



# malaysian ICM



Bi-annual Bulletin on the  
Malaysian Islamic Capital Market  
by the Securities Commission Malaysia

## Contents

Revised Shariah Screening Methodology: Expands ICM's Global Reach	1
<b>SHARIAH</b>	
New Shariah Advisory Council Resolutions	3
<b>DEVELOPMENT</b>	
Region's First Structured Covered Sukuk	7
Royal Award for Islamic Finance Calls for Global Nominations	9
SC and Autoriti Monetari Brunei to Strengthen Efforts in Greater Cross-border Activities	9
SC Leads Islamic Finance Taskforce to Publish a Report on Enhancing Infrastructure for ICM	10
<b>REGULATORY</b>	
IFSB-IOSCO-SC Collaborate on Disclosure Requirements for ICM Products	11
SC Revises Equity Guidelines for SPACS	12
Technical Note on the Application of SC's Guidelines In Relation to Non-Tradable and Non-Transferable PDS and Sukuk	13
<b>FEATURES</b>	
2013: Another Resilient Year for the Global Islamic Finance Industry	14
Global Islamic Funds Industry: Achieving Growth Under Challenging Times	18
Harmonisation of Shariah Rulings in Islamic Finance	22
News Round-up	29
<b>STATISTICAL UPDATES</b>	
Malaysian ICM – Facts and Figures	32

## REVISED SHARIAH SCREENING METHODOLOGY: EXPANDS ICM'S GLOBAL REACH

The Securities Commission Malaysia (SC) released the latest list of Shariah-compliant securities on 29 November 2013, based for the first time on the revised screening methodology that was announced in June 2012. The revised methodology, as decided and approved by the Shariah Advisory Council (SAC) of the SC, adopts a two-tier quantitative approach which applies the business activity benchmarks and the newly-introduced financial ratio benchmarks while maintaining the qualitative assessment. The revision took into consideration the rapid development and sophistication of the Islamic finance industry in Malaysia since the process was first introduced in 1995.

The revision is in line with the SC's initiatives to further build scale in the Shariah-compliant equity and investment management segments. It will also potentially spur greater inflow of foreign Islamic funds into Malaysian Shariah-compliant equities, thus expanding the Islamic capital market's (ICM) global reach as outlined in the *Capital Market Masterplan 2*, as the revised screening methodology is closer to the approach generally used by international index providers, according to the Executive Director of Islamic Capital Market, Zainal Izlan Zainal Abidin.

from page 1 ►►

The updated list features a total of 653 Shariah-compliant securities. These counters constitute 71% of the 914 listed securities on Bursa Malaysia. To facilitate transition under the revised screening methodology, investors are given six months from 29 November 2013 to dispose of securities that are excluded from the list, in the event that the respective market price of such securities exceeds or is equal to the investment cost. During the six-month period, dividends received and capital gains realised from the disposal of such securities may be retained by investors, without the need to channel any portion of the dividends and capital gains to *baitulmal* and/or charitable bodies. The complete list of the 653 Shariah-compliant securities, as well as a breakdown of these securities

according to sector is provided in the Table 1.

In classifying these securities, the SAC received input and support from the SC. Information was obtained on the companies through annual reports and enquiries made to the companies. The SAC, through the SC, will continue to review the Shariah status of securities listed on Bursa Malaysia, on an annual basis, based on the latest available annual audited financial statements of the companies.

The full list, which is updated twice a year based on the companies' latest annual audited financial statements is available at [www.sc.com.my](http://www.sc.com.my). The next updated list will be made available in May 2014.

**Table 1:**  
**Shariah-compliant securities on Bursa Malaysia**

Main Market/ ACE Market	Number of Shariah-compliant securities	Total securities <sup>1</sup>	Percentage of Shariah-compliant securities (%)
Consumer products	106	133	80
Industrial products	194	261	74
Mining	1	1	100
Construction	36	44	82
Trading/Services	143	206	69
Properties	59	86	69
Plantation	34	39	87
Technology	71	95	75
Infrastructure (IPC)	5	6	83
Finance	2	36	6
SPAC	2	2	100
Hotels	Nil	4	Nil
Closed-end fund	Nil	1	Nil
<b>TOTAL</b>	<b>653</b>	<b>914</b>	<b>71</b>

<sup>1</sup> As at 25 November 2013

## NEW SHARIAH ADVISORY COUNCIL RESOLUTIONS

The Shariah Advisory Council (SAC) of SC is a key pillar in the development of the ICM in Malaysia especially in facilitating innovation and ensuring a robust Shariah governance process. The rulings of the SAC provide greater consistency and clarity to issuers, intermediaries and investors in the Malaysian ICM.

Since its establishment in 1996, the SAC has facilitated the development of the ICM through its resolutions on Shariah concepts and their application. These resolutions are a body of reference on Shariah-related issues that concern the ICM. Key resolutions of the SAC were compiled and published as the *Resolutions of the Securities Commission Shariah Advisory Council*. In this regard, the SAC periodically reviews its past resolutions to take into consideration the dynamic changes and new development in the marketplace.

The following are among new resolutions issued by the SAC:

### 1. TA`WIDH (COMPENSATION)

*Ta`widh* (compensation) payment may be imposed due to delayed payment of either an Islamic financing based on *`uqud mu`awadhat* (exchange contracts) or *`uqud ishtirak* (partnership contracts). The imposition of *ta`widh* in the late repayment of Islamic financing based on *`uqud mu`awadhat* is permissible for:

- (i) arrears; and
- (ii) failure to pay after due date.

In Islamic Financing based on *`uqud ishtirak* such as *musharakah* or *mudharabah*, it is permissible to impose *ta`widh* on the issuer who fails to fulfill his/her obligation to pay the principal and profit amount to the investor at the pre-agreed date.

*Ta`widh* is also permissible under *wakalah* principle whereby if the issuer/*wakeel* (agent)–

- (i) breaches its fiduciary duty as an investment manager due to its failure to distribute the realised profit to the investors on the agreed date; or

- (ii) delays the payment of any amount due and payable to the investors upon dissolution of *wakalah* arrangement.

The late payment charge may be imposed on judgement debt and non-judgement debt for cases involving Islamic finance subject to the following conditions:

#### (a) Late payment charge on judgement debt

- (i) Late payment charge for judgement debt may be imposed by the court from the date the judgement was made until the date judgement debt was settled at the rate provided by the court rules. The implementation of this late payment charge must be based on the mechanism of *ta`widh* (compensation) and *gharamah* (penalty);
- (ii) *Ta`widh* refers to the compensation on the actual loss. The SAC decided that the rate of actual loss shall be based on the “daily overnight Islamic Interbank” rate as stated on the website of Islamic Interbank Money Market (<http://iimm.bnm.gov.my>), fixed on the date the judgement was made and calculated monthly based on daily rest basis;
- (iii) *Gharamah* refers to penalty imposed as prevention for late payment by debtor. In this context, *gharamah* refers to the difference between the amount of late payment charge and *ta`widh* i.e. the excess, if the amount of *ta`widh* is less than the amount of late payment charge;
- (iv) The late payment charge will be determined by the court rules. The amount of late payment charge for judgement debt cannot be compounded (non-compounding);
- (v) Judgement creditor is entitled to receive *ta`widh* only. If the amount of *ta`widh* is equivalent or more than the amount for late payment charge, then the judgement creditor

may take the whole amount of the late payment charge. However, if the amount of late payment charge is more than *ta`widh*, the excess (*gharamah*) must be channeled to charitable bodies;

- (vi) The amount of late payment charge shall not exceed the outstanding principal amount; and
- (vii) Calculation of late payment charge for judgement debt is imposed on the basic judgement sum. Basic judgement sum is the outstanding principal amount (subject to *ibra'* if applicable) and shall not include late payment charge before judgement and other related costs.

