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Duties and Decision-Making Guidelines for *Sharī'ah* Committee: An Overview of BNM

Tugas-Tugas dan Garis Panduan Dalam Membuat Keputusan Bagi Jawatankuasa Syariah: Satu Gambaran Umum BNM

Muhammad Amanullah,* & Muhammad Nabil Fikri bin Mhd Zain**

Abstract

The *Sharī'ah* committee of every Islamic bank or Islamic financial institution (IFS) has some specific duties and guidelines. Bank Nigara Malaysia (BNM) has prescribed these duties and decision-making guidelines in its *Sharī'ah* Governance Framework (SGF). Using analytical and critical methods, this research paper aims to study these duties and decision-making guidelines. The duties of the *Sharī'ah* Committee set by BNM include the basic principle of advising, endorsing, supervising, assisting, consulting and reporting on *Sharī'ah* matters. Besides that, the decision-making guidelines for *Sharī'ah* Committee by BNM are well-structured and practical. This study contributes to the related literature by showing that the country's support to the Islamic finance sector, through BNM's guidelines, may help the development of IFIs. The results drawn from this study may help policymakers to develop better duties and decision-making guidelines for *Sharī'ah* Committees. This study is limited to the SGF issued by BNM in 2010 only.

Keywords: *Sharī'ah* Committee, Duties, Decision-making, Guidelines.

Abstrak

Jawatankuasa Syariah bagi setiap bank Islam atau institusi kewangan Islam (IFIs) mempunyai beberapa tugas tertentu. Begitu juga, jawatankuasa ini perlu mengikuti beberapa garis panduan dalam membuat keputusannya. Bank Negara Malaysia (BNM) telah menetapkan tugas-tugas ini dan juga garis panduan membuat keputusan dalam Syariah Governance Framework (SGF). Dengan menggunakan kaedah analitikal

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dan kritikal, penyelidikan ini bertujuan mengkaji tugas-tugas serta garis panduan membuat keputusan tersebut. Tugas-tugas jawatankuasa Syariah yang ditetapkan oleh BNM merangkumi prinsip asas dalam menasihati, menyokong, menyelia, membantu, berunding dan melaporkan berkenaan isu-isu Syariah. Di samping itu, garis panduan membuat keputusan ke atas jawatankuasa Syariah yang ditetapkan oleh BNM adalah amat berstruktur dan praktikal. Kajian ini menunjukkan bahawa sokongan yang diberikan oleh negara terhadap sektor kewangan Islam melalui garis panduan ini boleh membantu kepesatan IFIs dalam negara Malaysia. Keputusan yang diperoleh daripada kajian ini dapat membantu penggubal dasar untuk membangun dengan lebih baik tugas-tugas serta garis panduan membuat keputusan untuk Jawatankuasa Syariah. Kajian ini terhad kepada SGF yang dikeluarkan oleh BNM pada tahun 2010 sahaja.

Kata Kunci: Jawatankuasa Syariah, Tugas-Tugas, Membuat Keputusan, Garis Panduan.

Introduction

Malaysia is a Muslim-majority country with 61.3% of the population being Muslim according to statistics issued by the Department of Statistics Malaysia (DOSM, 2011).¹ The Islamic finance sector in Malaysia is regulated by the Central Bank of Malaysia (BNM) which has worked closely with the *Sharī'ah* Advisory Council (SAC) in preparing robust standards and operational requirements since 2013. These standards aim to create consistent governance in the enforcement of the *Sharī'ah* in Islamic Financial Institutions (IFIs). In 2010, BNM issued a set of guidelines named the *Sharī'ah* Governance Framework (SGF) which also includes the *Sharī'ah* Committee's duties and decision-making processes (BNM, 2017).

There is a comparative study by Nawal Kasim, Nuhtay, and Syed Ahmad Salman (2013)² which discussed and compared the *Sharī'ah* governance guidelines between the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), the Islamic Financial Services Board (IFSB) and BNM. The result of this comparative study showed that all of the bodies touched upon the *Sharī'ah* Committee responsibilities which BNM has emphasised on: the independence of the

¹DOSM (2011, August 5). Population Distribution and Basic Demographic Characteristic Report 2010 (Updated: 05/08/2011). Retrieved July 15, 2018, from https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=117&bul_id=MDMxdHZjWtk1SjFzTzNkRXYzcVZjdz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09.

²Nawal Kasim, Nuhtay, S. N., & Salman, S. A., "Comparative Analysis on AAOIFI, IFSB and BNM Shari'ah Governance Guidelines," *International Journal of Business and Social Science*, (4 (Special), 2013, pp.220-227).

Shari'ah Committee, *Shari'ah* compliance, research function, *Shari'ah* audit, and also *Shari'ah* risk management.

However, this study is a general comparison of the governance guidelines by the three bodies; it did not touch on the duties and decision-making process guidelines in detail. There is also not a single study, from the researcher's knowledge, which focuses on the duties and the decision-making process guidelines issued explicitly by BNM. Therefore, the current study aims to examine this topic from BNM's SGF with a thorough analysis.

