



malaysian ICM

Quarterly Bulletin of
Malaysian Islamic Capital Market
by the Securities Commission



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MALAYSIA: CENTRE OF EXCELLENCE FOR HUMAN CAPITAL DEVELOPMENT IN ISLAMIC FINANCE

The continued development of a talented pool is indispensable for sustaining the performance, competitiveness and future growth of Islamic finance. The enormous growth of the market combined with greater competition from other jurisdictions offering new products and services has further increased the demand for experts in Islamic finance. Compounding the situation is the long gestation period for new graduates to gain relevant experiences.

Talent is vital to take Islamic finance to the next level. We need people who are knowledgeable and experienced in product innovation, regulation, intermediation and risk management. Seeing the dire need for such expertise, Malaysia took the opportunity to distinguish itself and is today duly recognised as a centre for human capital development in Islamic finance.

While quantity is the main issue, the quality cannot and should not be compromised. It is a primary challenge for Malaysia and globally to build a new generation of human talent who possess the right skill sets of both qualification and a good understanding of Shariah principles.

ISLAMIC ALTERNATIVE TO SHORT SELLING

There are several views on the trading of shares using the principles of *salam*. According to the resolutions of the Shariah Advisory Council (SAC) of the Securities Commission, trading shares under the *salam* contract is permissible as the shares, being the subject matter, satisfy the following criteria:

- the shares are not considered as too specific an item (*`ayn mu'ayyan*);
- the share's category, type, and amount can be determined; and
- the date of delivery of shares can be ascertained.

The following are justifications on the permissibility of applying *salam* to the trading of shares.

First justification: When shares are not considered as too specific an item (*`ayn mu'ayyan*)

Firstly, we need to assess when and under what circumstances shares are classified as *`ayn mu'ayyan*. If they are, then they cannot be traded under the *salam* contract. Shares are identified by the name of the corporation, such as Telekom (M) Bhd, Tenaga Nasional Bhd, etc. Under the resolution adopted by the SAC, the name of each share or counter is for the purpose of distinguishing it from other types of shares (*naw'*-type). This is congruent with the view held by Dr. Muhammad Abdul Ghafar al-Sharif in his paper "*Ahkam al-Suq al-Maliyyah*" where he said that a company's name associated with a particular share is intended to distinguish it from another and that the shares are not categorised as *ma yata'ayyan bi al-ta'yin* (ما يتعين بالتعيين) which means the item is described too specifically.

The view of Dr. al-Sharif is parallel to what has been

discussed by Ibn Qudamah who stated that one of the most important characteristics of a *salam* item is its category (*jins*) and type (*naw'*). This argument is further strengthened by the view of Imam Abu Hanifa who explained that it is sufficient to just mention these particular characteristics because they comprehensively cover other characteristics as well.

Fuqaha' (Islamic scholars) prohibits a *salam* item which is *`ayn mu'ayyan* since specifying or *ta'yin* would lead to an element of *gharar* in the *salam* contract. This is because by imposing such detailed specifications would incorporate elements of risks in delivery since the seller may be faced with the difficulty of obtaining the item in the market.

Hence, in the context of trading of listed shares on the stock exchange, trading is highly regulated and delivery is not a constraint to the transaction. The shares is considered as *`ayn mu'ayyan* only if the buyer requires a company's shares to be delivered based on very specific conditions that would make the delivery almost impossible. An example is when someone wishes to purchase Telekom shares which are held specifically by, say Mr. A, who may not possibly possess the said shares or if he does, is reluctant to release them.

Thus where Telekom shares are easily available by virtue of it being listed on the stock exchange, the issue of *`ayn mu'ayyan* does not arise and listed shares can be considered as a subject matter for *salam*.

The view which supports that shares do not fall under *`ayn mu'ayyan*, may also be reasoned out by the issue highlighted by the *fuqaha'* on items that can be turned into *salam* items. For example, al-Shirazi stated that an item that is allowed to be traded is also allowed to be a *salam* item. The important thing is that the characteristics of the item are *mundhabit*¹, like grains, fruits, clothes, etc. However, if the item

¹ *Mundhabit* means characteristics which are clear and can be distinguished from others without causing any confusion.

does not possess any clear characteristics in terms of requirements and aesthetic value, such as pearls, animal fur, and others, they may not be a *salam* item. This is because the sale falls under *bai' majhul* (sale that is not specified in clear terms).

The same characteristic also applies to shares. A share is *mundhabit* because it can be distinguished from other shares based on its type, category, classification (i.e. Shariah compliant or not) and name.

A comparison between *'ayn ghair mu'ayyan* (item that is not specified in more details) and *'ayn mu'ayyan* as applied to shares is as follows:

For shares		
	<i>'Ayn ghair mu'ayyan</i>	<i>'Ayn mu'ayyan</i>
Example	Telekom shares listed on Bursa Malaysia	Telekom shares listed on Bursa Malaysia but belonging to Mr A
SAC views	the shares are not <i>'ayn mu'ayyan</i> because– <ul style="list-style-type: none"> • they are available; • they are deliverable; and • clearing and settlement is regulated. 	This is <i>'ayn mu'ayyan</i> because– <ul style="list-style-type: none"> • the request is specific; and • there is risk of non-delivery.

Second justification: Salam is permitted on shares provided its category, type, amount and the date the item is to be delivered are described

The *salam* contract is permitted in Islam to overcome the problem of selling an item which does not exist when the contract is executed. What is important is that when it involves an item which does not exist, the characteristics of the *salam* item have to be specified clearly, such as its category, type, amount and the date the item is to be delivered. It is congruent with what the Prophet said:

من أسلف في شيء ففي كيل معلوم ووزن معلوم إلى أجل معلوم

Meaning: Those who practise the sale of *salaf* (*salam*) must specify clearly the measurement, the weight and the time of delivery.