With regard to the administration of *gharamah*, the SAC decided that the mandate is to be given to the Shariah committee/Shariah adviser to determine the suitable charitable bodies. *Gharamah* should be channeled by the judgement creditor, without taking into consideration whether or not the judgement creditor is an institution under the purview of the SC. Judgement creditor will have to ensure that they will not gain any benefit howsoever and whatsoever from their action in channeling the *gharamah*.

**(b) Late payment charge on non-judgement debt**

- (i) For default payment before maturity date  
  
*Ta`widh* may be imposed and shall not be more than 1% per annum on the outstanding amount and shall not be compounded. In addition, *gharamah* may be imposed and the combined rate of *ta`widh* and *gharamah* shall not exceed 10% of the outstanding amount or as may be determined by the SAC from time to time.
- (ii) For default payment after maturity date  
  
*Ta`widh* may be imposed and shall not be more than the prevailing daily overnight Islamic Interbank Money Market (IIMM) rate on the outstanding balance (outstanding principal and accrued profit). In addition, *gharamah* may be imposed and the combined

rate of *ta`widh* and *gharamah* shall not exceed 10% of the outstanding amount or as may be determined by the SAC from time to time.

(iii) Treatment of *ta`widh* and *gharamah*

Where *ta`widh* and *gharamah* are imposed, the investors/sukukholders are only entitled to the amount of *ta`widh*. The amount of *gharamah* shall be channeled to *baitulmal* and/or charitable bodies as advised by the Shariah adviser of the issuer.

**2. BAI` INAH**

The SAC has updated its resolution on *bai` inah* and has resolved that the implementation shall conform to and comply with the following conditions:

**(a) The sale and purchase of asset shall be executed via two clear and separate contracts**

In this regard, the following requirements should be complied:

- (i) Both contracts shall comply with the general requirements for valid sale and purchase in accordance with Shariah;
- (ii) Transaction documents for sale or purchase of asset may be done via documentation method which is accepted by market practice (*`urf*) including via written documentation or verbal recording; and
- (iii) Transaction documents for both sale and purchase of asset in written form shall be prepared in two separate set of documents.

**(b) The sale and purchase of asset should not have the conditions to repurchase or resell of asset**

Based on the view of *mazhab Shafi'i*, any form of conditions to repurchase or resell of asset that are associated with *bai` inah* contract will annul the contract. In this regard, the following requirements should be complied accordingly:

- (i) For the purpose of this resolution, the conditions to repurchase or resell of asset comprises the following matters:
  - (aa) Any statement in any documents in relation to the *bai` inah* transaction which clearly states that the seller or the purchaser will repurchase or resell asset; and/or
  - (bb) Any statement in any documents in relation to the *bai` inah* transaction which provides the sequence of transaction regarding the sale of asset between two parties followed by the purchase of the same asset between the same parties or vice versa.
- (ii) The conditions to repurchase or resell of asset shall not be stipulated in any documents in relation to the *bai` inah* transaction since it will annul such transaction.

All documents related to *bai` inah* transaction are considered as element that form the contract where all those documents are inter-related and shall not be separated from one another. Thus, the conditions to repurchase or resell asset shall not be included in any documents relating to such *bai` inah* transaction, for instance in sukuk issuance, such conditions shall not be included in the Principal Terms and Conditions, Trust Deed, Information Memorandum, Master Agreement and other related documents.

The SAC also resolved that the practice of pre-signing<sup>1</sup> of legal documents for *bai` inah* transaction is not allowed. Such practice is perceived as a form of condition for the repurchase or resell of asset in *bai` inah* transaction which is not permissible according to mazhab Shafii.

**(c) Both sale and purchase contracts shall be executed at different time**

The execution of both sale and purchase contracts simultaneously by the contracting parties shall annul

both transactions. In this regard, the sale and purchase contracts shall be executed at different times.

**(d) Sequence of execution for each sale and purchase contracts shall be based on proper sequence**

The sequence of execution for each sale and purchase contracts shall be executed properly whereby the first sale contract shall be completely concluded before the second sale contract is executed. Therefore, the following requirements shall be fulfilled:

- (i) For the sale or purchase of asset, the selling party shall sign the agreement first followed by the purchasing party;
- (ii) Similarly, for the subsequent sale or purchase transaction, the selling party shall sign the agreement first followed by the purchasing party; and
- (iii) Any contracting parties shall not provide any verbal or written promise to resell or repurchase the said asset.

**(e) The sale and purchase of asset should give effect to the transfer of ownership of asset and the existence of possession or holding of asset (*qabdh*) which is valid according to Shariah and customary business practice (*urf tijari*)**

In this regard, the following requirements should be observed:

- (i) The possession or holding of asset (*qabdh*) can occur either physically (*al-qabdh al-haqiqi*) or constructively (*al-qabdh al-hukmi*); and
- (ii) Such possession or holding of asset (*qabdh*) shall give the following effects:
  - (aa) *Takhliyah* which means denying the right of the seller in respect of the sold asset; and

<sup>1</sup> Pre-signing refers to signing of the sale or purchase of asset by either party to the contract in the first sale and purchase contracts, followed by the signing of the repurchase or resell of asset by the same parties in the second sale and purchase contracts, before the first contract is being executed by another party (counterparty).

- (bb) *Tamkin* which means creating complete right of the purchaser in respect of the purchased asset.

rate/ratio (either increasing or reducing the profit rate/ratio) may only be effected by executing a supplemental contract subject to agreement by all contracting parties.

### 3. REVISION TO PRINCIPAL TERMS AND CONDITIONS OF A SUKUK ISSUANCE

#### (a) Revision to profit rate

- (i) In the case of *sukuk bai` bithaman ajil*, *sukuk murabahah* and *sukuk istisna`*:
- (aa) a revision to reduce the profit rate may only be effected by applying the principle of *ibra`* without the need to execute a supplemental contract; and
- (bb) a revision to increase the profit rate resulting in the increase of the selling price may only be effected by executing a new and separate contract to incorporate the new profit rate, after which the outstanding obligation under the initial contract will be settled and terminated. This arrangement must be carried out before the maturity of the initial contract.
- (ii) In the case of *sukuk musharakah*, *sukuk mudharabah*, *sukuk wakalah bi al-istithmar* and *sukuk ijarah*, the revision to the profit

#### (b) Revision to maturity date

- (i) A revision to the maturity date, in the case of *sukuk bai` bithaman ajil*, *sukuk murabahah* and *sukuk istisna`*, may be effected by executing a supplemental contract subject to the following conditions:
- (aa) the revision is agreed by all contracting parties; and
- (bb) there is no revision to increase the selling price.
- (ii) A revision to the maturity date, in the case of *sukuk musharakah*, *sukuk mudharabah*, *sukuk wakalah bi al-istithmar* and *sukuk ijarah*, may be effected by executing a supplemental contract subject to agreement by all contracting parties.

Supplemental contract executed under paragraphs (a)(ii), (b)(i) and (b)(ii) above does not terminate the initial contract of *sukuk bai` bithaman ajil*, *sukuk murabahah*, *sukuk istisna`*, *sukuk musharakah*, *sukuk mudharabah*, *sukuk wakalah bi al-istithmar* and *sukuk ijarah* (as the case maybe).