1. The Chronological Development of BNM

Malaysia originates from the root of the Malay Kingdoms that existed in its territory.³ It became a colony of the British Government since the 18th century. Malaysia achieved its independence in 1957.⁴ Malaya's (name of old Malaysia) economic system before Western intervention was a system of subsistence economy with its focus on agriculture, mining and trading.⁵ Today, Malaysia is a developing nation and an emerging economy as classified by the World Bank with a Gross Domestic Product per capita of \$9,766 and a Human Development Index of 0.78.⁶

Two years after the successful independence of Malaysia as a sovereign state, the Central Bank was founded in January 1959. The Central Bank of Malaysia is known as Bank Negara Malaysia (BNM). The establishment was based on the Central Bank of Malaya Act 1958 (CBA 1958) which was subsequently replaced by the Central Bank of Malaysia Act 2009 (CBA 2009) which came into effect on November 25, 2009. BNM acts as a financial advisor and banker to the government.⁷ It is Malaysia's government-owned statutory body,⁸ which is headed by a gover-

³ Anthony Milner, *The Malays* (West Sussex: John Wiley & Sons, 2008), 47-74.

⁴ Barbara Watson Andaya & Leonard Y Andaya, "Negotiating a New Nation," in *A History of Malaysia*, pp. 260-302 (London: Palgrave Macmillan, 2017) 279-281.

⁵ John H. Drabble, "The Premodern Economy," in *An Economic History of Malaysia, c. 1800-1990*, pp. 27-48 (London: Palgrave Macmillan, 2000), 11-19.

⁶ Investopedia, "Top 25 Developed and Developing Countries," Investopedia, December 18, 2017, accessed February 19, 2018, <https://www.investopedia.com/updates/top-developing-countries/>.

⁷ Kevin Yeoh, About us - Bank Negara Malaysia Museum and Art Gallery, accessed February 19, 2018, <http://www.museumbnm.gov.my/about/>.

⁸ About the Bank | Bank Negara Malaysia | Central Bank of Malaysia, accessed February 20, 2018, http://www.bnm.gov.my/index.php?ch=en_about&pg=en_intro&lang=en.

nor who is appointed by the Yang di-Pertuan Agong as set out in Section 15 (1) of the CBA 2009.⁹

The philosophy of BNM's establishment is to generate a stable and sustainable monetary and financial system which leads to the sustainable development of the Malaysian economy as set out in the CBA 2009, Section 5(1).¹⁰ (Malaysia, 2009a). This monetary policy is obliged to exist in an environment free from external influence. BNM has the autonomy to design and implement that monetary policy. Freedom of development in BNM, especially those involving instruments, is necessary even though the government determines the economic system in Malaysia as stated in Section 22(1) in CBA 2009.¹¹

To understand BNM's function properly, an understanding of Malaysia's economy regulatory system should be known first. Malaysia has two major regulatory bodies for the economic system namely BNM and the Malaysian Securities Commission (SC). BNM focuses more on the financial sector involving banks, investment funds, insurance companies as well as real estates. Islamic financial systems involving Islamic banks, *takāfuls* etc. are also under the supervision of the BNM. Meanwhile, the SC regulates either the primary or secondary capital market including bond and trade.¹²

Since its inception, BNM as the country's economic regulator has been facing the turmoil of the country's economic growth. Among the challenges that the institution faced is the Asian financial crisis in 1998. The ringgit's pegging with the US Dollar had brought Malaysia into a corner with the lowest cost of any country in the world. BNM also faced the global financial crisis from 2007 to 2009. This time BNM adopted a monetary expansion method that maintained the sustainability of the Malaysian economy at a reasonable level.¹³

When the BNM's seventh governor took over, it became known as a central bank with a good record under the leadership of Tan Sri Dato

⁹*Law of Malaysia: Central Bank of Malaysia Act 2009: (act 701)* (Kuala Lumpur: Per-cetakan Nasional Malaysia Berhad, 2009).

¹⁰Ibid, section 5 (1).

¹¹Ibid, section 22 (2).

¹² Michael Meow-Chung & Kwek Kian Teng, "Monetary policy and financial sector development," in *Malaysia's Development Challenges: Graduating from the Middle*, ed. Hal Hill, Tham Siew Yean & Ragayah Haji Mat Zain (New York: Routledge, 2012), 120.

¹³Prema-Chandra Athukorala, "The Malaysian economy during three crises," *ibid*, 101.

'Dr. Zeti Akhtar Aziz, coincidentally during a time of economic crisis. Joseph Stiglitz, a US-awarded Nobel laureate, calls the BNM as a “prime example of an excellent institution and one where the whole world can learn a lot.”¹⁴

After the establishment of Bank Islam Malaysia in 1983 followed by Bank Muamalat Malaysia Berhad in 1999, Malaysia aggressively supported the development of Islamic finance in the region. In the following year, the phenomenon of the Islamic window bank to conventional banks spurred its advancement in Malaysia. BNM is one of the major players in this development. The progress is evident when Malaysia became the first country in the world to practice the concept of dual-regulatory frameworks i.e., both the Islamic financial system along with the conventional system ran under the umbrella of BNM.¹⁵

During the same year of Bank Islam Malaysia's establishment, the Islamic Banking Act (IBA) was set by Malaysia's Parliament on an underlying legal basis that gave BNM the power to control the Islamic banks. This Act came into force on 7th April 1983. This Act stipulates that the Central Bank or the Minister shall not approve the license for the opening of an Islamic bank until both of them are satisfied that the basis of the establishment of the bank does not involve any transaction which does not comply with the *Sharī'ah* principles.¹⁶ Also, the establishment of Islamic banks needs to be made with the establishing of *Sharī'ah* Committees of the banks to ensure that its activities are *Sharī'ah*-compliant.¹⁷

