحق المضرور في التعويض المدني

بينما يستوجب علينا جميعاً الإشادة بالمجهودات الموضوعة في هذا القانون من حيث مواكبة للتغيرات التي تحدث في العالم بما فيها تقدم التكنولوجيا والمحاولة لتقنين الأوضاع و ردع أي مخالفات قد تنتج عن هذا التقدم. وجب علينا أيضاً أن ننتفض نقضاً بناءً، وذلك في سبيل تقديم المعونة لذوي الشأن (مستخدمي الإنترنت)، حيث أن حتى يومنا هذا و بعد خمسة أشهر من تاريخ صدور القانون، إلا أن حتى هذه اللحظة لم تصدر لائحة تنفيذية للقانون، مما يجعل تطبيق القانون مستحيلاً. وذلك أخذاً بالإعتبار أهمية وجود التراخيص اللازمة، والتي يستحيل إصدارها دون لائحة تنفيذية، بالإضافة إلى وجوب تعيين مسؤول لحماية البيانات الشخصية، وذلك أيضاً مرتبط بصدر لائحة تنفيذية. وبالتالي، كل المجهود المبذول في إصدار قانون يواكب التغيرات المحيطة بنا حتى الآن غير ملحوظ، لعدم قانونية العمل به حتى صدور اللائحة التنفيذية الخاصة به

Lauren Williams
Legal Consultant

[Click to Email](#) 



03 Soy Extranjero y Deseo Comprar Propiedad en Egipto. ¿Qué Debo Hacer?

Sí, se puede comprar una casa vacacional en Egipto. Una casita a la costa del Mediterráneo o al Mar Rojo está a su alcance. Si bien hay algunas restricciones, los extranjeros reciben ventajas de inversión y ciudadanía al comprar una propiedad. La propiedad extranjera conforme a la Ley de Propiedad Extranjera no 230/1996. Contestamos a las preguntas más frecuentes abajo:

Cuáles son los procedimientos legales que los extranjeros deben cumplir para comprar propiedades inmobiliarias en Egipto?

En Egipto, no se realiza la venta de una propiedad inmobiliaria hasta que se cumpla la inscripción de la propiedad y de la venta. Las leyes diferencian entre la primera y la segunda. El gobierno egipcio está alentando a los titulares de propiedades no registradas a conciliar su condición jurídica con las autoridades competentes de conformidad con la Ley de Construcción no 119/2008. Por eso,

no se recomienda comprar una propiedad que ya no ha sido registrada aunque el gobierno haya decidido prolongar el periodo de inscripción hasta el fin de marzo.

También se necesita registrar la venta de la propiedad al firmar el acuerdo de venta. Anteriormente, se calculaba la tarifa de registrar a 3% del valor del acuerdo, pero el gobierno ha recientemente acotado esta tarifa a sólo 2000 EGP. No se permite vender propiedad inmobiliaria a los extranjeros sin el permiso del Consejo de Ministros.

Cómo restringe el gobierno el derecho de los extranjeros a la propiedad?

No se permite que un extranjero compre más de dos propiedades inmobiliarias. Además, es ilegal vender o alquilar la propiedad durante los primeros cinco años después de la inscripción de la venta con el notario público.

Hay otras restricciones que se imponen por motivos de seguridad nacional. No se permite que los extranjeros compren

propiedad en las tierras desérticas o las agrícolas, como se aplica la prohibición de comprar propiedad en la provincial de Sinai igualmente a los extranjeros y los egipcios.

Cuáles son las ventajas de comprar una propiedad inmobiliaria?

El compra de una propiedad inmobiliaria se considera una inversión que será protegida por tratados internacionales de inversión bilaterales. Además el compra de propiedad inmobiliaria se ha convertido en un incentivo a la inversión. Los extranjeros que compran una propiedad son elegibles para obtener un permiso de residencia según el valor de la propiedad. Por ejemplo, una propiedad valorada en USD 100.000 confía la residencia para un año y el compra de una propiedad con valor de USD 200.000 confía la residencia para tres años. Para obtener un permiso de residencia por cinco años, un extranjero debe comprar una propiedad valorada en USD 400.000.