Third justification: Delivery of shares can be ascertained

In the context of shares, the conditions or the rules set out by *fuqaha'* which states that the *salam* item must be available in the market at the time the *salam* contract is signed and continues to be available during the delivery date and can be fulfilled by the seller. This is based on the reason that shares can be found in the market and they can be delivered at the promised date as practised in regulated short selling (RSS).

Furthermore, there are *fuqaha'* that holds the view that if the *salam* item is no longer available in the market after executing the contract, it is resolved according to the following situations:

First situation: If under normal market conditions, the *salam* item is available but at the time of delivery, it is found that the item does not exist in the market, the *salam* contract does not become void. The buyer is given the choice of whether to cancel the contract or to wait until the seller is able to attain the item and deliver it to the buyer.

Hence, in the context of trading of shares through *salam* contract, if a certain decision embarked upon by the company resulted in the suspension in trading of the shares at the time the seller is required to deliver the shares, then the buyer has two options:

- Terminate the contract; or
- Wait for the share trading to resume for the delivery to be executed.

Second situation: If before the date of delivery of the

salam item, the seller is informed that the item is no longer available (stock no longer available or manufacturer no longer produces the item), then there is no other option but for the seller to terminate the *salam* contract.

In selling shares through a *salam* contract, this problem can be minimised if the seller trades only the shares of fundamentally strong companies. This way, problems associated with the unavailability or illiquidity of the shares in the market at the time of delivery can be avoided.

Hence, the conditions issued by Bursa Malaysia show that from the perspective of rules and regulation, the trade can only be executed with shares that are available in the market when the contract is entered into.

On the other hand, Sheikh Abdullah Ibn Khunain, one of the members of the Standing Committee for Issuing Fatwas and Saudi Arabia Ulama' Council prohibits *salam* in shares. In his view, application of *salam* is prohibited for buying shares because shares fall under *mal qimiy*² and not *mal mithliy*.³ This

"...it can be concluded that shares can be considered a salam item, as long as the shares are available in the market during the time the salam contract is performed."

From the discussion above, it can be concluded that shares can be considered a *salam* item, as long as the shares are available in the market during the time the *salam* contract is performed. In fact, this contract is enforceable by the law where Bursa Malaysia may issue rules or guidelines stating that if a *salam* principle is used in the trading of shares, then the shares must be available in the market during the time the contract is performed. In fact, this rule already exists and Bursa Malaysia has set out in RSS that one of the criteria stated below has to be fulfilled:

- Share borrowing has been performed beforehand; or
- Received confirmation from approved securities borrowing and lending (SBL) agent that the share to be shorted is available or ready to be borrowed.

is attributed to the ever-fluctuating nature of the share prices from time to time. Therefore, he believes that shares are not something that is constant in terms of unit, physical nature, and its value. Also, it is hard to find anything similar to it in the market.

His view of characterising shares as *mal qimiy* differs from the SAC. The SAC resolved that shares fall under *mal mithliy* because shares are measurable units (عدييات متقاربة). Shares are also considered as items which can be readily obtained in the market and are the same in terms of units and form. This is in accordance with the rule of *salam* where the item needs to be known by its type, measurement rate, and characteristics. This is to avoid elements of *gharar* or conflicts between the seller and the buyer if the detailed specifications of the item is unknown when it is finally delivered.

² *Mal qimiy* is anything that is not similar in terms of its unit, physical qualities and values, and cannot be obtained in the market. E.g. ancient artifact, where there is none like it in the market.

³ *Mal mithliy* is anything that is easily available in the market and there are many others like it in terms of its physical shape. The difference if any, is not too varied and is usually overlooked by the public.

The opinion of Ibn Khunain above can be reasoned out. If we scrutinise the views of the Maliki, Shafie and Hanbali School of Law on the permissibility (*harus*) of *salam* on animals, there is room for us to study in detail on whether *mal qimiy* may be used as a *salam* item or otherwise. This is because animals can also be categorised as *mal qimiy*. According to them, the permissibility is based on *qiyas* of allowing *qardh* (borrowing) for animals just as stated in the following *hadith* reported by Muslim:

أَنَّهُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اقْتَرَضَ بَكْرًا
— وَهُوَ الْفَتَى مِنَ الْإِبِلِ

Meaning: Verily, the Prophet PBUH himself has borrowed a young camel.

According to the Maliki, Shafie and Hanbali School of Law, the *salam* contract for an animal is allowed

given the characteristics of the traded animal in terms of its species, age, gender, colour of its hide, etc. This is to ensure that the characteristics of the animal are accurately known to prevent any rise of *gharar* and *jahalah*. However, the characteristics of the animal cannot be determined in more specific terms (*ta'yin*) since it would be difficult for the seller to procure it from the market for the delivery to take place.

Therefore, regardless of whether shares are categorised as *mal qimiy* or *mal mithliy*, they are still tradable using the *salam* principle as discussed earlier.

From the discussion above, it can be summarised that the *bai' salam* principle can be used as a viable Islamic alternative to short selling based on the arguments put forth in this article.

UPDATED LIST OF SHARIAH-COMPLIANT SECURITIES BY THE SC

On 27 November 2008, the SC released an updated list of Shariah-compliant securities approved by the SAC. The updated list took effect from 28 November 2008. The list comprises a total of 855 securities which are classified by the SAC as Shariah compliant and they constitute 87% of the listed securities on Bursa Malaysia.

The list saw the addition of 25 newly classified Shariah-compliant securities and the exclusion of two

from the list issued in May 2008. In classifying the listed securities, the SAC applied a set of standard criteria on the activities of the companies listed on Bursa Malaysia. The approach and criteria in classifying the securities as well as the SAC's advice and guidance on the disposal of Shariah non-compliant securities are also given.

The booklet is distributed free by the SC. The full list is also available on www.sc.com.my.