Hence, on May 1, 1997, BNM established the National *Sharī'ah* Advisory Council (SAC) which became the highest authority for the Islamic Bank and *takāful*. The SAC is not just about managing Islamic banks and *takāful* institutions, but all things related to Islamic finance are under it. This organisation will give a final word for any inconsistency issue in the Islamic banking industry or *takāful* institutions. More inter-

¹⁴“Lifetime achievement award: Zeti Akhtar Aziz,” Central Banking, May 18, 2017, accessed February 20, 2018, <https://www.centralbanking.com/awards/2440199/lifetime-achievement-award-zeti-akhtar-aziz>.

¹⁵Michael Meow-Chung & Kwek Kian Teng, “Monetary policy...,” 123-128.

¹⁶*Law of Malaysia: Islamic Banking Act 1983: (act 276)*, (Kuala Lumpur: Percetakan Nasional Malaysia Berhad, 2009), PART II and PART VI.

¹⁷Bank Negara Malaysia, *Shariah governance framework for Islamic financial institutions* (Kuala Lumpur: Bank Negara Malaysia, 2010), 6.

estingly, the court and the arbitrator should refer to this body in a conflict involving Islamic finance, and the resolution is binding.¹⁸

In August 2006, the Malaysian government set up the Malaysian Islamic Finance Center (MIFC). This body is a network that brings together players in the Islamic economic sectors such as BNM, SC, Labuan Financial Services Authority, Bursa Malaysia, Government Ministries and agencies, players of Islamic banking, *takāful* and *re-takāful*, Islamic capital market industry, and human capital development. It also includes professionals from law firms and *Sharī'ah* consultants. The opening of MIFC is to foster the collaboration with global industry players to mutually benefit in the Islamic economic market.¹⁹

The establishment of the MIFC led to the formation of Bursa *Sūq Al-Sila'* (BSAS) in August 2009. BSAS is a trading commodity platform that explicitly manages the administration and the liquidity of Islamic financing. The principal commodity traded is palm oil which is the underlying asset of Islamic financing products to Islamic banking. BSAS is the first such innovation to make Malaysia a global hub of Islamic investment.²⁰

Thus, BNM's development, with its clear vision as an industry player along with its intellectuals, makes Malaysia a very conducive country for the progress of the Islamic financial industry. Assuredly, the role of the *Sharī'ah* Committee is the central impetus of this change.

2. The Structure of BNM

BNM is the Central Bank of Malaysia. It is a statutory body under the Malaysian constitution. According to the Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240], the Federal Statutory Bodies (FSB) are corporate organisations which are incorporated under the provisions of the Federal Law. They are public or authority agencies of the

¹⁸Shariah Advisory Council | Bank Negara Malaysia | Central Bank of Malaysia, accessed February 20, 2018,

http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=439&lang=en.

¹⁹"About Us," Malaysia International Islamic Financial Centre (MIFC), accessed February 20, 2018,

http://www.mifc.com/index.php?ch=ch_header_contact_us&pg=pg_header_aboutus.

²⁰"Bursa Malaysia," Bursa Suq Al-Sila' (BSAS) | Bursa Malaysia Market, accessed February 20, 2018, <http://www.bursamalaysia.com/market/islamic-markets/products/bursa-suq-al-sila-bsas/>.

Malaysian government but do not include local authorities and bodies incorporated under the Companies Act 1965.²¹

Like a company, FSB is a separate entity that has general administrative power, and may sue and succumb to its name, may enter into contracts and may own, purchase, acquire, hold, and enjoy various types of movable and immovable properties. As a FSB, BNM has a mission to create a stable situation in the country's monetary and financial system as well as promoting a robust and progressive financial sector growth to achieve sustainable economic growth in Malaysia.²²

Within the structure of BNM, its governor is the highest position who can only be appointed by the Yang di-Pertuan Agong (YDPA) (the head of the State of Malaysia) under 'Section 15 (1)' of the Central Bank of Malaysia Act 2009 (CBA 2009). Since its establishment, there were already nine governors who alternated in office including the current governor, Datuk Nor Shamsiah binti Mohd Yunus who started her work since July 2018 as a replacement of Tan Sri Muhammad bin Ibrahim.²³ Nor Shamsiah, worked as Deputy Governor before, and experienced 30 years working in the Central bank before she left on Nov 2016.²⁴

Under the Governor, there are two Deputy Governors, namely Shaik Abdul Rasheed Abdul Ghaffour and Jessica Chew Cheng Lian. The governor is also assisted by eight assistant governors who lead the entire seven divisions. Islamic Banking and *Takāful* Department is located under one of the divisions.²⁵

Besides the whole structure, BNM has a Board of Directors and a *Shari'ah* Advisory Council (SAC), each with own jurisdiction. The Board of Directors of BNM has a total of eleven members including the Governor and two Deputy Governors. The Board must meet at least once

²¹ *Law of Malaysia: Statutory Bodies (Accounts and Annual Reports) Act 1980: (act 240)* (Kuala Lumpur: Percetakan Nasional Malaysia Berhad, 2011), Section 2.