## REGION'S FIRST STRUCTURED COVERED SUKUK

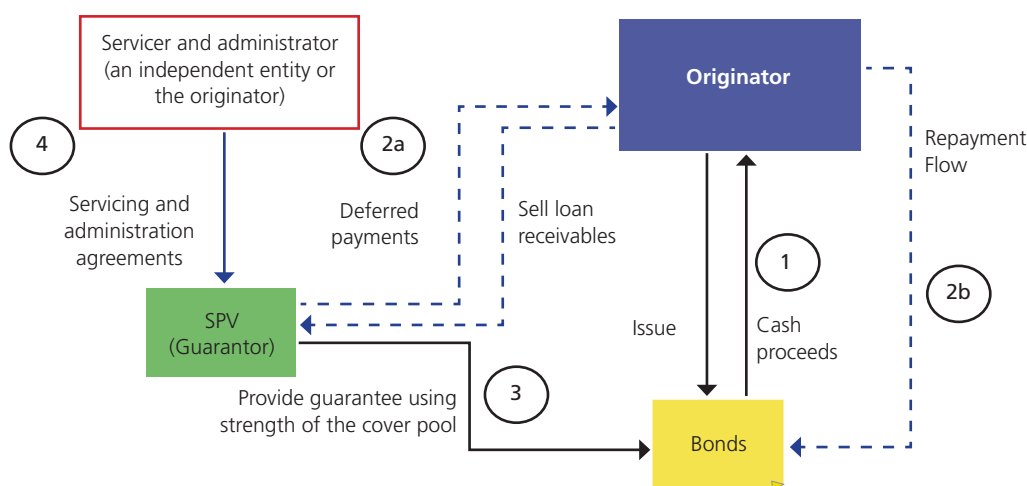
Covered bond is a debt instrument secured against a pool of low-risk assets which an investor has preferred claim in the event of issuer default. Meanwhile, structured covered bond is secured against a pool of assets which have been legally separated from the issuer or originator, isolating the asset pool's exposure to default and insolvency of the issuer<sup>1</sup>.

A covered bond is mostly issued directly from the balance sheet of an issuer where there is a legislation to insulate the pool of assets on the balance sheet from the insolvency of the issuer. For structured covered bond, a special purpose

vehicle (SPV) is created to isolate the pool of assets from the insolvency of the issuer, where the assets are transferred to the SPV through the normal contract laws. Therefore, the SPV needs to be structured as a bankruptcy remote entity from the issuer.

The structured covered bond is also a dual recourse bond where the bond holders have recourse, first to the issuer, when solvent, and then to the pool of assets upon the default of the issuer. The typical structure of structured covered bonds is illustrated in Diagram 1.

Diagram 1 – Typical Structured Covered Bond Structure<sup>2</sup>



The mechanics can be described in the following steps:

### Step 1

A structured covered bond will typically have an independent special purpose vehicle (SPV) which will hold the assets, known as the cover pool, while the issuer, which is normally the originator, will issue the structured covered bond as its own direct and unconditional obligation.

### Step 2

The proceeds raised through the issue of covered bonds will be on lent to an independent SPV. In turn, the SPV will use these proceeds to purchase from the originator portfolios of eligible assets/the cover pool on a true sale basis.

2a. The SPV will repay the intercompany loan in deferred payments. The loan schedule will mirror the debt profile of the structured covered bond.

2b. The deferred payments made will be the source of repayment for the covered bonds.

### Step 3

Backed by the cover pool, the SPV will provide a guarantee to covered bondholders for the payment of interest and principal on the covered bonds, which becomes enforceable if the issuer defaults. The guarantee represents an irrevocable, direct and unconditional obligation of the SPV and is secured by the cover pool.

### Step 4

The originator will act as the servicer under this structure. The originator usually also provides cash management services to the SPV and monitors compliance with imposed covenants. The servicer can also be an entity that is independent.

1 Structured Covered Bonds, MARC Rating Methodology, July 2013, Malaysian Rating Corporation Bhd.

2 Ibid.

In the case of sukuk, its issuance must comply with the Guidelines on Sukuk to ensure compliance with Shariah requirements.

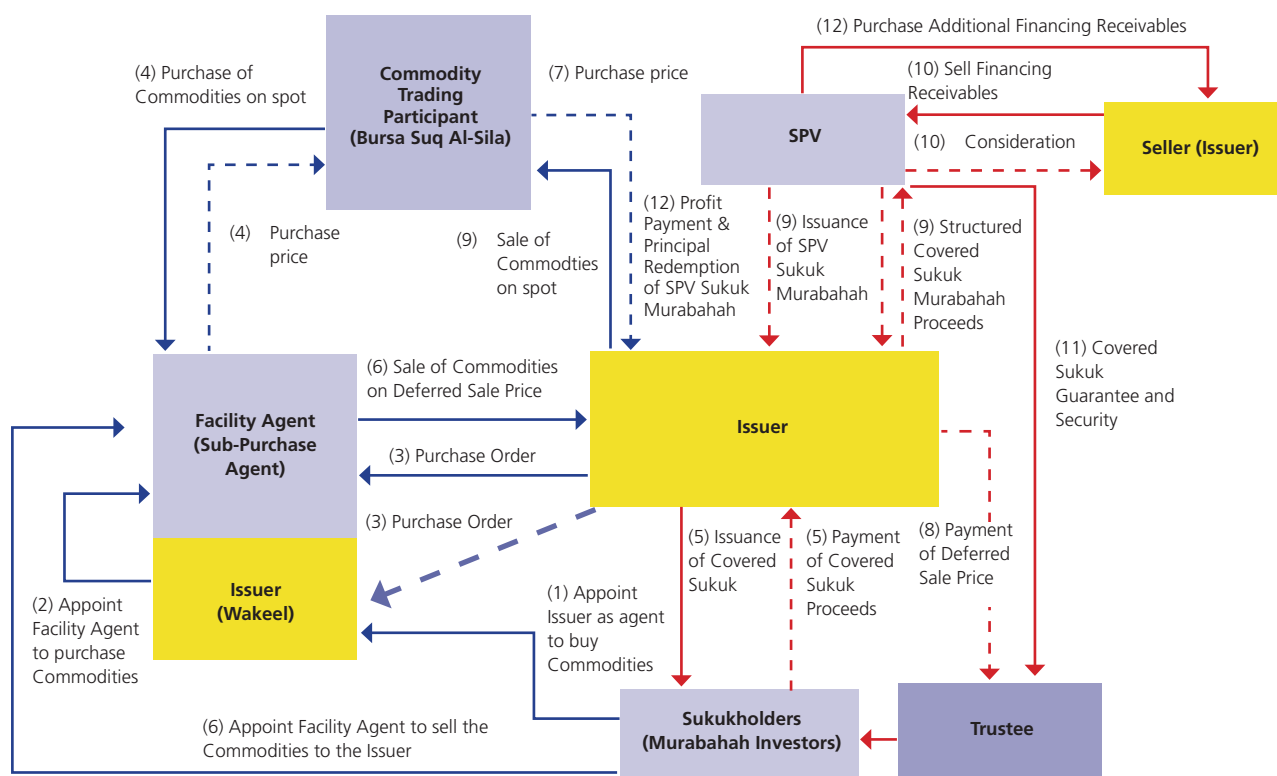
The region's first structured covered sukuk was issued in Malaysia in December 2013 with the issuance of RM3 billion Structured Covered Sukuk Murabahah Programme (Structured Covered Sukuk) by Malaysia Building Society Bhd (MBSB) as the issuer. RHB Investment Bank Bhd acted as the principal adviser and lead arranger for the Structured Covered Sukuk. The Structured Covered Sukuk was issued based on the Shariah principle of *murabahah* (via *tawarruq*) with tenure of 15 years.

For the purpose of this fund raising exercise, Jana Kapital Sdn Bhd (Jana Kapital), an SPV was set up to facilitate the issuance of the Structured Covered Sukuk, among others to provide guarantee for the payment of the deferred sale price under the Structured Covered Sukuk, acquire an identified portfolio of financial receivables which comply with some eligibility criteria from MBSB and issue Jana Kapital Sdn Bhd Sukuk Murabahah to fund the purchase of the financing receivables from MBSB.

Apart from guaranteed by Jana Kapital, the Structured Covered Sukuk is also backed by an identifiable pool of Shariah-compliant personal financing receivables (Financing Receivables). The Financing Receivables are purchased by Jana Kapital via true sale from MBSB. The sukukholders have dual recourse under the Structured Covered Sukuk, first to the issuer, and then to the pool of Financing Receivables as the Financing Receivables are separate and distinct from MBSB's other assets.

