



# Scrutinizing the Malaysian Regulatory Framework on *Shari'ah* Advisors for Islamic Financial Institutions

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## Abstract

Islamic banking, *takaful* and Islamic Capital Market are the main component of Islamic financial system in Malaysia. *Shari'ah* compliance is one of the attributes to distinguish Islamic Financial Institutions (IFIs) from its counterpart. Adherence to *Shari'ah* principles is fundamental to the operations of IFIs and such adherence is a continuing process as long as such institutions operate. The *Shari'ah* Advisors appointed by the IFIs are responsible in ensuring the *Shari'ah* compliance of IFIs in carrying out its Islamic financial business. The requirement for the appointment of *Shari'ah* Advisors in IFIs has been included in the statutes governing IFIs as well as guidelines and circulars issued by authoritative bodies related to Islamic banking, *takaful* and Islamic Capital Market. This indicates that, the appointment of *Shari'ah* Advisors in IFIs is a vital to the industry. A specific regulatory framework on *Shari'ah* Advisors is essential in regulating their duties and responsibilities as may be in ensuring that the operations of IFIs conform to *Shari'ah* principles. Furthermore, a strong regulatory framework on *Shari'ah* Advisors is one of the factors in ensuring the resilience development of Islamic finance industry. Henceforth, this study seeks to analyze the Malaysian regulatory framework on *Shari'ah* advisors as their significant roles and responsibilities in ensuring *Shari'ah* compliance of IFIs.

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*Keywords:* Islamic Financial Institutions, *shari'ah* Advisors, *shari'ah* Compliance, Regulatory Framework

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## 1. An Overview on Islamic Financial Sector in Malaysia

Financial transaction based on Islamic principles in Malaysia is not new. In glance, the first Islamic financial institution in Malaysia established in 1963 with the incorporation of Lembaga Urusan dan Tabung Haji (currently known as Lembaga Tabung Haji) (Ab. Mumin, 1999). The establishment of this institution paved the way to the government to introduce Islamic banking institutions in Malaysia (Nik Mustapha and Mazilan, 2004).

In 1983, Islamic Banking Act 1983 (Act 276) (IBA) passed by the Parliament of Malaysia which allowing the Islamic bank to be established and operated side by side with its counterpart. Islamic banking institutions may offer a product similar to those of the conventional banks and abiding by the regulations and supervision of Bank Negara Malaysia (BNM) (Hussin, 2004).

Bank Islam Malaysia Berhad which incorporated under the Companies Act 1965 on March 1, 1983 became the first Islamic bank in Malaysia. In 1994, BNM launched a scheme known as "Interest-free Banking Scheme" to allow the conventional banks offering Islamic banking business using the facilities of their conventional banking system. The second full-fledged Islamic bank, Bank Muamalat Malaysia Berhad was set up in 1990. In 2005, BNM has approved the subsidiary structure to replace the Islamic window institutional structure and those subsidiary institutions are licensed under the IBA (Sudin and Wan Nursofiza, 2009).

Currently, there are 16 Islamic banks and 5 international Islamic banks licensed under IBA. Meanwhile, the banking institutions participating in Islamic Banking Scheme consists of 7 investment banks and 2 commercial banks which licensed under Banking and Financial Institutions Act 1989 (Act 372) (BAFIA) and 6 Development Financial Institutions which subscribed under Development Financial Institutions Act 2002 (Act 618) (DFIA) (List of Islamic Banks, Malaysian International Islamic Financial Centre, 2011).

*Takaful* is the second component of Islamic financial system which was first introduced in Malaysia in 1984 when the first *takaful* operator, Syarikat *Takaful* Malaysia Berhad was established to fulfil the need of the general public to be protected based on Islamic principles (Norhaziah and Wan Rasyidah, 2007). Currently Malaysia has 8 *takaful* companies, 4 re-*takaful* companies and 1 international *takaful* operator (List of *Takaful* Companies, Malaysian International Islamic Financial Centre, 2011).