²² Mission Statement | Bank Negara Malaysia | Central Bank of Malaysia, accessed February 20, 2018,

http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=20&lang=en.

²³ Governors | Bank Negara Malaysia | Central Bank of Malaysia, accessed February 20, 2018,

http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=22&lang=en.

²⁴ The Star Online, "Nor Shamsiah Appointed Bank Negara Governor for Five-year Term," Nation | The Star Online, June 22, 2018, accessed August 09, 2018, <https://www.thestar.com.my/news/nation/2018/06/22/nor-shamsiah-appointed-bnm-governor-for-five-year-term/>.

²⁵ Bank Negara Malaysia, *Organisation Structure* (Kuala Lumpur: Bank Negara Malaysia, 2018).

a month. The Board also monitors that BNM should run in line with the mandate given to the agency. All members are appointed by YDPA except two Deputy Governors who are appointed by the Minister of Finance.²⁶

The SAC, as previously stated, is the highest governing body of Islamic Finance in Malaysia. The SAC is the determinant of Islamic law concerning all IFIs. All Islamic banks and *takāfuls*' products need to be verified by this body first. They also act as advisers to BNM in connection with *Sharī'ah* matters. In the event of a contradiction between the *Sharī'ah* Committee rulings in Malaysia, the SAC's judgment overrides them. It also will be counted as valid referred settlements in the court references in cases involving Islamic finance.

The SAC members are comprised of '*ulamā*', law practitioners and industry players who have vast experience in their respective fields, especially in Islamic finance. From 2016 until now there are ten SAC members led by Datuk Dr Mohd Daud Bakar. The other nine are Tan Sri Sheikh Ghazali Abdul Rahman, Prof. Dr Muhammad Akram Laldin, Prof. Dr Engku Rabiah Adawiah Engku Ali, Prof. Dr Ashraf Bin Md. Hashim, Assoc Prof. Dr Asmadi Mohamed Naim, Dr Shamsiah Mohamad, En. Burhanuddin Lukman, Datuk Dr Zulkifli Mohamad al-Bakri, and Dato 'Abdul Aziz Rahim. Most of them are *Sharī'ah* graduates, and some of them are professionals in law.²⁷

Section 53 (1) of the Central Bank of Malaysia Act 2009 clarifies the SAC members' appointment and the qualifications as below:

The YDPA may, on the advice of the Minister after consultation with the Bank appoint persons who are qualified or have knowledge or experience in *Sharī'ah* and banking, finance, law or such other related disciplines as members of the SAC.²⁸

Furthermore, the Section 53 (2) enables the appointment of Judges of the High Court, Court of Appeal, Federal Court or *Sharī'ah* Appeal Court as the SAC's members after the Chief Justice or the Chief

²⁶Board of Directors | Bank Negara Malaysia | Central Bank of Malaysia, accessed February 21, 2018,

http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=23&lang=en.

²⁷Shariah Advisory Council | Bank Negara Malaysia | Central Bank of Malaysia, accessed February 21, 2018,

http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=439&lang=en.

²⁸*Law of Malaysia: Central Bank of Malaysia Act 2009: (act 701)* (Kuala Lumpur: Percetakan Nasional Malaysia Berhad, 2009).

of the *Sharī'ah* Court respectively consented.²⁹ Establishment of a secretariat and such other committees as they are considered necessary to assist the *Sharī'ah* Advisory Council in carrying out its functions is mentioned in the Section 54 (b), which sets out that the appointment of officers of the Bank or other people as a member of the secretariat or such other committees can be appointed by the SAC.³⁰

From this structure of BNM, it is clear that the SAC, a monitoring body related to Islamic finance in Malaysia, was born from its own Central Bank. Malaysia adopts dual-regulatory systems, i.e. the Islamic system and the conventional system under one shade. To date, there are sixteen full-fledged and window Islamic banks, twelve *takāful* companies and one re-*takāful* company in Malaysia.³¹

3. Duties of *Sharī'ah* Committee According to BNM

Guidance on the duties of a *Sharī'ah* Committee has been issued by BNM since 2004 which came into force on 1st September 2005. This guide is named as the Guidelines of Governance of *Sharī'ah* Committee for the Islamic Financial Institution. It provides guidance on the *Sharī'ah* Committee from eligibility to dismissal.³² However, this guide has been superseded by a set of other guidelines called the *Sharī'ah* Governance Framework (SGF) which came into effect on January 1, 2011. The framework was issued by BNM as regulatory guidelines for all IFIs in Malaysia.³³

When SGF is compared to 2005's guidelines, the SGF is broader because it aims to become a framework for governance of the whole *Sharī'ah* system within an IFI. The development of guidelines is due to the growing *Sharī'ah* structure in every institution that sees the birth of industry players who support the *Sharī'ah* Committee in carrying out their tasks more efficiently.³⁴ Characters like members of the *Sharī'ah*

²⁹Ibid.

³⁰Ibid.

³¹"List of Licensed Financial Institutions in Malaysia | Bank Negara Malaysia | Central Bank of Malaysia," Publications | Bank Negara Malaysia | Central Bank of Malaysia, , accessed August 09, 2018,

<http://www.bnm.gov.my/index.php?ch=li&cat=islamic&type=IB&fund=0&cu=0>.