In this sukuk, the Structured Covered Sukuk proceeds are utilised by MBSB to subscribe the Jana Kapital Sdn Bhd Sukuk Murabahah. Thereafter, the proceeds from the Jana Kapital Sdn Bhd Sukuk Murabahah are utilised by Jana Kapital to purchase the Financing Receivables from MBSB (as seller). The sales proceeds of the Financing Receivables are in turn utilised by MBSB, as seller, for its working capital purposes including funding of its origination of financing assets in line with its business activity. The transaction structure of the Structured Covered Sukuk is illustrated in Diagram 2.

**Diagram 2: MBSB Structured Covered Sukuk Murabahah Programme**





## ROYAL AWARD FOR ISLAMIC FINANCE CALLS FOR GLOBAL NOMINATIONS

The Royal Award for Islamic Finance (The Royal Award) commences the third global search to honour an exceptional individual in the field of Islamic finance, with the opening of nominations.

The Royal Award, which was inaugurated in 2010 as a biennial award, is spearheaded by Bank Negara Malaysia and the SC in support of the Malaysia International Islamic Financial Centre (MIFFC) initiative. The Royal Award focuses on an individual's record of achievement and outstanding contribution to the advancement of Islamic finance globally. Previous recipients recognised for their efforts in expanding Islamic finance were Shaikh Saleh Abdullah Kamel, founder of Saleh Kamel Centre for Islamic Economy, at Al-Azhar University, Egypt; and Iqbal Khan, Chief Executive Officer of Fajr Capital.



An independent seven-member international jury, chaired by former Malaysian Deputy Prime Minister and Chairman of the World Islamic Economic Forum Foundation, Tun Musa Hitam, will select the deserving individual. The selection criteria of The Royal Award encompass both qualitative and quantitative aspects of an individual's exceptional contribution towards the global development of Islamic finance. This includes financial innovation and pioneering work, exceptional leadership, adoption and acknowledgement within the industry, and inspiration and influence towards future progress and development of Islamic finance. The closing date for nomination was 31 January 2014.

## SC AND AUTORITI MONETARI BRUNEI TO STRENGTHEN EFFORTS IN GREATER CROSS-BORDER ACTIVITIES

The SC and the Autoriti Monetari Brunei Darussalam (AMBD) signed a memorandum of understanding (MoU) to facilitate mutual efforts in building capital markets in Malaysia and Brunei Darussalam, and to encourage greater cross-border activities, particularly in ICM. It was signed by Datuk Ranjit Ajit Singh, Chairman of SC and Dato Paduka Haji Mohd Rosli Haji Sabtu, Managing Director of AMBD, in Bandar Seri Begawan on 29 October 2013.

The MoU provides a framework for the two authorities to explore mutually beneficial opportunities to enhance greater access to the respective capital markets, and to

promote investment activities aligned with the objectives of ASEAN capital market integration. It also strengthens co-operation in the areas of regulation, capacity building and human capital development between the two authorities.

Datuk Ranjit in his keynote speech at the 9th Annual Brunei Darussalam Roundtable in Bandar Seri Begawan on 30 October 2013 said, "This collaborative partnership is an important initiative in our efforts to grow our capital markets and to create greater channels for investor participation in our respective markets including in the area of Islamic wealth management."

## SC LEADS ISLAMIC FINANCE TASK FORCE TO PUBLISH REPORT ON ENHANCING INFRASTRUCTURE FOR ICM

The Standing Committee for Economic and Commercial Co-operation (COMCEC) is one of the three standing committees of the Organization of Islamic Cooperation (OIC) which monitors the decisions on economics and commercial co-operation by the OIC. At the 27th session on 16 September 2011, the COMCEC Capital Market Regulators Forum was established to offer a co-operation platform for the regulatory bodies. The main focus is to support market development and reinforce capabilities of regulatory bodies. The first meeting of the COMCEC Capital Market Regulators Forum was held from 26 to 27 September 2012 in Istanbul, Turkey, where the SC was elected as the chair for the Islamic Finance Task Force. The primary objective of the Task Force is to establish strategies and policy recommendations for development and internationalisation of Islamic finance among COMCEC member states.

The second meeting of the COMCEC Capital Market Regulators Forum, held on 19 September 2013 in Istanbul, Turkey, was hosted by the Capital Markets Board of Turkey as the Secretariat of the Forum. The Task Force presented a report on 'Enhancing Infrastructure for Islamic Capital Market' which aims to increase cross-border and co-operation activities in Islamic finance among the Forum member authorities. The report covers four segments of ICM infrastructural development namely, legal, tax and

regulatory framework, Shariah governance framework, talent development, and products and services.

To facilitate the collation of current data, the Task Force formulated a set of survey questionnaire where findings formed a basis to identify the current development of Member Authorities on their ICM financial infrastructure. It helped to draw conclusions and recommendations on the status of Member Authorities' ICM. In addition, research of secondary sources was conducted to obtain further views and insights.

The report also proposes 12 recommendations which are essentially broad strategies and initiatives that can be undertaken for developing the infrastructural components of the ICM. These recommendations include initiatives that may present opportunities for the Member Authorities to co-operate and collaborate in developing ICM. The report will act as a catalyst for further development and co-operation among the Member Authorities pertaining to the financial and market infrastructure of the ICM.

The report and information on COMCEC Capital Market Regulators Forum can be downloaded from [www.comceccmr.org](http://www.comceccmr.org)



*Participants of the 2nd meeting of COMCEC Capital Market Regulators Forum held on 19 September 2013 in Istanbul, Turkey*

## IFSB-IOSCO-SC COLLABORATE ON DISCLOSURE REQUIREMENTS FOR ICM PRODUCTS

The Islamic Financial Services Board (IFSB), the International Organization of Securities Commissions (IOSCO) and the SC released a joint publication *Disclosure Requirements for Islamic Capital Market Products* at the IOSCO 38th Annual Conference in Luxembourg, held from 15 to 19 September 2013. This publication is a compilation of the Issues Papers and commentaries presented at the IFSB-IOSCO-SC Roundtable on Disclosure Requirements for Islamic Capital Market (ICM) Products, held in Kuala Lumpur in September 2012.

The book discusses the need to develop international regulatory standards and best practices relating to disclosure requirements for ICM products. It analyses the issues, risks and challenges arising from potential inadequate disclosure in the areas of sukuk and Islamic collective investment schemes, and analyses ways to strengthen disclosure standards for ICM products.

The IFSB, IOSCO and SC recognise the need to complement the increasing internationalisation of ICM with a favourable regulatory environment. The collaboration among the three bodies represents a significant step towards the development and enhancement of international regulatory standards and best practices relating to disclosure requirements for ICM products. The joint initiative further underscores the importance of ICM within the global financial landscape



and highlights the need to approach investor protection and market integrity from a cross-jurisdictional perspective.

The IFSB, as the international standard-setting organisation for the Islamic financial services industry, seeks to strengthen the regulatory requirements for disclosure to make it more comprehensive for the industry. The book's release follows earlier ICM initiatives by IOSCO: the publication of the *Islamic Capital Market Fact Finding Report* in 2004 and the *Analysis of the Application of IOSCO's Objectives and Principles of Securities Regulation for Islamic Securities Products* in 2008. The first report concluded that the IOSCO Objectives and Principles of Securities Regulation would apply equally to the ICM, a view supported by the 2008 report with recommendations, among others, for further thematic work on disclosure standards.

The publication of this book is timely in view of the growing cross-border transactions and activities in the ICM, which call for some degree of standardisation, including disclosure requirements. The book is aimed at helping strengthen the disclosure regime and promote overall investor confidence in this increasingly important segment of the global financial system.

## SC REVISES EQUITY GUIDELINES FOR SPACs

The SC revised its *Equity Guidelines* to enhance investor protection and market efficiency. The key changes include additional investor safeguards and a practice note to clarify the regulatory principles and requirements of Special Purpose Acquisition Companies (SPACs), as well as introducing an easier transfer process for ACE Market counters to move to the Main Market of Bursa Malaysia Securities Bhd (Bursa Securities).