Islamic Capital Market (ICM) is the third component of Islamic financial system in Malaysia. In 1995, the Securities Commission Malaysia (SC) established the Islamic Capital Market Unit, comprising experts in *fiqh mu'amalat* and capital market practices, to undertake research in product origination and Islamic capital market operations (Securities Commission, 2001). As on 25 November 2011, there are 839 *Shari'ah*-compliant securities on Bursa Malaysia as approved by *Shari'ah* Advisory Council of the SC (List of *Shari'ah*-Compliant Securities, 2011). Meanwhile, for Malaysian approved Islamic Funds as at 31 August 2011, there are 162 Unit Trust Funds offered by 30 companies and 26 Wholesale Funds offered by 17 companies (List of Malaysian Approved Islamic Funds, 2011).

In 2006, Malaysia International Islamic Financial Center (MIFC) has been launched by Government of Malaysia in order to turn this country to become Islamic financial hub. The MIFC is the collective efforts of BNM, Securities Commission Malaysia (SC), Labuan Financial Services Authority (LFSA) (formerly known as Labuan Offshore Financial Services Authority) and Bursa Malaysia. MIFC involves the participation of industry players representing the banking, *takaful* and capital market in Malaysia. The main objective of MIFC is to promote Malaysia as the major hub for international Islamic finance through several incentives designed to create conducive environment for conducting Islamic finance business in Malaysia (Sudin and Wan Nursafiza, 2009).

In summary, the Islamic Financial Institutions (IFIs) in Malaysia can be summarized in the following diagram:

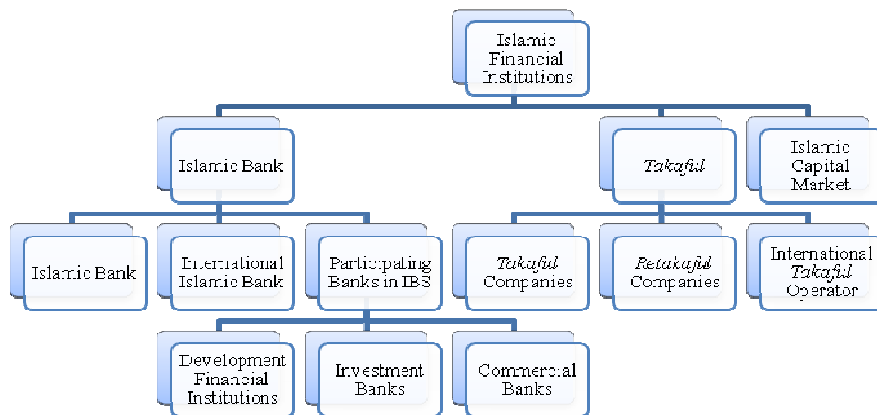


Diagram 1: Islamic Financial Institutions in Malaysia

## 2. Regulatory Authorities for IFIs

Regulatory authorities for the IFIs consist of BNM, SC, LFSA and Bursa Malaysia as can be seen in the following Diagram 2.

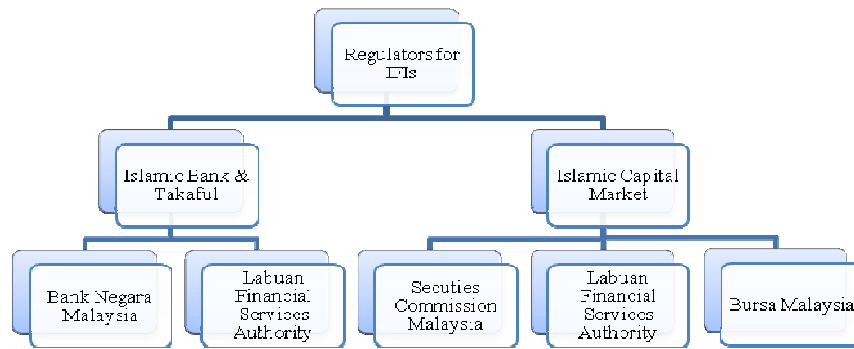


Diagram 2. Regulators for IFIs in Malaysia

BNM was established in 1959 under the Central Bank of Malaysia Act 1958 (Act 519) which was repealed by current Central Bank of Malaysia Act 2009 (Act 701) (CBMA). In relation to the role of BNM, section 5(1) and 5(2) of CBMA spelt out the principle functions and the primary functions of BNM. BNM as the central bank is responsible for the supervision and regulation of banking institutions and insurance companies including Islamic banking and *takaful*. For *takaful* companies, section 54 of *Takaful* Act 1984 (Act 312) (TA), the Governor of the BNM is appointed as the Director General of *Takaful* with such powers, duties and functions as provided under TA.