MORE MEASURES TO SPEED-UP AND INCENTIVISE FUND-RAISING IN ICM

As the global crisis has not shown any sign of abating and recognising that more funds need to be injected into the economy, on 10 March 2009, the government announced its second stimulus package totalling RM60 billion. The money is to be distributed as follows: RM15 billion in fiscal injection; RM25 billion in guarantee funds; RM10 billion for equity investments; RM7 billion for private finance initiatives and off-budget projects; and RM3 billion in tax incentives. This will be implemented from now until 2010 and will make up about 9% of Malaysia's GDP.

For the Malaysian capital market, several measures have been instituted which will shorten time-to-market, reduce cost, provide greater certainty and spur the *sukuk* and bond market. Previously, the SC's approval was required for any amendments or revision made to the approved terms of *sukuk*^{1,2} including those listed;

and mandatory credit rating for convertible or exchangeable *sukuk*.²

Effective 16 March 2009, the SC needs only to be informed on any amendments or revisions to the approved terms of *sukuk*² – provided all other requirements have been complied with; and exemption from credit rating in respect of exchangeable and convertible *sukuk*.²

In addition to these measures, the government will further support *sukuk*² issuance through a financial guarantee institution which will issue credit enhancement to companies (that have attained investment grade) intending to issue *sukuk*² to enable such companies to have greater access to the capital market.

These measures will speed-up the issuing process and provide further incentive for fund-raising in the ICM.

Notes:

1 – the SC would previously evaluate on the basis of the rationale for the amendment/revision, impact on credit rating and other disclosures.

2 – also applicable to conventional bonds

THREE NEW FOREIGN ISLAMIC FUND MANAGEMENT COMPANIES APPROVED

In January 2009, the SC approved three new foreign Islamic fund management companies (IFMCs). They were Aberdeen Islamic Asset Management Sdn Bhd, BNP Paribas Islamic Asset Management Sdn Bhd and Nomura Islamic Asset Management Sdn Bhd. The other IFMCs approved earlier were Kuwait Finance House (Malaysia), DBS Asset Management, CIMB-Principal Asset Management, Global Investment House and Reliance Asset Management.

In approving them, the SC had considered the scope of operations, their fund management and banking experience, brand value, expertise, geographical presence, and compliance and risk management capabilities. The government had in Budget 2008 announced that IFMCs are allowed to have 100% foreign ownership. This liberalisation measure is to complement the broader MIFC initiatives of positioning Malaysia as an international Islamic financial centre.

SHARIAH-BASED UNIT TRUST FUNDS

In 2008, the SC approved 15 new Shariah-based unit trust funds, bringing the total to 149 or 25.6% of the total of 579 approved funds. Of the 149, 68 were equity funds, 21 were balanced funds, 18 were *sukuk* funds while the remainder comprised money market funds, structured products, feeder funds, fixed income funds and mixed asset funds. From the period of October to December 2008, the following funds were

launched in the market:

- Affin Islamic Money Market Fund;
- Alliance Islamic Institutional Money Market Fund;
- AmStaples; and
- Prudential Dana Al-Hafeez.

SUKUK

In 2008, the SC approved 99 private debt securities issues amounting to RM140 billion, of which 47 issues were *sukuk* valued at RM43.2 billion.¹ The value represented 30.9% of total new bond issues approved.

As in 2007, *sukuk musyarakah* and *sukuk ijarah* dominated the Malaysian *sukuk* market in terms of approval size. The combination of these *sukuk* represented RM28.5 billion or 65.9% of the total size of *sukuk* approved. The remaining 34.1% or RM14.8 billion *sukuk* approved were structured using *murabahah*, *mudharabah*, *bai' bithaman ajil*, *istisna'*, a combination between conventional and *sukuk* and also the approval of a multiple Shariah principles issuances. The following are among some selected *sukuk* issuances from October to December 2008.

Sukuk Ijarah Programme by TH Group Bhd

On 31 Dec 2008, TH Group Bhd, a company listed on the Main Board of Bursa Malaysia issued an Islamic commercial paper/medium-term note programme of RM330 million under the principle of *ijarah*.

Under the above structure, the issuer and the sole subscriber will enter into a master purchase agreement whereby the sole subscriber purchases certain Shariah-compliant leaseable assets from the issuer for a mutually-agreed purchase price.

Proceeds from the issuance will be utilised for Shariah-compliant purposes which include the refinancing of an existing commercial paper/medium-term note programme.

Sukuk Musharakah Programme by Chemical Company of Malaysia Bhd

In November 2008, the Chemical Company of Malaysia Bhd (CCM) issued *musyarakah* commercial papers (MCP) and *musyarakah* medium-term notes (MMTN) with a combined master limit of RM500 million. CCM is a company listed on the Main Board of Bursa Malaysia.

For each issue of the above *sukuk*, CCM will identify a Shariah-compliant business to invite for investments. The *sukuk* holders will, from time to time, form a partnership among themselves for the purpose of investing in the business (such an investment is referred to as a "*musyarakah* venture").

Proceeds from the issuance of the *sukuk* will refinance the issuer's existing borrowings and to finance the issuer's and/or subsidiaries' capital expenditure and/or working capital requirements.

The *sukuk musharakah* has been accorded a rating of AA3/P1 by RAM Ratings.

¹ Includes the approval of a combination issuances (conventional and *sukuk*) and also the approval of a multiple Shariah principles issuances.

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In addressing these issues, the SC has spearheaded various initiatives as outlined in the *Capital Market Master Plan*. These include organising numerous forums and workshops annually aimed at enhancing the understanding of market players both locally and abroad on current Shariah and financial issues. The SC has also established an International Advisory Committee (IAC) comprising prominent ICM practitioners to provide strategic guidance and international perspectives for ICM development projects including enriching human capital.