³²Bank Negara Malaysia, *Guidelines on the Governance of Shariah Committee for the Islamic Financial Institutions* (Kuala Lumpur: Bank Negara Malaysia, 2005), 1.

³³Bank Negara Malaysia, *Shariah Governance Framework for Islamic Financial Institutions* (Kuala Lumpur: Bank Negara Malaysia, 2010), 1.

³⁴Ibid.

review, *Sharī'ah* audit, *Sharī'ah* research and *Sharī'ah* Risk Management are not inscribed in the old guidelines.

Besides, both guides touch on the task of a *Sharī'ah* Committee. The principal role of the *Sharī'ah* Committee listed by the guidelines in 2005 comprises of seven points,³⁵ but there was a slight increase in SGF which has eight points.³⁶ The added point is about the responsibility and accountability of a *Sharī'ah* Committee member on all *Sharī'ah*-related opinions, resolutions and views issued by them.³⁷ The researcher observes that the addition of this point is aimed at giving more focus on what the *Sharī'ah* Committee already knows about responsibility and accountability in carrying out their tasks. Hence, they will be more careful and professional in the fulfilment of their obligations.

Furthermore, a significant task of the *Sharī'ah* Committee listed in 2005's guidelines, "To assist the SAC on reference for advice,"³⁸ was rephrased to: "Advice on matters to be referred to the SAC."³⁹ According to the elaboration of the BNM on 2005's guidelines, the task "to assist the SAC on reference for advice" means that the *Sharī'ah* Committee explains the *Sharī'ah* issue involved in a dispute and recommends its opinion to the SAC. However, the 2005's guidelines are silent about who should refer a *Sharī'ah* issue involved in a dispute to the SAC, whether the *Sharī'ah* Committee or the management of the IFI. Therefore, in SGF, BNM clarifies the duty that, *Sharī'ah* Committee needs to advise the IFI management on matters that could not be resolved by them; or matters of judgements by *Sharī'ah* Committee that the IFI intends not to accept, to be referred to the SAC. This reference to the SAC shall be done by IFI management, not by the *Sharī'ah* Committee. The difference between the 2005 guidelines and SGF in this point of duty is that SGF mentions that the IFI (not the *Sharī'ah* Committee) needs to refer the *Sharī'ah* issue or judgement of the *Sharī'ah* Committee on an issue to the SAC itself, if it tends not to accept it; while 2005's guidelines keep silent on who should refer to the SAC.

Other six points are equally reflected in the 2005's guidelines and SGF 2010 except one point in SGF, i.e. 'Responsibility and accountability' is not mentioned in 2005's guidelines. The total number of *Sharī'ah* Committee's duties in SGF is eight points while in 2005's guidelines

³⁵Bank Negara Malaysia, *Guidelines on the Governance of Shariah Committee...*, 6-9.

³⁶Bank Negara Malaysia, *Shariah Governance Framework*, 34-35.

³⁷*Ibid.*, 34.

³⁸Bank Negara Malaysia, *Guidelines on the Governance of Shariah Committee...*, 8.

³⁹Bank Negara Malaysia, *Shariah Governance Framework*, 37.

there are only 7. There are differences in the processing of language. A neater and compact texture structure is found in SGF 2010 than in the 2005's guidelines. On the other hand, SGF used 'primary duties' term of the *Sharī'ah* Committee, which can be interpreted that there are secondary duties that are not written in the paper, indicating that the *Sharī'ah* Committee's duties are unrestricted with the list only.⁴⁰

The first significant task of the *Sharī'ah* Committee as outlined by BNM in SGF 2010, is responsibility and accountability.⁴¹ Responsibility in Oxford's dictionary⁴² can be interpreted in three terms; the first is the "state or fact of having a duty to deal with something or having control over someone." Second is "the state or fact of being accountable or to blame for something." The last definition is "the opportunity or ability to act independently and take decisions without authorisation." Hence a responsible *Sharī'ah* Committee member is the one who knows his duties and his subordinates, the one who can be blamed for his negligence in the work and independence in making decisions without being influenced by individuals or organisations. Accountability is synonymous with responsibility which affirms the importance of this duty to a *Sharī'ah* Committee.⁴³

Secondly, the *Sharī'ah* Committee shall advise the Board of IFI as well as any division of the IFI on *Sharī'ah* matters. As the highest authority of its jurisdiction in the *Sharī'ah* section, a *Sharī'ah* Committee is expected to provide input and exposure to all the institutions it holds, about *Sharī'ah* matters. The advice will also ensure that all institutions' activities comply with the *Sharī'ah* principles.⁴⁴

Thirdly, all *Sharī'ah* procedures and policies prepared by the IFI must first be endorsed by the *Sharī'ah* Committee so that the policies strictly follow *Sharī'ah* principles and avoid misunderstandings of IFI's management on *Sharī'ah* principles. Fourth, not just *Sharī'ah*-related strategies and procedures require the approval of the *Sharī'ah* Committee, but any other document that is perceived to be relevant should also

⁴⁰Ibid., 34.

⁴¹Ibid.

⁴²"Responsibility | Definition of responsibility in US English by Oxford Dictionaries," Oxford Dictionaries | English, accessed February 22, 2018, <https://en.oxforddictionaries.com/definition/us/responsibility>.

⁴³"Accountability | Definition of accountability in US English by Oxford Dictionaries," Oxford Dictionaries | English, accessed February 22, 2018, <https://en.oxforddictionaries.com/definition/us/accountability>.