Meanwhile, for securities industry, the responsibility falls mainly under the purview of SC. SC was established on 1 March 1993 under the Securities Commission Act 1993 (Act 498), is a self-funding statutory body that reports to the Minister of Finance, Malaysia. The SC has direct responsibility and monitoring the activities of markets institutions including the exchanges and clearing houses, as well as persons licensed under the Capital Markets and Services Act 2007 (Act 671) (CMSA). Besides protecting investors, the SC is also responsible to promote and develop the securities and futures markets in Malaysia (section 15 of Securities Commission Act 1993). This includes the matters related to ICM as can be seen in Part VI of CMSA 2007.

The other regulator for IFIs is the Labuan Financial Services Authority (LFSA), formerly known as Labuan Offshore Financial Services Authority. LFSA was set up on 15 February 1996 as a corporate body under Labuan Financial Services Authority Act 1996 (Act 545) which provides the functions and powers of LFSA as stipulated in section 3(2) and section 4 respectively. Meanwhile, Labuan Financial Services and Securities Act 2010 (Act 704), section 181(1) states that A licensed entity who carries on or transacts or holds himself out as carrying on or transacting any Islamic banking business, Islamic investment banking business, *takaful*, re-*takaful* or any other business under this Act which is *Shari'ah* compliant, shall comply with the provisions of the Labuan Islamic Financial Services and Securities Act 2010 in matters where such *Shari'ah* compliance are concerned, subject to such modifications as may be made by the Authority pursuant to guidelines.

Finally Bursa Malaysia is also one of the regulators responsible in regulating financial market in Malaysia. Bursa Malaysia is an exchange holding company approved under Section 15 of the CMSA. It operates a fully-integrated exchange, offering the complete range of exchange-related services including trading, clearing, settlement and depository services. Islamic markets offered by Bursa Malaysia including Bursa *Suq Al-Sila'*, *Shari'ah*-Compliant Securities, *Sukuk*, Islamic Real Estate Investment Trust (iREITs) and *Shari'ah* Compliant Exchange Traded Funds (iETFs) (Bursa Malaysia Islamic Market, 2012).

### 3. *Shari'ah* Advisors for IFIs in Malaysia

Referring to the *Shari'ah* advisors for Islamic financial sector in Malaysia, it is closely related to the regulatory authorities responsible for IFIs respectively. Each of the regulatory bodies has their own *Shari'ah* advisors whom responsible to give advice on matters relating to Islamic financial business respectively as can be seen in the following diagram 3.

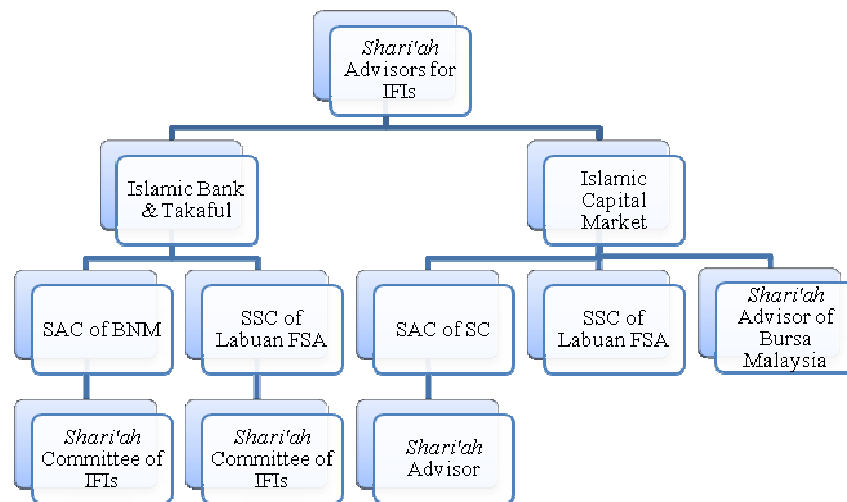


Diagram 3: *Shari'ah* Advisors of IFIs in Malaysia

SAC of BNM is the sole authoritative body to ensure that the Islamic banking and financial business offered by the Islamic banking institutions and *takaful* operators comply with the *Shari'ah* principles. The SAC of BNM is responsible to give advice on matters in relation to Islamic banking and *takaful* businesses or any other Islamic finance area that is supervised and regulated by BNM. Although every Islamic banking institutions and *takaful* operators are responsible to form their own *Shari'ah* committees at institutional levels, the committees are still need to observe the advice from the SAC of BNM pertaining to Islamic financial business. In short, there is a link between *Shari'ah* advisors at institutional level of IFIs and SAC of BNM.