The changes are part of the SC's ongoing efforts to ensure that regulations and guidelines remain relevant and effective with balanced regulation to ensure the risk associated is proportionately addressed.

### Practice Note on Regulatory Principles of SPACs

In August 2009, after stakeholder and public consultations, the SC introduced a framework for the listing of SPACs on the Main Market of Bursa Securities to promote private equity activity, spur corporate transformation and encourage mergers and acquisitions. While there is keen interest in SPAC listings, the SC has noted that frequently, applicants and their advisers have not fully observed the principles for the listing of SPACs, despite the consultations and briefings held prior to the launch of the SPAC framework.

The new practice note is intended to address this and clarify, among others that a SPAC proposal must be viewed holistically and must ensure that the management team's experience and track record ties in with the SPAC's business objective and strategy. The new practice note also clarifies that the management team's compensation and reward structure must be commensurate with the potential returns to shareholders.

The SC has also introduced additional safeguards in the guidelines which are intended to ensure that a SPAC's management team has more meaningful financial participation and strengthens alignment of interest with the SPAC's public shareholders. The new safeguards, among other revisions, include prohibiting the use of initial public offering (IPO) proceeds for payment of management team remuneration prior to the completion of a qualifying acquisition by the SPAC, restricting the management team's ability to sell securities held in the SPAC before the assets acquired are income generating and requiring a minimum capital contribution from the management team. The practice note issued by the SC has taken into consideration feedback received through industry consultations involving a cross section of stakeholders, as well as developments and market practices in other jurisdictions.

### Transfer of Listing

In the revised *Equity Guidelines*, the SC has removed the requirement for an introductory document for companies seeking to transfer their listing from the ACE Market to the Main Market of Bursa Securities. The requirement has been removed only for companies eligible for a transfer based on the strength of their current businesses, and not through an acquisition which constitutes a reverse take-over or backdoor listing of the assets acquired.

The guidelines also now clarify that companies seeking a transfer are required to have a healthy financial position, which includes positive cash flow from operating activities, sufficient levels of working capital for at least 12 months from the date of the transfer and no accumulated losses based on its latest audited balance sheet.

The revisions take effect immediately and a copy of the revised *Equity Guidelines* is available on the SC website, [www.sc.com.my](http://www.sc.com.my).

## TECHNICAL NOTE ON THE APPLICATION OF SC'S GUIDELINES IN RELATION TO NON-TRADABLE AND NON-TRANSFERABLE PDS AND SUKUK

The SC issued a technical note to clarify SC's application of the *Guidelines on Private Debt Securities* (PDS Guidelines) and the *Guidelines on Sukuk* (Sukuk Guidelines) to PDS and sukuk proposals that are structured on a non-tradable and non-transferable basis. The SC does not intend to regulate financing arrangements that are essentially a loan whether structured on a Shariah-compliant basis or otherwise. This exclusion is consistent with the exemption of loans from the definition of 'debenture' in the *Capital Markets and Services Act* (CMSA).

In this regard, PDS and sukuk that are issued on a non-tradable and non-transferable basis will not fall under the PDS and Sukuk Guidelines if–

- (a) The PDS and sukuk are only subscribed by–
  - i. the principal adviser for the proposed issue;
  - ii. the arranger/manager for the proposed issue; or
  - iii. the principal adviser and arranger/manager for the proposed issue; and
- (b) The lending of monies or provision of finance is in the ordinary course of business of the subscriber(s).

Nevertheless, the SC notes that given the structure of the Malaysian bond and sukuk markets where banks remain significant participants in the role of investors, the SC will continue to regulate debentures and sukuk where the investor(s) are not also the principal adviser or lead arranger/manager.

### Frequently-asked questions (FAQs) on the application of the SC's Guidelines in relation to non-tradable and non-transferable PDS and sukuk

1. **XYZ Investment Bank is the Principal Adviser and ABC Bank is the Arranger of a bond that is issued on a non-tradable and non-transferable basis. Is SC's approval required for the bond issue if:**
  - (a) **XYZ Investment Bank is the sole subscriber?**  
The SC's approval is not required for the bond issue as it is solely subscribed by the Principal Adviser.
  - (b) **ABC Bank is the sole subscriber?**  
Given that the bonds are to be solely subscribed by the Arranger for the bond, the SC's approval is not required for the bond issue.
  - (c) **XYZ Bank and ABC Bank are the only subscribers to the bond?**  
The SC's approval is not required for the bond issue in view of the fact that the bond will only be subscribed by the Principal Adviser and the Arranger.
  - (d) **XYZ Bank and ABC Bank subscribe to the bond together with another investor?**  
As the investor (other than XYZ Bank and ABC Bank) is not the Principal Adviser or Arranger for the bond, the bond issue requires the SC's approval.
2. **If the subscriber is an asset management company, would the bond issue require the SC's approval?**  
Yes, it would. The asset management company is not in the business of lending monies or providing finance.
3. **Would this policy also apply to Islamic medium term notes that are issued under the programme and are issued on a non-tradable and non-transferable basis?**  
Yes, this policy position will also apply to each issue of securities under a programme. The Lead Arranger must ensure that the Lead Arranger and the Principal Adviser, as the case may be, must not be the only subscribers for any issue under the programme that has been approved by the SC.
4. **Does the term "provision of finance" also include any other financing arrangement or investment which is structured in compliance with Shariah principles?**  
Yes, the term "provision of finance" also includes any financing arrangement or investment which is structured based on any applicable Shariah principles.

## 2013: ANOTHER RESILIENT YEAR FOR THE GLOBAL ISLAMIC FINANCE INDUSTRY

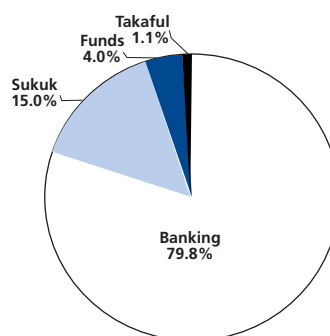
Despite the global economic and financial challenges, Islamic finance has once again demonstrated its resilience by continuing to grow at double-digit growth rates across all sectors of banking, sukuk, funds and *takaful* to reach an estimated US\$1.8 trillion in assets as at end-2013, reflecting an impressive y-o-y growth of 18.6%<sup>1</sup>.

Following 2013's performance, the growth of total Islamic financial assets has managed to achieve a CAGR of 17.07% during 2009-2013. Spearheading this impressive growth has been the Islamic banking sector which continues to dominate the global portfolio of Islamic financial assets with a 79.8% contribution to total assets in 2013. The amount of new sukuk issuances in 2013 once again surpassed the US\$100 billion mark, although the volume of issuances fell 8.77% short of the 2012's record amount. The funds and *takaful* sectors also posted double digit growth rates of 10.2% and 15.5% respectively in 2013, although in recent years, both sectors have been experiencing lower y-o-y growth rates<sup>2</sup>.

### Global Sukuk Market "2013 Review"

The global sukuk industry once again surpassed the US\$100 billion mark in terms of new issuances during the year 2013. Having witnessed a slowdown in the second half of 2013, particularly in 3Q, the global sukuk issuances closed with a total of US\$119.71 billion in issuances, falling 8.77% short of the record issuances amount of US\$131.2 billion in 2012. The slowdown in global sukuk issuances was largely due to the indication of a cut-back in the US monthly stimulus programme by the US Federal Reserve (US Fed) in May 2013. This announcement by the US Fed had a profound effect on the global bond market which saw prices of fixed-income instruments (including sukuk) to fall sharply as fears spread that the US Fed's reduction in bond purchases would move investors out of the safe asset to higher yielding assets on an improving US economy. In particular, the hard hit was the corporate sukuk market in the 3Q immediately after US Fed's

Global Islamic finance assets by segment (2013 estimates)



Source: IFIS, Zawya, Bloomberg, KFHR

*“This announcement by the US Fed had a profound effect on the global bond market which saw prices of fixed-income instruments (including sukuk) to fall sharply as fears spread that the US Fed's reduction in bond purchases would move investors out of the safe asset to higher yielding assets on an improving US economy.”*

announcement, which fell to their lowest level in two years with issuances at a mere US\$2.68 billion as compared to US\$8.1 billion and US\$7.4 billion issuances in 1Q 2013 and 2Q 2013 respectively. Nonetheless, sovereign sukuk issuances sustained the momentum throughout 2013 steering the global sukuk outstanding level to expand by 17.8% y-o-y to close at US\$270.2 billion as at end-2013.