Tengo recurso legal en caso de expropiación?

Sin perjuicio a las leyes que restringen la propiedad de extranjeros, el gobierno debe compensar los extranjeros al expropiar su propiedad y esa compensación debería ser adecuado y suficiente según el valor de la propiedad. No se permite discriminar entre los extranjeros y los egipcios o entre los extranjeros de una nacionalidad y los de otra. Si haya una infracción de esos principios, el extranjero tiene el derecho de someter una demanda de arbitraje ante del Centro Internacional para Resolución de Disputas sobre Inversiones o adjudicar el dispute por El Consejo de Estado en Egipto. La opción apropiada depende del valor de la inversion –

las disputas ante ICSID suelen ser valoradas a decenas de millones de dólares. Se recomienda consultar un abogado antes de comprar una propiedad inmobiliaria o emprender acciones legales contra el gobierno egipcio.



Omar Sherif
Junior Associate

[Click to Email](#)

04 Contrats de travail et contrats de consultance

La distinction entre ces deux contrats se voit établie en droit congolais vu le fait que les deux contrats sont régis par deux lois différentes et ce après l'adoption de la nouvelle loi congolaise sur la sous-traitance.

Dans sa rédaction, un contrat de consultance doit clairement afficher sa nature distincte d'un contrat de travail et ce par la formulation de ses termes ou de ses clauses.

I-Le contrat de travail:

Conformément à l'article 7 du chapitre 4 (titre 1) du code de travail, on entend par travailleur "toute personne physique (...), qui s'est engagée à mettre son activité professionnelle, moyennant rémunération, sous la direction et l'autorité d'une personne physique ou morale, publique ou privée, dans les liens d'un contrat de travail".

Donc, c'est le lien de subordination qui caractérise le contrat de travail.

La durée est aussi un des critères faisant la différence entre le contrat de travail et celui de consultance.

"Tout contrat de travail est à durée déterminée ou indéterminée"(chapitre 2, titre 4).

Dans ce cas, le contrat de travail ne prévoit pas d'échéance au contrat. C'est donc la volonté de l'une ou l'autre des parties qui peut y mettre un terme.

En effet, le travailleur a l'obligation d'exécuter personnellement son travail, dans les conditions, au temps et au lieu convenus (Titre 4, section 1, chapitre 4).

Il doit aussi restituer en bon état à l'employeur tout ce qui lui a été confié.

D'après l'article 54, le travailleur peut être passible d'une des sanctions disciplinaires compte tenu de la gravité de la faute commise de sa part.

L'employeur lui, il doit fournir au travailleur l'emploi convenu et ce, dans les conditions, au temps et au lieu convenus; il est responsable de l'exécution du contrat de travail passé par toute personne agissant en son nom.

Il doit aussi diriger le travailleur et veiller à ce que le travail s'accomplisse dans des conditions convenables. Il doit accorder au travailleur la dignité et le temps nécessaire pour l'accomplissement de sa mission tout en le rémunérant de ce temps.

II-Le contrat de consultance:

Le contrat de consultance est consacré dans la loi congolaise du 8 février 2017 sur la sous-traitance.

D'après l'article 372 du code congolais des obligations et contrats, le contrat d'entreprise, aussi qualifié de "louage d'industrie" -par opposition au "louage de services" qui relève du contrat de travail- est un contrat par lequel l'entrepreneur s'engage à l'égard de son client à réaliser une prestation convenue dans une certaine période déterminée moyennant rémunération.

Toutefois, le contrat d'entreprise ne se limite évidemment pas aux contrats de construction, et peut revêtir une variété infinie de prestations intellectuelles, tels la consultance.