Meanwhile, the SAC of SC is responsible to give advice on matters pertaining to the ICM. SAC of SC was informally established in 1994 and formalized in 1996 (Securities Commission, 2010) to advise the SC on *Shari'ah* matters pertaining to ICM. The SAC members have vast experience in application of *Shari'ah*, particularly in the areas of Islamic economics and finance, and are in a position to present *Shari'ah* opinions (Securities Commission, 2006). SAC presiding as the highest point of reference with respect to all *Shari'ah* matters in the capital market (Securities Commission, 2006). Currently there are 11 members appointed as SAC of SC for the term from 1 July 2010 to 30 June 2012 (Members of the SC's Shariah Advisory Council, 2011). Other than the SAC appointed by SC, as at 30 November 2011, there are 40 individuals and 18 companies registered as *Shari'ah* advisors for ICM (List of Registered Shariah Advisers, 2011).

LFSA also has its own *Shari'ah* Supervisory Council (SSC), which was set-up in 2002 and comprises renowned Malaysian and international Islamic finance scholars. The SSC reviews the compatibility of proposed financial instruments to *Shari'ah* requirements and also advises LFSA on the development of Islamic jurisprudence principles. The members of the SSC are appointed by the Authority. Currently there are 6 advisors appointed by LFSA as a member of SSC (*Shari'ah* Supervisory Council LFSA, 2012).

For Bursa Malaysia, the *Shari'ah* advisor is responsible in providing *Shari'ah* advisory services on matters relating to strategic product development and innovation in the Islamic Capital Market. Apart from that, *Shari'ah* advisor will also be working very closely with the relevant industry players and authorities to position and profile the exchange within the global Islamic Capital Market. Currently, there are three *Shari'ah* advisors is appointed to carry out this duty (*Shari'ah* Committee of Bursa Malaysia, 2013).

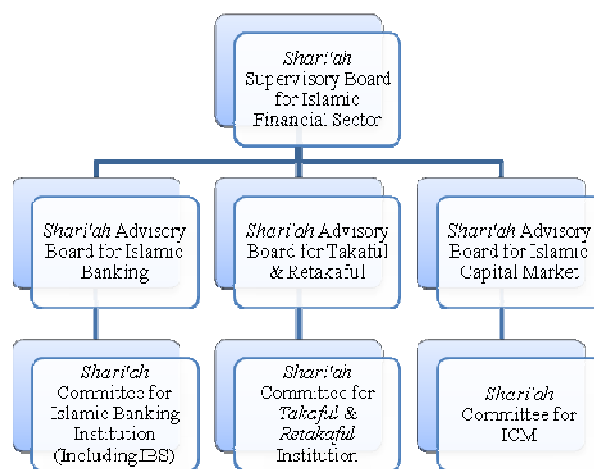
In relation to the structure of the *Shari'ah* advisor for Islamic financial industry in Malaysia, it is observed that the Islamic financial sector that operates in Malaysia is regulated by difference authoritative bodies involving the BNM, SC, LFSA and Bursa Malaysia. In this regard, each of authoritative body has its own *Shari'ah* advisors and has restricted jurisdiction to the industry which they represent only. Ideally, this is a good thing to enable the *Shari'ah* advisors to concentrate and be specialists in the sector respectively.

However, it can also impact the harmonization process in connection with *Shari'ah* matters involving the Islamic financial system. For instance, issues involving differences of opinion in products and services offered by IFIs even involving the same sector. The harmonization process has been undertaken by BNM with the establishment of SAC of BNM in 1994 as the highest authoritative body for Islamic banking and *takaful* industries under the purview of BNM.

This does not happen to the ICM sector which is administered by the SC, LFSA and Bursa Malaysia. This can lead to differences in opinion involving the aspects of *Shari'ah* in the ICM industry. It is better if the government of Malaysia set up the ultimate authoritative body for ICM as was done by BNM in order to strengthen the ICM sector as well as regulating the *Shari'ah* advisors of SC, LFSA and Bursa Malaysia.