<sup>1</sup> KFH Research.

<sup>2</sup> *ibid.*

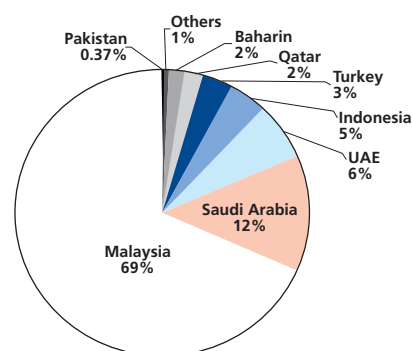
## Malaysia Sukuk Market Snapshot – 2013

Malaysia's sukuk market is recognised as the most vibrant and active in the world. During 2013, Malaysia maintained its top position as the largest sukuk issuer with a 69% share of total issuances in 2013 amounting to almost US\$82.4 billion.

By currency, Malaysian ringgit sustained its domination representing 67% of total sukuk issuances for the year 2013 worth US\$80.4 billion.

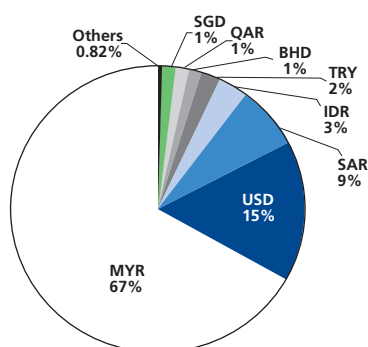
By structure, murabahah is the most popular principle in Malaysia representing 75% or US\$61.8 billion of total Malaysian sukuk issuances.

## Global sukuk issuances by domicile (2013)



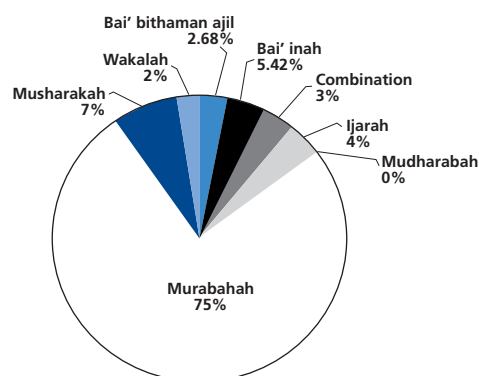
Source: IFIS, Zawya, Bloomberg KFHR

## Global sukuk issuances by currency (2013)



Source: IFIS, Zawya, Bloomberg KFHR

## Sukuk issuances by structure – Malaysia (2013)



Source: IFIS, Zawya, Bloomberg KFHR

## Global Islamic Funds Industry "2013 Review"

The global Islamic funds sector witnessed a 10.2% y-o-y expansion in assets under management (AUM) to close at an estimated US\$73.7 billion as at 9 December 2013. Post the global financial crisis, the Islamic funds sector witnessed subdued growth on the back of falling prices and stagnant

volume in the global equity markets. However, improved global economic outlook and growing demand for Shariah-compliant investment avenues contributed towards the 2013 y-o-y growth in Islamic funds AUM which comes at a rate higher than the CAGR of 9.10% for the years 2008–2013. The number of funds in this sector has also grown four-fold from approximately 285 funds in 2004 to an estimated 1,053 funds as at end-2013.<sup>3</sup>

<sup>3</sup> KFHR Research.

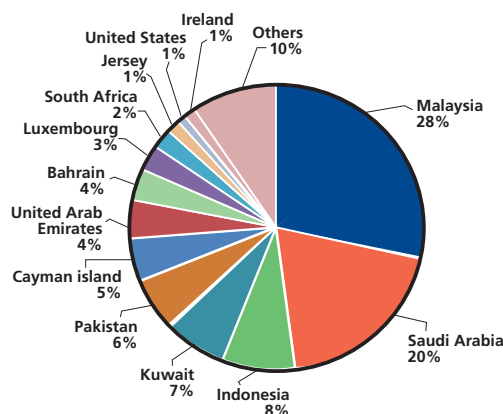
### Malaysia Islamic Funds Market Snapshot – 2013

In terms of number of funds by domicile, Malaysia retains the top position in 2013 with nearly 28% of the total number of Islamic funds domiciled in Malaysia as at 9 December 2013.

In terms of Islamic funds assets by domicile, Malaysia represents the second largest Islamic funds markets having total Islamic funds AUM of US\$16.3 billion or 22% of the total industry AUM as at 9 December 2013.

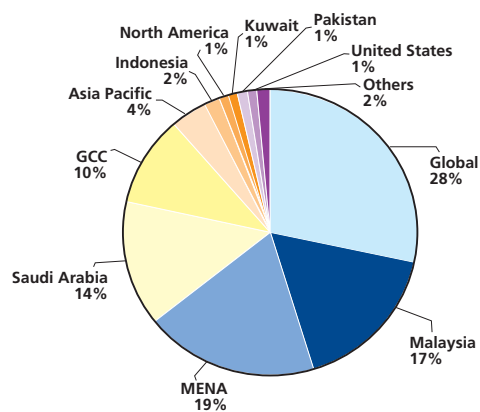
In terms of geographical focus of Islamic funds assets, Malaysia represents the largest individual country focus market with almost 17% of Islamic funds having geographical focus on Malaysia

### Global number of Islamic funds – by domicile (2013)



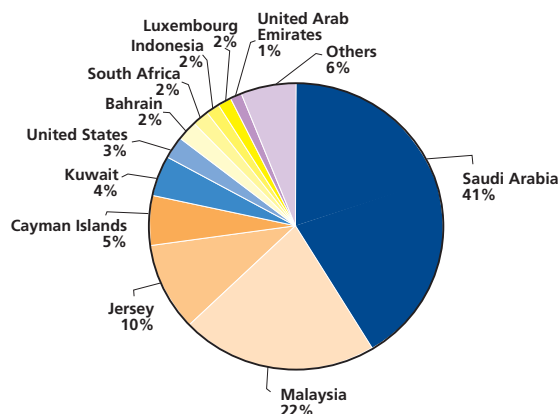
Source: IFIS, Zawya, Bloomberg KFHR

### Islamic funds assets by geo focus (2013)



Source: IFIS, Zawya, Bloomberg KFHR

### Global Islamic funds assets by domicile (2013)



Source: Bloomberg, EurekaHedge, KFH Research Limited

### 2014 Prospects

The global Islamic finance industry has managed to sustain its impressive double-digit growth rates in 2013 despite various challenging economic conditions such as the emerging markets funds outflows in the light of tapering

in US quantitative easing programme, the US public sector shutdown over its budget deficit fiscal cliff, as well as slow recovery in the Eurozone. Moving forward, the Islamic financial industry is expected to continue its robust performance in 2014 particularly with more jurisdictions penetrating into the Islamic financial industry.



By the end of the year 2014, the Islamic financial industry is expected to surpass the US\$2 trillion mark. Islamic banks financing growth remains robust and positive, supported by aggressive government spending on infrastructure projects and domestic consumption. Mega infrastructure projects in GCC countries and Asia are poised for Islamic banks to tap into these investment opportunities. Sukuk market will also benefit from these trends. The sukuk segment is expected to experience an increase in momentum in 2014 as there are a number of jurisdictions and entities looking to tap into the global pool of Shariah-compliant funds through sukuk for their various economic, business and infrastructural spending needs.