Le contrat de consultant est un contrat par lequel un consultant est engagé d'apporter son expertise et de conseiller le client sur des aspects que ce dernier délimite et ce pour une certaine durée.

Le consultant doit exécuter sa mission conformément aux règles en vigueur dans sa profession et en se conformant à toutes les données acquises dans son domaine de compétence.

Le client s'engage à remettre au consultant tous les documents nécessaires dans les meilleurs délais.

III-Le régime de la sécurité sociale:

Le contrat de consultant ne crée pas une relation employeur/salarié; donc en principe le consultant n'est pas un salarié et donc ne doit pas bénéficier de ce qui est accordé à un salarié.

Or, le régime congolais de protection sociale garantit pour le salarié des indemnités journalières de maternité, des prestations d'assurance invalidité-vieillesse-décès, des prestations d'accidents du travail-maladies professionnelles, des prestations familiales ainsi que des soins de santé suite à la création du Régime d'Assurance Maladie Universelle (RAMU) institué par la Loi numéro 37-2014 du 27 Juin 2014.

Cependant, les travailleurs non-salariés ne peuvent qu'adhérer volontairement aux assurances pension et accidents du travail.



05 Islamic Inheritance Rules

Islamic law sets out strict and rigid inheritance rules that determine how a Muslim's estate is to be divided between his or her heirs on death.

Under this law testamentary freedom is restricted to just one third of the Deceased's net estate, after deduction of all debts and funeral expenses. The remaining two thirds is divided in accordance with Shari'a.

The primary (or immediate) heirs:

1. The spouse - Husband or a maximum of four Wives

Share of Husband:

If there are no children or grandchildren (note, son's children only) the husband inherits $\frac{1}{2}$ of the deceased's property. If there are children or grandchildren the husband inherits $\frac{1}{4}$ of the deceased's property.

Share of Wife:

If there are no children or grandchildren the wife inherits $\frac{1}{4}$ of the deceased's property. If they are, then the wife's share is $\frac{1}{8}$ of the deceased's property.

2. The children - only biological

In the case when there is only one daughter and no son, the daughter will inherit $\frac{1}{2}$ of the testator's property. If there are two or more daughters only, their share will be $\frac{2}{3}$ of the inheritance property and should be distributed equally between all of them. When the testator has a son and a daughter, the son inherits twice as much as his sister.

3. The parents - only biological

Share of Father:

If entitled descendants (sons, daughters, son's children) exist, then the father claims $\frac{1}{6}$ of the inheritance. If there are no male descendants, the father inherits $\frac{1}{6}$ of the property and Residue (remainder after all legal shares are distributed). In the case when there are no entitled descendants the father inherits Residue.

Share of Mother:

When entitled descendants or Brothers or Sisters exist then the Mother's share is $\frac{1}{6}$.

If there are no entitled descendants, Father, Spouse, Brothers or Sisters the Mother inherit $\frac{1}{3}$ of property.

If there are no entitled descendants, but there are Brother or Sisters, Father, Spouse share is $\frac{1}{3}$ of Residue

4. The grandchildren

Applicable only when the son is already deceased. Notice that only Son's children have inheritance rights. If there's only one Son's Daughter, no daughters, no Son's Son, her inheritance share will be $\frac{1}{2}$. If there are Son's children of both gender, no daughters, the Son's Daughter inherits half share of Son's son share (2:1). If there are two or more Son's Daughters, no daughters, no Son's Son, their share will be $\frac{2}{3}$ and they distribute it equally between each other

The secondary heirs:

1. The grandparents (Paternal and Maternal) are entitled only if the Father or Mother do not exist.

2. The Brothers and/or Sisters inherit only when there are no Descendants and no Ascendants.

If there's no Full Brother (from same father/mother) and no Female Entitled Descendant, and deceased was Male, then Full Sister's inheritance share is $\frac{1}{2}$ of property.

If there's no Full Sister and no Female Entitled Descendant, and deceased was Female, then Full Brother will inherit all of her property.