In terms of jurisdiction, the *Shari'ah* advisors have a jurisdiction limited to the industry they represent only. For example, the SAC of BNM has broad jurisdiction at the national level, but limited to banking and *takaful* sectors under the supervision of BNM. The same goes to the *Shari'ah* advisors at institutional level where their decision only binds the institution they represent. Meanwhile ICM is regulated by SC, LFSA and Bursa Malaysia and each of these institutions has its own *Shari'ah* advisors and their jurisdiction is limited to the body they represent only.

It is very good as well if the Malaysian government and the Ministry of Finance particularly to establish the ultimate *Shari'ah* authoritative body to patronize Islamic financial sector in this country as in the following diagram:



#### 4. Legislation on *Shari'ah* Advisors in Malaysia

As the Islamic financial system in Malaysia is regulated by the relevant law, the *Shari'ah* advisory aspects are also governed by the law. In ensuring that Islamic banking business and *takaful* business activities are in compliance with *Shari'ah* principles, the legislations governing Islamic banking and *takaful* stipulate the matters related to *Shari'ah* advisors. This is to ensure that *Shari'ah* advisors will be effectively discharging their roles and responsibilities in the matters related to Islamic financial business of IFIs.

##### 4.1. *Shari'ah* Advisors of IFIs under supervision of BNM

For IFIs under the purview of BNM, matters pertaining to the *Shari'ah* advisors have been allocated by the statutes including CBMA, IBA, TA, BAFIA and DFIA. CBMA provides the matters pertaining to SAC which can be referred in Chapter 1 of Part VII. In general, the provisions stipulate the matters related to the establishment of SAC (section 51), the function of SAC (section 52), the appointment of members to SAC (section 53), secretariat to SAC (section 54), the Bank and Islamic financial institutions to consult SAC (section 55), reference to SAC for ruling from court or arbitrator (section 56), the effect of *Shari'ah* rulings (section 57) and SAC ruling prevails (section 58).

According to IBA, section 3(5)(b) requires the articles of the association of the bank to include the provision for the establishment of *Shari'ah* advisory body to advise the bank on the operations of its banking business in order to ensure that they do not involve any element which is not approved by the Religion of Islam. Meanwhile, section 13A stipulates that Islamic bank is required to seek the advice from SAC of BNM pertaining to *Shari'ah* matters related to its banking business and the Islamic bank shall comply with the advice of the SAC.

TA also requires the establishment of a *Shari'ah* advisor by the *takaful* operators as provided under section 8(5)(b) of TA. The *Shari'ah* advisor will serve as a foundation to ensure that the operations of *takaful* business are in compliance with *Shari'ah* principles at all times (Wan Mohd Nzri, 2007). Meanwhile the requirement for *takaful* operators to seek the advice from SAC on *Shari'ah* matters relating to the *takaful* business is compulsory and shall comply with the advice provided in section 53A of TA.

However, there is no provision on the requirement for the establishment of *Shari'ah* advisors for institutions carrying Islamic banking business and Islamic financial business licensed under BAFIA and DFIA. Both Acts only provide the requirement for the institutions to seek the advice from SAC of BNM in order to ensure that the operations of Islamic banking business do not involve any element which is not approved by the Religion of Islam. Regarding to BAFIA, the matters related can be found in section 124(3) and section 129(4) of DFIA.

Other than the statutes, a series of guidelines issued by BNM in regulating IFIs which include the matters related to *Shari'ah* advisors in Malaysia is as follows:

- (a) *Shari'ah* Governance Framework for Islamic Financial Institutions (SGF) (BNM/RH/GL\_012\_3). SGF is the latest Guideline on *Shari'ah* Governance Framework issued by BNM which comes into effect on 1 January 2011. SGF is applicable to an Islamic banks licensed under IBA, *takaful* and *retakaful* operator registered under TA, a financial institutions licensed under BAFIA that participates in IBS and a development financial institution prescribed under DFIA that participates in IBS (Para 3, BNM/RH/GL\_012\_3). SGF provides a comprehensive guidance to the *Shari'ah* Committee in discharging its duties in matters relating to *Shari'ah* (Para 2, BNM/RH/GL\_012\_3). SGF provides in detail on *Shari'ah* advisors including the requirement for the establishment of the *Shari'ah* Committee in IFIs, the accountability and responsibility of *Shari'ah* Committee in the implementation of *Shari'ah* governance framework, the independence of *Shari'ah* Committee in exercising their duties, the competency of *Shari'ah* Committee and also pertaining to the confidentiality and consistency of *Shari'ah* Committee in carrying out their duties and responsibilities.
- (b) Guidelines on Fit and Proper for Key Responsible Persons (BNM/RH/GL 018-3) which set out the requirements on the obligations of financial institutions to assess and determine the fitness and propriety of key responsible persons including *Shari'ah* Committee (Para 4.1, BNM/RH/GL 018-3). The Guidelines set out the three (3) criteria to be assessed as follow (Para 6, BNM/RH/GL 018-3):
  - (i) Probity, personal integrity and reputation - person must have the personal qualities such as honesty, integrity, diligence, independence of mind and fairness.
  - (ii) Competence and capability - person must have the necessary skills, experience, ability and commitment to carry out the role.
  - (iii) Financial integrity - person must manage his debts or financial affairs prudently.
- (c) Guidelines on Introduction of New Products (BNM/RH/GL 008-3) which deal with the role of *Shari'ah* Committee in introducing a new product based on *Shari'ah* principles by financial institutions. In this matter, all product proposals should be endorsed and validated by all members of the *Shari'ah* Committee, including the terms and conditions contained in proposal forms, offer letters, agreements and other legal documents used in the transaction. The same goes to all product manuals, advertisement or marketing materials, product illustrations and brochures used to describe the product shall be endorsed by the *Shari'ah* Committee. Other than that, the Guidelines also stipulate that all *Shari'ah* issues are thoroughly researched prior to the deliberation of the *Shari'ah* Committee (Para 6.12, BNM/RH/GL 008-3).

- (d) Guidelines on Directorship for *Takaful* Operators (BNM/RH/GL/004-1) which deal with the rules relating to the appointment of directors and chief executives as well as sets out the major duties and responsibilities of the board of directors and chief executives of a *takaful* operator. One of the major responsibilities of the board of directors is to form a *Shari'ah* committee and to ensure that the advice of the *Shari'ah* committee on *Shari'ah* matters be complied with in the business operations of the *takaful* operator (Para 4(e), BNM/RH/GL/004-1).
- (e) Guidelines on Introduction of New Products for Insurance Companies and *Takaful* Operators (BNM/RH/GL/010-04) which set out the procedures to be followed by Insurance Companies and *Takaful* Operators in introducing a new product. For *Takaful* products, the *Takaful* Operators should ensure that effective *Shari'ah* compliance review processes are in place during the pre and post-launch stages of a new product offering. In this matter, all product proposals should be endorsed and validated by the SC. Other than that, all *Shari'ah* issues are thoroughly researched prior to the deliberation of the *Shari'ah* Committee (Para 6.12, BNM/RH/GL/010-04).
- (f) Guidelines on Applications for Registration and Operation of *Retakaful* Operator (BNM/RH/GL/004-12) which provide the requirement for the establishment of *Shari'ah* Committee should be included in the memorandum and article of association. The guidelines also provide the matters related to the appointment process of the *Shari'ah* Committee (Para 2.1(b) and Para 3.1.1 (b) of Part IV, BNM/RH/GL/004-12).

#### 4.2. *Shari'ah* Advisor for ICM

According to ICM, as fall under the purview of SC, CMSA and several guidelines have been issued in regulating *Shari'ah* advisors for ICM. The establishment of the SAC of SC, brought about by the Capital Markets and Services (Amendment) Act 2010 (Act A1370) which came into force on 1 April 2010, further provides for a strong and robust framework to the SAC's pivotal role as well as enhancing the SC's regulatory oversight of the Islamic capital market, products and participants. The list of sections which have been inserted in the principle Act including establishment of SAC for ICM (section 316A), functions of SAC (section 316B), appointment of members of SAC (section 316C), secretariat to SAC (section 316D), advice or ruling of SAC (section 316E), reference to SAC for ruling from court or arbitrator (section 316F), effect of Shariah ruling (section 316G) and SAC ruling prevails (section 316H) (Securities Commission, 2010).