The SC is not alone in transforming these efforts into reality; other related agencies are also seriously engaged in developing human talent for Islamic finance, such as the Securities Industry Development Corporation (SIDC), International Centre for Education

in Islamic Finance (INCEIF), Islamic Banking and Finance institute Malaysia (IBFIM), International Shariah Research Academy for Islamic Finance (ISRA) and a number of local universities offering Shariah and Islamic finance courses. Details of courses offered by these institutions can be viewed at the Malaysia International Islamic Financial Centre's (MIFC) website, www.mifc.com.

Countries around the globe are now looking to Malaysia to develop their human capital needs in Islamic finance. INCEIF, for example, has attracted many international students. Malaysia is also fortunate to have a supportive government which, via its regulatory bodies and relevant ministries, has established clear policies and set the direction for Islamic finance.

Incentives and Facilitative Policies

Tax Incentives	
<ul style="list-style-type: none"> • Tax exemption on income received by foreign experts in Islamic finance. Applicants need only apply to the MIFC for verification. • RM5,000 tax relief is provided to Malaysian individuals for fees on courses at institutions of higher learning in Malaysia for Islamic finance studies. 	
Facilitative Immigration Policies	
<ul style="list-style-type: none"> • Fast and easy immigration approval through the "Green Lane" established for expatriates in Islamic finance and their family members. 	
Flexible Employment Rules	
<ul style="list-style-type: none"> • No conditions and requirements are imposed for the number and fields of expertise for Islamic finance experts employed by international Islamic banks, international takaful operator and international currency business units. 	
Funds for Shariah Scholars in Islamic Finance	
<ul style="list-style-type: none"> • The first in the region, the US\$62.5 million endowment fund for Shariah scholars in Islamic finance to create a pool of Shariah experts in Islamic finance and to promote research and development. • Among the activities funded are– <ul style="list-style-type: none"> a. Shariah Scholarship Award – Candidates who qualify can pursue postgraduate studies i.e. Masters, Doctorate or a Certified Islamic Finance Professional (CIFP) programme. b. Shariah Research Grant – Specifically for researchers, this grant is open to institutions and institutions of higher learning to pursue research in the area of Shariah relating to Islamic finance. c. Organisation of international and regional Shariah scholars' dialogues – Premier international gathering of prominent Shariah scholars across the globe to establish a framework of co-operation and global collaboration on Shariah matters related to Islamic finance. 	

Source: MIFC

ISLAMIC ALTERNATIVE STRATEGY FUNDS AND VENTURE CAPITAL¹

It is not easy these days to chart the landscape for finance, let alone in an area of active innovation as in Islamic finance. The enthusiasm and energy levels are certainly high enough such that Islamic finance frequently wanders off well-trodden paths and beyond neatly-defined boundaries.

Managing the change process in Islamic finance becomes an even more challenging task in the current global financial crisis where recent events portend that the future topography of global finance will be radically different from the way it is currently shaped. Even as global efforts are underway to contain the effects of financial contagion, it is evident to all that the current global financial architecture is flawed and major rewiring is required.

Many would like to see a future environment that provides stability where financial risk taking and leverage is better controlled; where private gains do not come at the cost of huge social losses; and where the distribution of wealth is firmly grounded and more inclusive. So it should not come as a surprise that, amid this soul-searching about the global system of finance, proponents of the Islamic approach are discovering a renewed sense of purpose and adopting a more confident view of their future – a view where, according to one commentator,

“Islamic finance has entered a bright new stage of development, emerging after the global financial crisis as a more equitable and efficient alternative to the Western approach.”²

There are many who see the Shariah-based approach as a panacea for the problems that have beset global finance. They argue that Islamic finance has largely escaped the fallout from the global financial crisis, thanks to rules that forbid the sort of risky business that is felling mainstream institutions.³

So will Islamic finance lead the way for others to follow? There are certainly good reasons to think so. Islamic financing involves a closer link between financial flow and productivity because interest-bearing transactions are not sanctioned. This contributes toward insulating Islamic finance from potential risks resulting from excess leverage and speculative financial activities. This characteristic of Islamic financing, along with a tight regulatory framework governing transparency for trading and fund management has helped cushion Malaysia from the shocks affecting the global hedge fund industry.

The SC recognises the need to facilitate a shift from a traditional long-only view of investing into one that provides the flexibility to employ sophisticated strategies to manage risk with greater precision. The advantage of modern finance is that it makes markets more efficient and deepens liquidity and, consistent with this, it should be an objective of securities regulators to facilitate the hedging of risks in markets. From the SC's perspective, problems arise when hedging activities are opaque, and there is a lack of oversight, accountability and ethical conduct.

In this context, the SC has looked into the regulated short-selling and securities-borrowing and lending (SBL)

¹ This article is based on the keynote address of Dato' Sri Zarinah Anwar, delivered at the 2nd International Islamic Capital Market Forum (IICMF) – Islamic Alternative Strategy Funds and Venture Capital, in Kuala Lumpur on 13 November 2008.

² “Global financial crisis highlights benefits of Islamic finance.” By Ibrahim Ozturk. *Today's Zaman*. 22 October 2008.

³ “Islamic banking escapes global financial crisis”. *Middle East Online*. 20 October 2008. The same report quotes a Kuwait Finance House report that states: “In the current financial turmoil, it is interesting to note that Islamic financing may have prevented a majority of the mess created by the conventional banking and financial institutions.”

framework with a view to introducing appropriate flexibilities within the Shariah context to enable the establishment of alternative strategy funds which are highly dependent on their ability to undertake hedging strategies. Subsequent to this, the Shariah Advisory Council (SAC) has approved regulated short selling via a Shariah-compliant replicated SBL and would continue to assess other issues including leveraging and other hedge strategies. These regulatory developments will provide a sound basis for alternative strategy funds to be used as a launch-pad for Islamic funds employing absolute return strategies.

as Islamic finance expands its international dimension, Islamic transactions would also be increasingly exposed to broader risk elements, such as currency volatility, counterparty risks, macro risks and operational risks.