⁴⁴Bank Negara Malaysia, *Shariah Governance Framework*, 34.

comply with *Sharī'ah* aspects. Among the relevant documents are the terms and conditions contained in contracts, forms, agreements and other legal documentations involving transactions. Similarly, the approval is also applicable to manual products, marketing advertisements, sales' illustrations and brochures that contain the description of a product.⁴⁵

Fifthly, the *Sharī'ah* Committee has to examine and assess the works carried out by the *Sharī'ah* Review team and the *Sharī'ah* Audit team.⁴⁶ This role is significant as it involves double checking work from the *Sharī'ah* Committee towards the *Sharī'ah* officers' task, whether the task is implemented rightly, without being negligent or having any misunderstandings between the *Sharī'ah* Committee and the *Sharī'ah* officer, or not. The task is involved with the implementation of *Sharī'ah* Committee judgements and the launching of new products.

Sixth, the *Sharī'ah* Committee also needs to assist and cooperate with parties related to the IFI such as the Legal Council, auditors and consultants.⁴⁷ Such parties may seek direct advice and explanation from the *Sharī'ah* Committee without an intermediary.

Seventh, when the *Sharī'ah* Committee is unable to resolve an issue, the issue should be referred to the *Sharī'ah* Advisory Council (SAC), BNM. The *Sharī'ah* Committee may advise the IFI to do so and provide written opinions, if the IFI wants to seek more explanations from the SAC or when it seeks new product approval. This practice is based on 'Guidelines on Introduction of New Products for banking institutions' and 'Guidelines on Introduction of New Products for Insurance Companies and *Takāful* Operators,' issued by BNM.⁴⁸

4. Decision-Making Guidelines for *Sharī'ah* Committee Issued by BNM

The decision-making process is a vital process in organisational life. Some leaders are comfortable with the one-person show and decision-making without opinion surveys. Some of them are different when they follow the majority decision.

BNM describes decision-making guidelines of the SGF 2010 in 'Appendix 5, Operation Procedures for the *Sharī'ah* Committee'. This appendix is new which did not exist in the 'Guidelines on the governance

⁴⁵Ibid.

⁴⁶Ibid., 35.

⁴⁷Ibid.

⁴⁸Ibid.

of *Sharī'ah* Committee for the IFI' before. The SGF states that: "Decisions shall be made on the basis of two-thirds of the members present, with the majority of the two-third votes shall be members with *Sharī'ah* background."⁴⁹

In the same framework, it is stated that:

The number of *Sharī'ah* Committee members to be appointed must not be less than five (5), the majority of whom must possess strong knowledge in *Sharī'ah* and backed by the appropriate qualifications in that area.⁵⁰

Hence, if the minimum number of *Sharī'ah* committee members are five persons, three of them are required to have strong knowledge of *Sharī'ah*.

Furthermore, if the same five members of *Sharī'ah* Committee need to make a decision by choosing an option out of two or more options for a *Sharī'ah* issue, then the option opted should be the one that got three votes from the members of the meeting (majority). In addition, to be a valid decision, three members from the majority must comprise of two *Sharī'ah* background members as mentioned by BNM: "with the majority of two-third votes shall be members with *Sharī'ah* background". This procedure shows that the role of *Sharī'ah* background members in *Sharī'ah* Committee is significant in achieving a *Sharī'ah* resolution.

Also, out of the entire *Sharī'ah* Committee, a qualified member with *Sharī'ah* background should be appointed as its chairman. If the chairman is unable to attend the meeting, the committee members should choose one with adequate *Sharī'ah* background to be an alternate chairman. The chairman should play an essential role in managing meetings and handling of votes.⁵¹

A meeting should also meet the quorum. The minimum quorum prescribed is two-thirds of the attendees. The majority of the members attended shall come from the members with *Sharī'ah* background.⁵² If the number of the committee members is 12, then the minimum eight must be present, and it is necessary that at least five of 8 members be with *Sharī'ah*-background.

Sharī'ah Committee meeting shall be regularly conducted, at least once within two months. Regular meetings are required to enable

⁴⁹Ibid., 36.

⁵⁰Ibid., 10.

⁵¹Ibid., 37.

⁵²Ibid., 36.

the *Sharī'ah* Committee to always connect with the IFI's management and not to complicate the process of approval of a new product or the design. The regular meetings also prevent any long-time issues, resolving being late because of long intervals between the meetings.⁵³

Also, the *Sharī'ah* Committee members are expected to attend at least 75% of the total *Sharī'ah* meetings annually. This policy means that if the minimum meeting is held once during two months, the *Sharī'ah* Committee members must attend at least four from 6 meetings. The commitment and time allocated by the *Sharī'ah* Committee members toward their duties in IFI to some extent are judged based on their attendance of the *Sharī'ah* meetings. In conjunction with it, the overall meetings' attendances for each member of the *Sharī'ah* Committee will be disclosed at the Annual General Meeting of the IFI annually.⁵⁴

Additionally, there is flexibility in the method of *Sharī'ah* Committee's attendance. The attendance is not just limited to the traditional form of physical attendance but also it is allowed via a video or telephone conference.⁵⁵ This flexibility minimises the possibility of absence of *Sharī'ah* Committee members due to technical factors such as the residences of the members being faraway from the meeting place. After the meeting, the *Sharī'ah* Committee will need to provide reports or statements to the Board, which involve non-*Sharī'ah* issues.⁵⁶