Several guidelines have been issued by SC in regulating ICM in Malaysia as follows:

- (a) Guidelines on the Offering of Islamic Securities (26 July 2004).
- (b) Joint Information Note on the Issuance of Foreign Currency-Denominated Bonds and Sukuk in Malaysia (27 March 2007).
- (c) Guidelines for Islamic Real Estate Investment Trusts (21 November 2005).
- (d) Guidelines on Islamic Fund Management (3 December 2007).
- (e) Guidelines and Best Practices on Islamic Venture Capital (May 2008).

In summary, the above Guidelines stipulate the requirement to appoint *Shari'ah* advisors for the respective *Shari'ah* based products and services. The Guidelines also stipulate the requirement of the *Shari'ah* advisors to be appointed either from an individual capacity or corporation. However, it is found that there is no standardization in relation to the experience of the *Shari'ah* advisors. According to Guidelines on the Offering of Islamic Securities (issued on 26 July 2004) requires that an independent *Shari'ah* advisor has a minimum of 3 years experience or exposure in Islamic finance. No such condition is required in Guidelines on Islamic Fund Management (issued on 3 December 2007) and also under Guidelines and Best Practices on Islamic Venture Capital (issued in May 2008).

To further strengthened the *Shari'ah* advisors regulatory framework, the SC has issued a Registration of *Shari'ah* Advisers Guidelines which came into force on 10 August 2009. Based on the Guidelines, the registration process was streamlined so that *Shari'ah* advisor can provide advice on a broad range of *Shari'ah*-based products and services regulated by the SC (Securities Commission, 2010). In addition, the Guidelines clarify the differences in appointment of *Shari'ah* advisors for the *Shari'ah*-based products and services. The Guidelines issued by SC pursuant to section 377 of CMSA 2007 and set out:

- (i) the criteria for the registration and renewal of registration of a *Shari'ah* advisor; and
- (ii) the circumstances under which the SC can deregister a registered *Shari'ah* advisor.

According to the Guidelines, the products and services which require the services of a registered *Shari'ah* advisor including collective investment schemes (Unit trust funds, Real estate investment trust, Exchange-traded funds and Wholesale funds) and other products and services (Islamic securities or sukuk and asset-backed securities, structured products and stockbroking services).

It contains the matters related to *Shari'ah* advisors including the criteria for the registration and renewal of registration from individual applicant, corporation and also foreign *Shari'ah* advisors. Other than that, the Guidelines provide the procedures for registration and renewal of registration and also deregistration of *Shari'ah* advisors.

#### 4.3. *Shari'ah* Advisor for Islamic Financial Business under purview of Labuan FSA

According to Labuan Islamic Financial Services and Securities Act 2010 (Act 705) (LIFSSA), the matters related to *Shari'ah* Supervisory Council (SSC) have been provided in Part II of the Act. The provisions include, the establishment of SSC for LFSA (section 7), functions of SSC (section 8), power to make ruling and give advice (section 9), appointment of members to the SSC (section 10), reference by court or arbitrator in making decision (section 11).

Other than the establishment of SSC, section 130 of Act 705 requires Islamic securities licensees and fund manager to appoint qualified persons to their respective internal *Shari'ah* advisory board. However, for Labuan Islamic trusts, Labuan Islamic foundation, Labuan Islamic limited partnership or Labuan Islamic limited liability partnership are given choices either to appoint a qualified person as a *Shari'ah* advisor or consult a qualified person to advise the *Shari'ah* matters respectively as pursuant to section 131 of the Act.

Directive on Islamic Financial Business in Labuan IOFC has been issued pursuant to section 4(5) of LOFSA Act 1996 by Labuan Offshore Financial Services Authority (LOFSA) dated 1 October 2003, required Offshore Financial Institution (OFI) offering Islamic financial products and services in Labuan IOFC to establish its own *Shari'ah* Supervisory Council (SSC) or engage the services of an existing SSC available in the market, including the SSC of the International Islamic Financial Market (IIFM), to ensure that the products and services offered are *Shari'ah* compliant (Paragraph II(b), Directive on Islamic Financial Business in Labuan IOFC).

## 5. Analysis and Findings

Since the operation of Islamic financial sectors is regulated by different bodies, the laws which regulate the *Shari'ah* advisors are also different. BNM has statutes and guidelines that its jurisdiction is limited to IFIs only under the purview of BNM. The same goes to SC, LFSA and Bursa Malaysia in regulating Islamic financial business in general and ICM particularly. In relation to the regulation on *Shari'ah* advisor, it can be seen that there is no consistency between the provisions of the laws in regulating *Shari'ah* advisor under BNM, SC and LFSA.