Islamic asset markets have certainly been affected by price volatility and higher risk aversion. The value of Shariah-compliant equities worldwide has declined as a result of the current market turbulence in tandem with that of global equities. The returns on *sukuk* have been flat for the year. In fact, several banks in the Gulf States

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At the same time, it is important to note that Islamic finance is not risk-free finance. Islamic finance exists within the real economy. It interacts with the financial system through Muslim and non-Muslim investors, issuers and intermediaries. It is therefore no less exposed to business risks and market cycles.

For example, deflation of the property sector, on which many Islamic structures are based, would lead to a fall in the value of Shariah-compliant securities as it would for any mortgage-backed securities. And

recently experienced liquidity problems which were triggered by the sudden appreciation of the US dollar and a decline in the price of crude oil – requiring the same type of interventions that occur in the global markets.

The global environment has also affected the pace of innovation in Islamic finance. Growth in Islamic hedge funds, for instance, is reportedly slower but this is not surprising given that the conventional hedge fund industry is expected to shrink by a third to half.⁴

However, it should also be noted that the more established areas of Islamic finance seem to be weathering the storm relatively better than their conventional finance counterparts. In fact, several Middle Eastern *sukuk* funds have been established in recent months reflecting the views of the fund management industry that there are still ample opportunities in this market segment.⁵

⁴ "Extinction predicted for a third of hedge funds." *Financial Times*. 22 October 2008.

⁵ They are Algebra Capital (Dubai), Elaf Bank (Bahrain), Al Arabi Investment Group (Jordan) and Jadwa Investment (Saudi Arabia).

Islamic finance has begun to move increasingly into the realm of capital markets, primarily through the growth of *sukuk* instruments, and also in the area of structured products. However, structured financing is being done by recrafting conventional instruments in an Islamic way.

This is an important issue because if Islamic finance is to take the lead in driving forward a more robust and equitable global financial system, then innovations within the Islamic space must come organically, and not by just mimicking the conventional industry. Islamic finance emphasises the link between financial assets

compliant methods to cope with Islamic requirements on the use of leverage represents another promising path to be explored.

The current challenges posed by an unstable global financial system provide an opportunity for Islamic finance experts to consider the opportunities to promote the virtues of a Shariah-compliant financial system. This must go hand-in-hand with continued advancement in knowledge and innovation. Islamic investors also need to consider diversification strategies and to reduce their reliance on their traditional

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and real assets and provides a framework that is stable and sound. In light of the current market developments, this is highly commendable and the Islamic finance industry must take the opportunity to put this advantage to work.

Venture capital is another promising area of growth because the financing techniques required are similar to the stated principles of Islamic finance, namely favouring profit and loss over interest. Moreover, by providing funds to entrepreneurs with sound ideas, Islamic finance can help to promote innovation, invention, job creation and the development of high-growth industries. The promotion of Islamic venture capital is also timely given the tightness in global credit markets.

Currency and commodity funds have been successful in attracting Islamic investors because their investing styles involve underlying assets. The use of Shariah-

investments in commodity *murabahah*, mutual funds, and direct equity and bond investments. Islamic banks and other financial intermediaries do need to expand their capabilities in diversifying the risks on their balance sheets and to manage their liquidity. A thriving Shariah-based industry in venture capital, private equity and alternative investments would add breadth to Islamic capital markets and provide the impetus to grow a comprehensive and more robust Islamic financial system.

Overall, the key to sustainability lies in innovation. To add value, Islamic finance must provide form with substance, and not form over substance. Therefore, the market players and regulators must work together to chart the future landscape of Islamic finance so that it delivers an "inclusive prosperity" that meets not just the pursuit of profit for individuals but the equitable sharing of wealth for society. After all, Islamic finance is synonymous with socially responsible and ethical finance.

YEAR IN REVIEW: 2008

Among the ICM products, *sukuk* has gained the most worldwide attention. Malaysia, despite the global economic downturn, is still considered one of the leaders in *sukuk* issuance. Nevertheless, the economic downturn impacted on the overall value of *sukuk* issuance in the local market. In 2008, 47.5% of all bonds, in terms of the number, approved by the SC were *sukuk*, with a total value of RM43.23 billion. This was a decline of RM78.1 billion from last year.¹ The Shariah principles of *musharakah* and *ijarah* remained as favourite structures to issuers.

Malaysia's track record as the center for *sukuk* origination has been notable. For example, in 2008 a

RM10 billion² *sukuk musyarakah* programme issued by Danga Capital Bhd was the market's largest year-to-date *sukuk* approved by the SC. More notable issuances included a ringgit-denominated *sukuk* by the first foreign *sukuk* issuer in 2008, i.e Tadamun Services Sdn Bhd, which issued up to a RM1 billion Islamic trust certificate issuance programme. The SC also approved a RM1 billion Islamic funding programme by UMW Toyota Capital Sdn Bhd (UMWTC), a subsidiary of Toyota Financial Services Corporation which marked the Toyota Group's inaugural foray into the ICM.

In Budget 2009, the government has provided tax incentives for the origination, distribution and trading of

Notable Sukuk Approved in 2008

Issuer	Shariah Principle	Nominal Value (RM million)
Danga Capital Bhd	<i>Musharakah</i>	10,000
Plus SPV Bhd	<i>Musyarakah</i>	4,000
Dewa Ringgit Sukuk Limited	<i>Ijarah</i>	3,500
The Export-Import Bank of Korea	Note 1	3,000
Industrial Bank Of Korea	Note 1	3,000
National Bank of Abu Dhabi	Note 1	3,000
Seafeld Capital Bhd	<i>Musyarakah</i>	1,500
Lingkaran Trans Kota Sdn Bhd	<i>Musyarakah</i>	1,145
UMW Toyota Capital Sdn Bhd	<i>Musyarakah</i>	1,000
Tadamun Services Bhd	<i>Ijarah, Istisna' & Murabahah</i>	1,000
Rim City Sdn Bhd	<i>Bai' Bithaman Ajil</i>	1,000
GS Caltex Corporation	Note 1	1,000

Note 1: A combination of conventional and *sukuk* programme.