If two or more Brothers and Sisters, then Full Sisters shares $\frac{2}{3}$ of property equally between them. And Full Brothers inherit twice as many sisters.

If there's no Full Brother, but Female Entitled Descendant exist, then the share of a Full Sister is $\frac{1}{6}$. The same goes for Full Brother.

If there are Female Entitled Descendant and Full Sisters and also Brothers, then Full Sisters and Brothers share $\frac{1}{3}$ of property equally between them.

If there are Uterine Brothers/Sisters (from same Mother) in addition to Full Brothers/Sisters, then they share in the residue.

If there's one Uterine Brother/Sister, no Entitled Descendants and no Male Ascendants, then the share of Uterine Brother/Sister is $\frac{1}{6}$.

If there are two or more Uterine Brothers/Sisters, no Entitled Descendants and no Male Ascendants, then All Uterine Brothers & Sisters divide $\frac{1}{3}$ of property equally between them.

Consanguine Sister (from same Father) inherit only when there are no Sons or Son's Son and no Father, no Full Brother.

If there is one Full Sister and no Consanguine Brother, then Consanguine Sister inherit $\frac{1}{2}$ of property. If two or more Consanguine sisters, then they share $\frac{2}{3}$ of inheritance equally.

If there's one Full Sister and Consanguine Brother, then Consanguine Brother inherits twice as much as Full Sister (2:1).

3. The Uncles and/or Aunts are entitled in the absence of Parents and Grandparents only. They also

They also won't inherit if the children/children's children of the deceased are living.

4. The Nephews and/or Nieces are entitled in the absence of Brothers and Sisters only. This means that they take the shares of the Brothers/Sisters of the deceased in their absence. Hence a Nephew/Niece will receive what his/her parent (Brother/Sister of the deceased) would have received if he/she was alive. They also won't inherit if the children/children's children of the deceased are living.

Can a non-Muslim inherit from a Muslim and vice versa?

No, this is based on the Hadith narrated by Imam Bukhari in which the Prophet said: "The believer does not inherit from a disbeliever and the disbeliever does not inherit from a believer."

How do non-Muslims inherit property in Egypt?

It is well established that all Egyptian nationals, regardless of their faith are bound by inheritance laws founded on Sharia principles, including Coptic Christians who make up more than 10 per cent of the Egyptian population. The law that would govern all personal status matters relating to non-Muslims in Egypt has not still been enacted.

However Monday 25 November 2019 marked a historical moment for Coptic Christians since it was on this day that the Helwan Family Court (South Cairo) rendered a landmark judgment praised by many defenders of Coptic rights and in

particular Coptic women's rights in Egypt.

The judgment lays down the principle that an Egyptian Family Court may apply Coptic Christian Canonical principles, as opposed to Islamic Sharia principles, and determine the shares of the heirs accordingly. Coptic Christian principles do not distinguish between male and female heirs and therefore allow for equal distribution of the deceased's inheritance amongst all of the surviving children. Contrast this with Islamic Sharia rules which stipulate that male sons get double the inheritance to that of their sisters when it comes to inheriting their parents' estate.

How do Muslims inherit property in non-Muslim country?

Only a will can help in this situation, otherwise the laws of the country of the testator's last place of residence or the location of the property will apply.

Can a Muslim bequeath anything to persons outside the circle of heirs? For example, friends, associates, charities?

Maybe, but only not more than one third of the total property."

Disclaimer

Articles contained within this newsletter are for informative purposes only. They represent the personal opinions of the those who have written them and are **not** to be considered legal advice nor legal opinions from Hegazy and Partners.

For official representation, expert legal advice, or other business services, we would be pleased to address your inquiries via e-mail or by booking an appointment. Please e-mail info@hegazylaw.com or call us today to book your appointment!

To learn more about our firm's areas of practice and business expertise, visit www.hegazylaw.com.