In terms of establishment, CBMA, CMSA and LIFSSA provide the requirement for the establishment of SAC of BNM (section 51 of CBMA), SAC of SC (section 316A of CMSA) and SSC of LFSA (section 7 of LIFSSA) as an authoritative body in the ascertainment of Islamic law for the purpose of the business regulated or supervised by the authorities respectively. Similarly, the functions of SAC of BNM, SAC of SC and SSC of LFSA are provided in the Act respectively. However, SAC of BNM has a function at national level in the ascertainment of Islamic law on any financial matters (section 52 of CBMA). In contrast, SAC of SC and SSC of LFSA, the committees have a limited power in ascertain Islamic law only



for the purpose of ICM (section 316B of CMSA) and business regulated or supervised by LFSA (section 8 of LIFSSA).

For the appointment of SAC of BNM and SAC of SC, both Acts stipulate the same requirement for the person to be appointed as a member of the board. However, the difference is the appointment of SSC of LFSA is made by the LFSA (section 10 of LIFSSA). Meanwhile under CBMA and CMSA, the appointment is made by the Yang di-Pertuan Agong (section 53 of CBMA and section 316C of CMSA). Only CBMA and CMSA provide the requirement to form a secretariat to SAC respectively and no such requirement for SSC of LFSA (section 54 of CBMA and section 316D of CMSA).

In relation to consultation on *Shari'ah* matter, CBMA provides that BNM and IFIs shall consult SAC of BNM in relation of Islamic financial business. IFIs also may refer for a ruling and seek for the advice of SAC in conducting Islamic financial business in order to avoid any inconsistency with *Shari'ah* principles (section 55 of CBMA). The same provision is provided for any licensed person, stock exchange, futures exchange, clearing house, central depository, listed corporation or any other person to seek the advice or refer for a ruling from SAC of SC (section 316E of CMSA). The same goes to LIFSSA (section 9(1) and (2) of LIFSSA).

However there is a difference in term of binding on the advice and the ruling issued by SAC of BNM, SAC of SC and SSC of LFSA. For SAC of BNM, the ruling made by the SAC pursuant to a reference made shall be binding on the Islamic financial institutions (section 57 of CBMA). Similarly as provided by CMSA, the ruling issued by SAC of SC shall be binding the licensed person, stock exchange, futures exchange, clearing house, central depository, listed corporation or any other person (section 316G(a) of CMSA). Meanwhile, ruling issued by SSC of LFSA shall be binding the LFSA, such licensed entity, such entity regulated under LIFSSA and also such *Shari'ah*-compliant entity (section 9(3) and (4) of LIFSSA).

Pertaining to the advice given by SAC of BNM, SAC of SC and SSC of LFSA, only LIFSSA states that the LFSA, such licensed entity, such entity regulated under LIFSSA and such *Shari'ah*-compliant entity shall take into consideration such advice given by the SSC (section 9(5) of LIFCASA). However, no such provision found in the CBMA and CMSA.

In the case of reference for a ruling made by court or arbitrator in deciding a dispute on Islamic financial matters, the court or the arbitrator shall take into consideration any published rulings of the SAC or refer such question to the SAC for its ruling. In this matter, the *Shari'ah* ruling issued by SAC shall be binding on the court or arbitrator making a reference (section 56 and 57 of CBMA). The same provision can be found in section 316F and 316G(b) of CMSA and section 11 of LIFSSA. Other than that, CBMA also provide that if the ruling issued by any *Shari'ah* body or committee of IFIs is different from the ruling issued by SAC of BNM, the ruling of SAC shall prevail (section 58 of CBMA). Similarly a ruling given by a registered *Shari'ah* adviser to a person engaging in any Islamic capital market business or transaction is different from the ruling given by the *Shari'ah* Advisory Council, the ruling issued by SAC of SC shall prevail (section 316H of CMSA). However, this matter is not provided by LIFSSA.

## 6. Conclusion

Based on the discussion, it can be concluded that Malaysia has a very good framework in regulating the *Shari'ah* advisors for the IFIs. However, it still needs improvements from time to time. This is consistent with the crucial roles and responsibilities of *Shari'ah* advisors in ensuring compliance with *Shari'ah* principles by the IFIs in offering Islamic financial business.

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