¹ The total nominal value of *sukuk* approved in 2007, which includes the substantial approval of RM60 billion *sukuk* by Cagamas Bhd.

² Multi-currency *sukuk* programme

non-ringgit *sukuk* with tax exemption for a period of three years for the following:

- Fees earned by qualified institutions from arranging, underwriting and distributing of non-ringgit *sukuk* from Malaysia; and
- Profits received by qualified institutions from the trading of non-ringgit *sukuk* from Malaysia.

Islamic Fund Management

In 2008, the SC approved the establishment of five Islamic fund management companies in Malaysia. These companies are expected to play a catalytic role in the internationalisation of the Malaysian ICM and enhance Malaysia's opportunity to be a leading Islamic fund and wealth management hub. The five IFMCs are Kuwait Finance House (Malaysia) Bhd, DBS Asset Management Ltd, CIMB-Principal Islamic Asset Management Sdn Bhd, Reliance Asset Management and Global Investment House.

In August 2008, Prudential Fund Management Bhd (PFMB) in Malaysia and Prudential Asset Management Limited in the Dubai International Financial Centre signed the MoU to expand marketing co-operation and distribution of Islamic funds in Malaysia and the Middle East. This MoU was signed following the mutual recognition agreement between the SC and the Dubai Financial Services Authority in March 2007 for cross-border marketing and distribution of Islamic funds.

The region's first Shariah-compliant exchange-traded fund (ETF) known as MyETF Dow Jones Islamic Market Malaysia Titans 25 (MyEFF-DJIM25) was launched in Malaysia in January 2008. The fund, managed by i-VCAP Management Sdn Bhd, allows investors to gain immediate exposure to 25 leading Shariah-compliant companies listed on Bursa Malaysia Securities Bhd.

The SC revised and introduced new guidelines to provide greater clarity and certainty on Shariah compliance and to further promote the development of other niche sector in ICM as follows:

- *Revised Guidelines on Unit Trust Funds*. It sets out requirements to be complied with by any person intending to establish a unit trust fund in Malaysia and issue, offer or invite any person to subscribe or purchase units of the unit trust fund. For Shariah-based unit trust funds, it sets out additional requirements namely, the appointment of a Shariah adviser, roles of the Shariah adviser and compliance officer.
- *Guidelines and Best Practices on Islamic Venture Capital Industry*. These guidelines aim to promote the adoption of appropriate standards for the development of the Islamic venture capital industry. It stipulates the minimal requirements for the establishment of an Islamic venture capital corporation (VCC) and Islamic venture capital management corporation (VCMC).

Shariah-compliant Securities

The updated lists of Shariah-compliant securities were published on 30 May and 28 November 2008 respectively. Throughout the year, 48 securities were added to the list while 14 were removed. As at November 2008, there were 855 Shariah-compliant securities or 87% of the total listed securities on Bursa Malaysia.³

In 2008, 31 IPOs were approved by the SC. Of this, 20 IPOs were approved as Shariah-compliant securities by the SAC including five approved at pre-IPO stage.⁴

As at end-2008, the market capitalisation of Shariah-compliant securities stood at RM426.4 billion or 64.2% of total market capitalisation.

³ Throughout 2008, 32 Shariah-compliant equities were also excluded from the list as their shares were delisted from Bursa Malaysia.

⁴ The SC has undertaken Shariah compliance review for companies at pre-IPO stage since October 2004 on voluntary basis i.e. based on application received by the company.

NEWS ROUND-UP

International Islamic Capital Market Forum



Kirby Daley



Dr Mohammed Burhan Arbouna



Michael Gassner

Following the success of the inaugural International Islamic Capital Market Forum (IICMF) held in March 2008, the SC hosted the second IICMF on 13 November 2008. Themed “Islamic Alternative Strategy Funds and Venture Capital”, the IICMF presented the views of international Shariah scholars on hedge funds, including the application of Shariah principles to the hedging strategies such as in the application of *wa’ad*, *urbun* and *salam* in short selling. It also addressed the development of Islamic venture capital and private equity as a long-term asset class, given

the huge demand from GCC investors for new and attractive financial assets.

The SC Chairman delivered the keynote address, “Charting the Landscape for Islamic Alternative Strategy Funds”. More than 200 participants comprising industry players, Shariah advisers, regulators and academicians attended the forum. Renowned speakers consisting of practitioners from various financial centres and Shariah scholars from Kuala Lumpur, Asia Pacific, Europe and GCC were invited to share their views.

India – Malaysia Capital Market Forum

The SC in collaboration with the Securities and Exchange Board of India (SEBI) hosted India-Malaysia Capital Market Forum on 20 November 2008 in Mumbai. The objective of the event was to raise awareness of the regulatory structures and market development and investment opportunities in both capital markets. The forum also provided an overview of the capital markets in India and Malaysia, recent development on regulatory structures, the infrastructures of the exchanges, potential opportunities in the market segments mutual fund and investment management, corporate finance,

and Islamic finance. The forum was attended by a delegation of 40 from Malaysia which included representatives from the SC, BNM, Bursa Malaysia, Kuwait Finance House (Malaysia), Nomura Malaysia, Credit Suisse Malaysia, Aseambankers Malaysia, and Nomura International (Hong Kong) Limited. And from India’s capital market, there were over 200 participants comprising regulators, exchanges, investment banks, corporate finance advisers, accountants and lawyers, market intermediaries, fund and asset managers, mutual fund advisers, PLCs and other issuers.