Below is an example of *Sharī'ah* Committee Reporting:⁵⁷

“Sharī'ah Committee's Report

In the name of Allah, the Beneficent, the Merciful

In compliance with the letter of appointment, we are required to submit the following report:

We have reviewed the principles and the contracts relating to the transactions and applications introduced by the ABC Islamic Financial Institution during the period ended XX/XX/XXXX. We have also conducted our review to form an opinion as to whether the ABC Islamic Financial Institution has complied with the *Sharī'ah* principles and with the *Sharī'ah* rulings issued by the *Sharī'ah* Advisory Council of Bank Negara Malaysia, as well as *Sharī'ah* decisions made by us.

⁵³Ibid.

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶Ibid., 37.

⁵⁷Ibid., 33.

The management of ABC Islamic Financial Institution is responsible for ensuring that the financial institution conducts its business in accordance with *Sharī'ah* principles. It is our responsibility to form an independent opinion, based on our review of the operations of the ABC Islamic Financial Institution, and to report to you.

We have assessed the work carried out by *Sharī'ah* review and *Sharī'ah* audit which included examining, on a test basis, each type of transaction, the relevant documentation and procedures adopted by the ABC Islamic Financial Institution.

We planned and performed our review so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the ABC Islamic Financial Institution has not violated the *Sharī'ah* principles.

In our opinion:

1. the contracts, transactions and dealings entered into by the ABC Islamic Financial Institution during the year ended XX/XX/XXXX that we have reviewed are in compliance with the *Sharī'ah* principles;
2. the allocation of profit and charging of losses relating to investment accounts conform to the basis that had been approved by us in accordance with *Sharī'ah* principles;

(where appropriate, the opinion paragraph shall also include the following matters:)

3. all earnings that have been realised from sources or by means prohibited by the *Sharī'ah* principles have been considered for disposal to charitable causes; and
4. the calculation of zakat is in compliance with *Sharī'ah* principles.

We, the members of the *Sharī'ah* Committee of ABC Islamic Financial Institution, do hereby confirm that the operations of the ABC Islamic Financial Institution for the year ended XX/XX/XXXX have been conducted in conformity with the *Sharī'ah* principles.

Chairman of the *Sharī'ah* Committee:

(Name:)

Sharī'ah Committee :

 (Name:)”

It can be said that the decision-making guidelines from BNM provide a comprehensive guide to preparation, procedure and reporting on the technicalities of a decision-making process. Some flexibilities offered, such as the teleconference method, makes a meeting easier to take

place. However, SGF does not address the method of *ijtihād* when dealing with numerous sources of *ḥukm* and on *tarjīh* (preferences on the stronger opinion between two or more opinions) methodology. Therefore, decision-making of the *Sharī'ah* Committee in issues involving this type of *ijtihād* and *tarjīh* is up to the wisdom and knowledge of *Sharī'ah* Committee members themselves.

Conclusion

The development of Islamic Finance in Malaysia is in line with the development of BNM itself. Welcoming responses from industry players in Malaysia also contributed a lot. These situations are among the factors that made Malaysia the first country to adopt dual-system regulations. Furthermore, there is a mutual arrangement between Malaysia's government, the lawyers, BNM, the bankers and other Islamic finance industry players in achieving the vision of empowering the Islamic finance sector in the country. Among the fruitful achievements are enactment of the Islamic Financial Act, and the reference of the SAC judgements as the final say in court cases involving Islamic finance issues.

The SAC under the BNM is among the essential councils related to Islamic Finance in Malaysia. The establishment of this council is within the concept of *al-siyāsah al-shar'īyyah* in controlling all IFIs by the Malaysian government, not to mention BNM itself is a statutory body under the government. Additionally, BNM's recognition of the SAC in the authorised jurisdiction of the Islamic finance sector, shows significant respect to the professionals in the *Sharī'ah* field.

The duties of the *Sharī'ah* Committee set by BNM include the basic principles of advising, endorsing, supervising, assisting, consulting and reporting. All of these duties are not solely the *Sharī'ah* Committee's responsibilities, but, some of them like assisting and reporting are collective duties that should be shared by the other *Sharī'ah* officers within the institution. Duties that should only be dedicated to the *Sharī'ah* Committee are decision-making, supervising, endorsing and consulting only.

Last but not least, the decision-making guidelines for the *Sharī'ah* Committee on *Sharī'ah* matters issued by BNM are structured, specific and is practical. However, the guidelines do not touch the *Sharī'ah* perspective on the methods of *ijtihād* or *tarjīh*. This situation will bring too broad unsimilarity of judgements by the different *Sharī'ah* Committees from the different IFIs. To some degree, it may produce a weak decision based on weak evidence. Therefore, the BNM is requested to address the methods of *ijtihād* and *tarjīh* in its guidelines.

BIBLIOGRAPHY

Andaya, B. W., & Andaya, L. Y. (2017). Negotiating a New Nation, 1942–69. A History of Malaysia, 260-306. doi:10.1057/978-1-137-60515-3_8.

Athukorala, P. (2012). The Malaysian economy During Three Crises. In Malaysia's Development Challenges: Graduating from the Middle. New York: Routledge.