Particularly for sovereign sukuk issuances, 2014 will witness a number of debut issuances including from the United Kingdom, South Africa, Oman and Senegal among others. The new participation in the Islamic financial system, e.g. Oman, Philippines and China, and potential expansion in niche markets to the likes of Sri Lanka, Maldives, Singapore, United Kingdom, Hong Kong, Azerbaijan, Kazakhstan and Afghanistan are bound to spur growth in all sectors of the Islamic financial industry in 2014. Notably, United Kingdom's efforts to issue sovereign sukuk and to list an Islamic index in the London Stock Exchange are likely to encourage other European nations to follow suit including France, Ireland and Germany. Luxembourg is already known to soon realise the launch of EU's first Islamic bank in 2014 known as Eurisbank. From the demand side, the rise in the number of High Net Worth Individuals (having investable assets over US\$1 million) as well as general increase in the affluence of the population in key Islamic finance markets represents further potential for the Islamic financial industry as a whole to expand its market base.

*“The new participations in the Islamic financial system, e.g. Oman, Philippines and China, and potential expansion in niche markets to the likes of Sri Lanka, Maldives, Singapore, United Kingdom, Hong Kong, Azerbaijan, Kazakhstan and Afghanistan are bound to spur growth in all sectors of the Islamic financial industry in 2014.”*

The development of sukuk and money markets are also expected to contribute to the growth of Islamic funds industry. Furthermore, the global Islamic funds industry is expected to benefit from the steady global economic recovery which will bolster investor confidence and performance of underlying invested assets. Growing number of new Islamic financial institutions e.g. Islamic pension funds, takaful companies and Islamic trusts (or awqaf), as seen in recent years, would naturally create greater demand for Islamic investments including funds. Attracting institutional investors, therefore, is of the essence for active progression of the Islamic funds sector.

These prospects, coupled with growing preferences for Shariah-compliant financial solutions and instrumental support by various multilateral organisations and regulatory bodies, are among the key drivers of the Islamic finance industry in 2014.

**NOTE:**

**2013: Another resilient year for the global Islamic finance industry by the Malaysia International Islamic Financial Centre (MIFC).**

*Our marketplace is a comprehensive Islamic finance ecosystem and business environment of infrastructure, innovation, expertise and deal flow, served by the Malaysia International Islamic Financial Centre (MIFC) Community, comprising the financial institutions, professional firms, regulators and government agencies founded on the launch of the MIFC initiative in 2006. For more information, please visit [www.mifc.com](http://www.mifc.com)*



## GLOBAL ISLAMIC FUNDS INDUSTRY – ACHIEVING GROWTH UNDER CHALLENGING TIMES

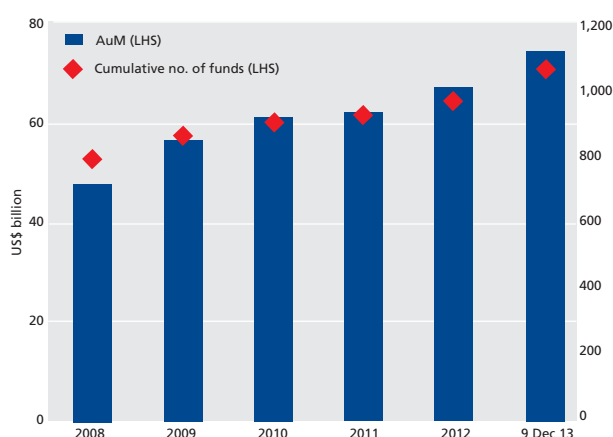
The global assets under management (AUM) for Islamic funds are estimated to have reached US\$73.7 billion<sup>1</sup> as at 9 December 2013 at a CAGR of 9.1% during the past five years and the number of funds has grown four folds, demonstrating the vast potential of the Islamic wealth management industry.

The global Islamic funds industry has progressed tremendously having grown from a US\$29.2 billion AUM market in 2004 to an almost US\$73.7 billion market as at 9 December 2013. The number of funds in the industry has also grown four-folds from approximately 285 funds in 2004 to an estimated 1,053 funds in the same time period. Despite the challenging global macroeconomic environment and volatile performances in the world financial markets, the Islamic funds industry has managed to post an impressive 2013 year-to-date growth of 10.2% in AUM, having witnessed the introduction of more than 78 new Shariah-compliant funds in this period ending 9 December. The growth in the Islamic funds sector has been supported by the surge in availability of Shariah-

compliant capital market instruments including listed equities, fixed-income instruments, money market instruments and other structured investment products which essentially provide fund managers a wide range of Shariah-compliant financial instruments for fund portfolio management. Moreover, there are now four major global Islamic indices providers, namely Dow Jones Islamic Indices, S&P Shariah Indices, FTSE Islamic Indices and MSCI Islamic Indices, which track a global universe of Shariah-compliant stocks in various financial markets, thus providing fund managers with options to vary their fund offerings according to geographical focus.

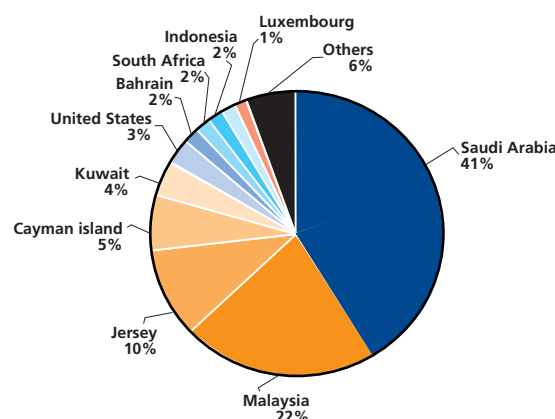
By domicile, Malaysia and Saudi Arabia represent the two largest Islamic funds markets having combined total Islamic funds AUM of US\$46.5 billion or 63.1% of the total industry AUM as at 9 December 2013. The leading position of Malaysia as an Islamic funds domicile can be attributed to the availability of a wide range of ICM instruments and ready pool of various institutional and retail investors investing in Shariah-compliant financial products. Moreover, Malaysia's

**Islamic funds industry – Assets under management (AUM) and number of funds**



Source: Bloomberg, Eurekahedge, KFH Research Limited

**Islamic funds assets – by Domicile (9 December 2013)**



Source: IFIS, Zawya, Bloomberg KFHR

<sup>1</sup> KFH Research Limited

FEATURES

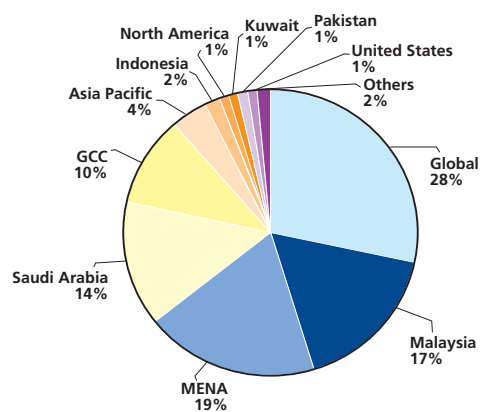
well-developed regulatory framework and accommodative policies which encourage the growth and development of ICM make it attractive to originate Islamic funds from the country. Similarly, in the case of Saudi Arabia, the availability of a ready pool of Islamic investors and high net-worth individuals (HNWIs) factor in as reasons for the jurisdiction to be a preferred domicile for Islamic funds.

As at 9 December 2013, funds with a global geographical focus remain the most popular as 28% of total Islamic AUM were invested under a global mandate with global geo-focus strategy to achieve diversification of risks by investing in various financial markets. Malaysia and Saudi Arabia represent the two key individual country focus markets which attract the most AUM of Islamic funds (17% and 14% respectively as at 9 December) given the large market capitalisation of Shariah-compliant equities in these markets. Furthermore, bulk of the Islamic funds raised locally in these two jurisdictions is channeled into the domestic ICMs, thus raising their profile as focus countries for funds.