Forum and Seminars on Islamic Finance

The inaugural Hong Kong Islamic Finance Forum was held by Euromoney Conferences on 25 November 2008. The forum brought together the Hong Kong Special Administrative Region (HKSAR) government officials, key Islamic finance heads and world renowned Shariah scholars. The SC's Executive Director, Datuk Kris Azman, represented the SC as one of the panellists in the session entitled "The Success of Islamic Finance in Malaysia".

A seminar, themed "Financial and Capital Markets in the Islamic World: Opportunities and Challenges", was held in Sao Paulo, Brazil on 8 December 2008. The seminar served to show the Brazilian market that it was possible to make use of instruments of

the Islamic financial system to collect funds, especially in times of a global credit crisis. During the seminar, the SC's Managing Director, Dato Dr Nik Ramlah Mahmood, presented a paper entitled "The Asian Market: Malaysian Experience".

From 13 to 14 January 2009, Islamic Financial Services Board (IFSB) organised its inaugural seminar on Islamic finance in Seoul, Korea. The seminar aimed to create awareness of Islamic finance, which has not yet acquired sufficient recognition among the Korean financial community, and to highlight its potential opportunities in Korea. Dato Dr Nik Ramlah presented a paper entitled "Overview of the Islamic Financial Services Industry – Perspectives of Regulators".

5th Kuala Lumpur International Islamic Finance Forum 2008

The 5th Kuala Lumpur Islamic Finance Forum (KLIFF 2008), organised by CERT Sdn Bhd, was held from 17 to 21 November 2008. The theme of the forum was Islamic Finance – The Road Ahead. The forum was officiated by the Deputy Prime Minister of Malaysia, Dato' Sri Mohd Najib Razak who is also Minister of Finance, Malaysia.

Datuk Kris Azman Abdullah, the SC's Executive Director was a panellist in the session, "Evaluating Issues and Challenges in Islamic Finance at the Time of Global Credit Crisis". The Malaysia International Islamic Financial Centre (MIFC) booth comprising regulatory bodies was also set up to showcase the development of Islamic finance in Malaysia.

MIFC Road Show to Tokyo

The MIFC organised a road show to Tokyo from 9 to 12 November 2008. The MIFC delegation was

represented by regulatory bodies and industry players from various financial sectors.

MALAYSIAN ICM – FACTS AND FIGURES

Shariah-compliant securities on Bursa Malaysia

Number of Shariah-compliant securities – Nov 2008	855 securities		
% to total listed securities	87%		
Latest Market capitalisation – Dec 2008	(RM billion)		
Shariah-compliant	426.4		
Total market	663.8		
% of Shariah-compliant securities to total market	64.2%		
Equity market indices	28 Nov 08	31 Dec 08	% change
KL Composite Index (KLCI)	866.14	876.75	1.2%
FBM EMAS Shariah	5,900.37	5,949.63	0.8%
FBM Hijrah Shariah	6,594.18	6,640.04	0.7%
DJIM Malaysia Titans 25	531.84	538.48	1.2%

* The SAC of SC releases the updated Shariah-compliant securities list twice a year in May and November.

Shariah-based unit trust funds

Number of approved funds	Dec-2007	Dec-2008*
Shariah-based	134	149
Total industry	521	579
Net asset value (NAV) of approved funds	Dec-2007	Dec-2008*
Shariah-based (RM billion)	16.90	17.19
Total industry (RM billion)	169.40	134.40
% to total industry	10.0%	12.8%

* Including feeder funds, fixed income funds, money market funds and structured products.

Islamic exchanged-traded funds (ETF)

Number of approved ETF	Jan-2008	Dec-2008*
Shariah-based	1	1
Total industry*	3	3
Net asset value (NAV) of approved funds	Jan-2008	Dec-2008
Shariah-based (RM million)	825.22	482.73
Total industry* (RM million)	1,347.94	1,022.91
% to total industry	61.2%	47.2%

Note : Islamic ETF, DJIM MyETF-DJIM25 was launched on 22 January 2008.

* Including bond ETF, ABF Malaysia Bond Index Fund.

Islamic REITs

Number of approved REITs	Dec-2007	Dec-2008
Islamic REIT	2	3
Total REITs	13	13
Market capitalisation	Dec-2007	Dec-2008
Islamic REIT (RM million)	1,376.24	1,241.04
Total REITs (RM million)	5,249.56	4,070.02
% to total REITs	26.2%	30.5%

Chart 1
Performance of KLCI vs Shariah Indices

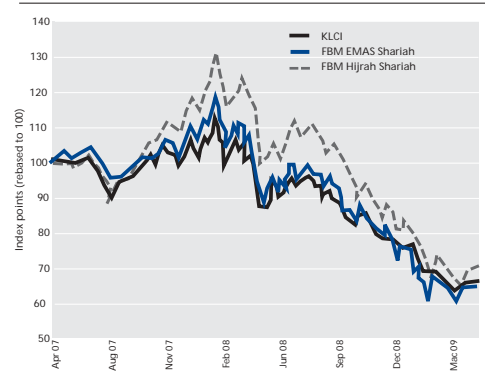
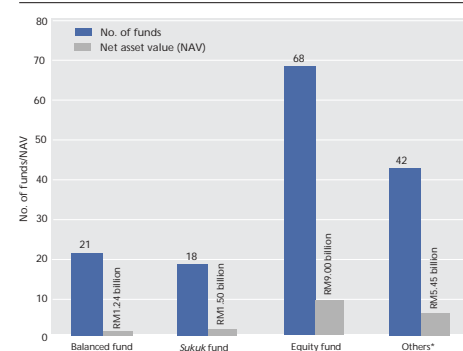


Chart 2
Shariah-based unit trust funds by category



*Including feeder funds, fixed income funds, money market funds and structured products.