BNM. (2005). Guidelines on the Governance of *Sharī'ah* Committee for the Islamic Financial Institutions. Kuala Lumpur: Bank Negara Malaysia.

BNM. (2009). *Sharī'ah* Governance Framework for Islamic Financial Institutions. *Bnm*. <https://doi.org/10.1007/s13398-014-0173-7.2>

BNM. (2017). *Financial Stability and Payment Systems Report 2017* (pp. 93-103, Rep. No. Islamic Finance Development). Kuala Lumpur: BNM.

BNM. (2018). Organisation Structure. Kuala Lumpur: Bank Negara Malaysia.

BNM. (n.d.). About the Bank | Bank Negara Malaysia | Central Bank of Malaysia. Retrieved from http://www.bnm.gov.my/index.php?ch=en_about&pg=en_intro&lang=en

BNM. (n.d.). Board of Directors | Bank Negara Malaysia | Central Bank of Malaysia. Retrieved July 3, 2018, from http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=23&lang=en

BNM. (n.d.). Governors | Bank Negara Malaysia | Central Bank of Malaysia. Retrieved July 3, 2018, from http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=22&lang=en

BNM. (n.d.). List of Licensed Financial Institutions in Malaysia | Bank Negara Malaysia | Central Bank of Malaysia. Retrieved July 3, 2018, from <http://www.bnm.gov.my/index.php?ch=li&cat=islamic&type=IB&fund=0&cu=0>

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BNM. (n.d.). Mission Statement | Bank Negara Malaysia | Central Bank of Malaysia. Retrieved July 3, 2018, from http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=20&lang=en

BNM. (n.d.). *Sharī'ah* Advisory Council | Bank Negara Malaysia | Central Bank of Malaysia. Retrieved from http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=439&lang=en

BNM. (n.d.). *Sharī'ah* Advisory Council | Bank Negara Malaysia | Central Bank of Malaysia. Retrieved July 3, 2018, from http://www.bnm.gov.my/index.php?ch=en_about&pg=en_thebank&ac=439&lang=en

Bursa Malaysia. (n.d.). Bursa Suq Al-Sila' (BSAS). Retrieved July 3, 2018, from <http://www.bursamalaysia.com/market/islamic-markets/products/bursa-suq-al-sila-bsas/>

Central Banking. (2016, January 14). Lifetime achievement award: Zeti Akhtar Aziz. Retrieved July 3, 2018, from <https://www.centralbanking.com/awards/2440199/lifetime-achievement-award-zeti-akhtar-aziz>

Chung, M. M., & Kwek, K. T. (2012). Monetary Policy and Financial Sector Development. In H. Hill, S. Y. Tham, & Ragayah Haji Mat Zain (Eds.), *Malaysia's Development Challenges: Graduating from the Middle*. New York: Routledge.

DOSM. (2011, August 5). Population Distribution and Basic Demographic Characteristic Report 2010 (Updated: 05/08/2011). Retrieved July 15, 2018, from

https://www.dosm.gov.my/v1/index.php?r=column/cthemedByCat&cat=117&bul_id=MDMxdHZjWtk1SjFzTzNkRXYzcVZjdz09&menu_id=L0pheU43NWJwRWVVSZklWdzQ4TlhUUT09

Drabble, J. H. (2000). *The Premodern Economy. An Economic History of Malaysia, C. 1800–1990*, 9-23. doi:10.1057/9780230389465_2

Investopedia. (2018, June 21). Top 25 Developed and Developing Countries. Retrieved July 2, 2018, from <https://www.investopedia.com/updates/top-developing-countries/>

Malaysia. (2009a). Law of Malaysia: Central Bank of Malaysia Act 2009: (act 701). Kuala Lumpur: Percetakan Nasional Malaysia Berhad.

Malaysia. (2009b). Act 276 Islamic Banking Act 1983. Kuala Lumpur: Percetakan Nasional Malaysia.

Malaysia. (2011). Act 240 Statutory Bodies (Accounts and Annual Reports) Act 1980. Kuala Lumpur: Percetakan Nasional Malaysia.

MIFC. (n.d.). About Us. Retrieved July 3, 2018, from http://www.mifc.com/index.php?ch=ch_header_contact_us&pg=pg_header_aboutus

Milner, A. C. (2008). *The Malays*. West Sussex: John Wiley & Sons.

Nawal Kasim, Nuhtay, S. N., & Salman, S. A. (2013). Comparative Analysis on AAOIFI, IFSB and BNM Shari'ah Governance Guidelines. *International Journal of Business and Social Science*, 4(Special), 220-227.

Oxforddictionaries. (n.d.). Accountability | Definition of accountability in US English by Oxford Dictionaries. Retrieved July 6, 2018, from <https://en.oxforddictionaries.com/definition/us/accountability>

Oxford dictionaries. (n.d.). Responsibility | Definition of responsibility in US English by Oxford Dictionaries. Retrieved July 6, 2018, from <https://en.oxforddictionaries.com/definition/us/responsibility>

The Star. (2018, June 22). Nor Shamsiah appointed Bank Negara governor for five-year term. The Star Online.

Yeoh, K. (n.d.). About us - Bank Negara Malaysia Museum and Art Gallery. Retrieved July 2, 2018, from <http://www.museumbnm.gov.my/about/>