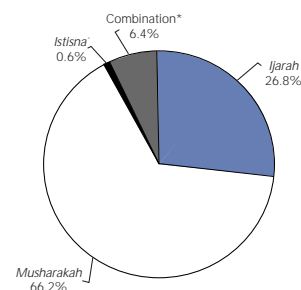
Corporate sukuk

Sukuk approved	2007 ⁺	Q4-2008
Number of <i>sukuk</i>	59	11
Size of <i>sukuk</i> (RM billion)	121.30	18.6
Size of total bonds approved (RM billion)	158.80	49.97
% of size of <i>sukuk</i> to total bonds approved	76.4%	37.2%
Sukuk issued*	2007	Q4-2008
Size of <i>sukuk</i> issued (RM billion)	72.9	3.7
% of <i>sukuk</i> issued to total bonds issued	57.2%	38.1%
Sukuk outstanding	2007	Dec-2008
Size of outstanding <i>sukuk</i> (RM billion)	135.8	152.8
% of outstanding <i>sukuk</i> to total outstanding bonds	56%	57%

⁺ Includes the approval combination issuances (conventional bonds and *sukuk*).

* A combination between conventional and *sukuk* and also a multiple Shariah principles issuances.

Chart 3
Size of *sukuk* approved based on various Shariah principles in Q4 2008



*A combination between conventional and *sukuk* and also a multiple Shariah principles issuances.

RM-denominated sukuk approved by the SC in Q4 2008

Issuer	Shariah principle	Size of issue (RM million)	Date of approval	Rating
1. Dewa Ringgit Sukuk Limited	<i>Ijarah</i>	3,500	22 Oct	AAA
2. Offshoreworks Capital Sdn Bhd	<i>Musharakah</i>	200	21 Nov	AA-
3. Offshoreworks Capital Sdn Bhd	<i>Musharakah</i>	150	22 Nov	MARC-1/AA-
4. Dura Pisifera Sdn Bhd	<i>Ijarah</i>	321	13 Nov	AAA, AA, Unrated
5. Dura Pisifera Sdn Bhd	<i>Ijarah</i>	38	13 Nov	MARC-1/A
6. Danga Capital Berhad*	<i>Musharakah</i>	10,000	19 Nov	AAA
7. Danga Capital Berhad*	<i>Musharakah</i>	-	24 Dec	-
8. Makro Utama Sdn Bhd	<i>Istisna'</i>	100	17 Dec	A+
9. TH Group Berhad	<i>Ijarah</i>	330	3 Dec	Unrated
10. GS Caltex Corporation (PN2B)	<i>Murabahah, Ijarah, Mudharabah, Musharakah & Istisna'</i>	1,000	4 Nov	AA1
11. National Bank of Abu Dhabi (PN2A)	<i>Murabahah</i>	3000	18 Dec	AAA

*Note: Multi currency approval with total nominal value up to RM10,000 million.

Al-Fatihah**Tribute to Nik Ruslin Nik Jaafar
(9 May 1964–26 Dec 2008)**

The SC, with deep sadness, announces the passing of our colleague, Nik Ruslin Nik Jaafar. His immense contribution is a fitting legacy to the modern world of Islamic finance. Nik Ruslin was the Head of Islamic Capital Market (ICM) Department at the SC. His unrelenting contribution led to the successful development of ICM. He was not only well respected in capacity as head of the department, but also a respected mentor and a very dear friend. Nik Ruslin will be sadly missed but his brilliant legacy and selfless devotion lives on to bear fruit beyond his expectations *insha-Allah* (God willing).



"Nik had been the stalwart of the ICM department and a very loyal and committed member of staff. He had been invaluable in his support for me and the Management Committee, and had contributed in no small measure to the SC's role in the development of the ICM. As a person, he was pleasant, respectful and obliging, and was able to get along easily with people of all levels."

*Dato' Sri Zarinah Anwar,
SC Chairman*

"One or two continents away, Nik never forgot his friends. And, how many friends could one have? Nik seemed to build friendships everywhere. There was a warm energy that he invested in all of us. We could not be business associates, regulators and regulatee, we had to be friends. Nik's easy manner, his bridge building was responsible for more than just our fond personal memories of moments that we will cherish. Nik made us all love our second home, Malaysia. He gave us a love of the people and the place. He helped us to respect Malaysia's achievements. He made us wish to help Malaysia to achieve more."

*Abdulkader Thomas,
CEO, Shape Financial Corporation
USA*

"We had done a lot of work with Br. Ruslin for the 10-year framework and strategies initiative. Br. Ruslin had also helped IRTI in organising a number of capacity building seminars for ICM development. We have lost a young, dynamic and committed brother and professional colleague and we will indeed miss him and his professional contributions for a very long time."

*Dr Tariqullah Khan, Senior Economist
Division Chief, Islamic Banking and Finance
IsDB/IRTI Jeddah*

"Nik Ruslin was a generous man with both his knowledge and his time; he was encouraging to me in my endeavours in Islamic finance and was always guiding and supportive. His excellent sense of humour was always apparent and he never let anyone know of his medical issue but soldiered on with his task in complete devotion and dedication."

*Majid Dawood,
CEO, Yasaar Limited*

"Nik Ruslin cut his teeth in a challenging environment. Nik was one of those champions who persisted in his deeply held belief that Islamic finance offered a more wholesome alternative to conventional finance. As such he served in the Islamic finance industry most of his working life. This was a virtually uncharted territory and posed many more challenges than Islamic banking and finance. However, he took this task on with a passion and virtually moulded the ICM into the vibrant and creative centre that we witness today.

In a personal capacity, I found that whenever we needed advice on ICM products, Nik was always available with helpful advice and valuable suggestions on how to progress any application. He would even facilitate dialogue with relevant colleagues in the SC to enable matters to proceed smoothly and with mutual understanding. He made difficult issues seem simple."

*M Iqbal Asaria, Afkar Consulting Ltd,
London, UK*

We appreciate your feedback and comments. If you would like to know more about the Malaysian Islamic capital market or require further information from the Securities Commission, please contact the following persons at the Islamic Capital Market Department:

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