By asset class, equities constitute 34% of the total AUM of Islamic funds as at 9 December, followed by money market instruments (19%) and then commodities (15%) as the second and third largest Islamic funds assets by asset class.

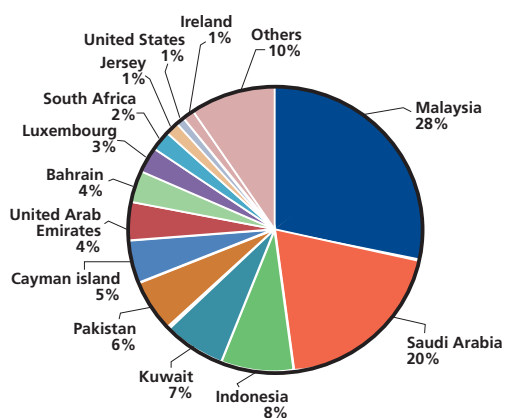
The concentration of Islamic funds in Malaysia and Saudi Arabia was attributed by the large size of funds domiciled in the two countries. Among the top 20 Islamic funds by asset size, Malaysian and Saudi Arabian domiciled-funds dominate the list with eight and 10 funds respectively along with one fund each from the United States and Kuwait. Half of these funds have investment focus on equity, followed by five money market funds and three having commodities as their asset focus.

**Islamic funds assets by geographical focus (9 December 2013)**



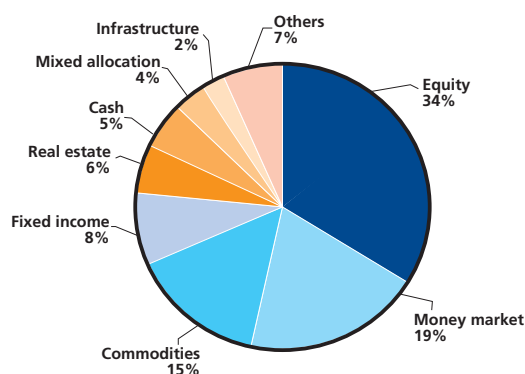
Source: Bloomberg, Eurekahedge, KFH Research

**Number of Islamic funds – by Domicile (9 December 2013)**



Source: Bloomberg, Eurekahedge, KFH Research Limited

**Islamic funds assets – by asset class (9 December 2013)**



Source: Bloomberg, Eurekahedge, KFH Research Limited

## MALAYSIA'S ISLAMIC FUNDS AND ASSET MANAGEMENT INDUSTRY

Malaysia's ICM is one of the most dynamic markets globally and the industry has led many product innovations in the global ICMs. Malaysia leads the global sukuk sector in terms of number of issuances and sukuk outstanding since the inception of the sector in the year 2000. In terms of funds and asset management, the domicile has nearly two decades of experience in Islamic funds having established two Islamic unit trust funds way back in 1993. Since then, the country has been driving the Islamic asset management industry's innovation with milestones among others the launching the world's first Islamic real estate and investment trust (REIT) in 2006 and the Asia's first Islamic exchange-traded fund (ETF) in 2008. Malaysia is now the second largest Islamic funds market by domicile (largest number of funds globally) and is centrally located in the ASEAN region which is home to a population of more than 570 million. As at 31 October 2013, Malaysia has 175 active Islamic funds with a net asset value (NAV) of RM40.7 billion while there are a total of 39 asset management companies which offer Islamic and conventional unit trust funds.

Gradual financial liberalisation undertaken by the Malaysian government has attracted a number of market players to establish their operations in the country's Islamic financial market place. In terms of flexibility of funds operation, Malaysia allows Islamic fund management companies to offer funds in both local and foreign currencies while further allowing fund managers to invest 100% of the capital abroad. In addition, the foreign exchange administration rules of Malaysia now allow free mobility of inward and outward movement of funds. Dynamic ICM with ready pool of Islamic financial players provide abundant opportunities for various Islamic financial institutions, including the Islamic asset management industry, to participate in the growth of Malaysia's Islamic finance sector.

In terms of returns on Islamic funds, the top 10 best total equity funds returns in 2013 are domiciled in United Arab Emirates, Pakistan, Malaysia and Saudi Arabia, with more than 45% in total YTD returns as at 9 December 2013. In comparison, the mixed allocation funds yielded average total YTD returns of 32% across the top 10 best total mixed allocation fund returns as at 9 December 2013. The top 10 best performing mixed allocation funds in terms of returns are domiciled in Pakistan, Saudi Arabia, Kuwait, Malaysia and the United Arab Emirates.

As for money market and fixed-income funds, funds domiciled in Pakistan and Indonesia generally yielded higher returns given the higher Islamic interbank profit rates and sukuk return rates in these countries. The total YTD returns among the top 10 money market funds averaged 6.2% while among the top 10 fixed-income funds averaged 10.1% as at 9 December 2013. The returns on commodity funds however remained stagnant given the declining commodity prices in the global markets as the world macroeconomic conditions remain challenging.

### Outlook and Challenges

The global Islamic funds industry has managed to achieve growth despite the challenging economic conditions. Moving forward, the Islamic funds sector is expected to continue this growth. As more jurisdictions introduce Shariah-compliant indices in their capital markets, for example United Kingdom's recent announcement of listing a Shariah-compliant index on the London Stock Exchange, the Islamic fund managers have wider stock universe to choose from for their portfolio management. The phenomenal growth rates in world sukuk issuances further provide avenues for Islamic fixed-income and mixed-allocation funds to blossom. Similarly, growing efforts to introduce short-term Shariah-compliant instruments for liquidity management of Islamic financial institutions will allow more funds be directed to Islamic money market type of funds. These developments will further spur growth of the Islamic funds industry which eventually will attract more asset managers to tap into the market.

From the demand side, the rise in the number of high-net-worth individuals (HNWIs) (having investable assets over US\$1 million) in key Islamic finance markets represents further potential for the Islamic funds industry to expand its market base. Based on 2012 statistics, 6.8% of global HNWIs were located in Middle East and Africa, with GCC

having the majority share in the cluster. Meanwhile, Asia-Pacific, which has witnessed growing interest in Islamic financial services among its various jurisdictions, is home to 30.4% HNWI's as at 2012, overtaking North America and other regions to become home to the most number of HNWI's. As a result, the Islamic funds industry has vast opportunities to profile the HNWI's in such regions in order to offer them Islamic wealth management products based on their investment objectives and risk appetites.

Nonetheless, challenges remain in the sector's growth and development as volatile global economic performances have caused smaller-scale Islamic fund managers to restructure and at times, exit the industry in the light of

competition from larger-scaled and more developed conventional fund managers. Under such circumstances, opportunities for Islamic fund managers exist in the form of attracting investments from institutional investors that can help shore up the AUM of Islamic funds, which may lead to achieve efficiency benefits through scale for the fund managers. Further opportunities for fund managers exist in the form of penetrating into untapped markets in the rising Asia-Pacific and developed North-America, targeting HNWI's in such markets. In conclusion, the Islamic funds sector needs are expected to grow beyond its traditional strongholds of GCC and Malaysia and will attract more conventional fund managers to tap into this thriving Islamic funds industry.

**NOTE:**

***Global Islamic Funds Industry – Achieving Growth under Challenging Times by the Malaysia International Islamic Financial Centre (MIFC).***

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# HARMONISATION OF SHARIAH RULINGS IN ISLAMIC FINANCE

by Dr Amir Shaharuddin, First SC–OCIS Scholar-in-Residence (Academic Year 2012)

## SC-OCIS Scholar-in-Residence Programme

The collaboration between the Securities Commission Malaysia (SC) and Oxford Centre for Islamic Studies (OCIS), United Kingdom (UK) was established in 2010, with the objective of promoting intellectual discourse and research on applied and contemporary issues with respect to global Islamic finance.

The SC-OCIS Scholar-in-Residence programme complements the flagship programme under this collaboration which is the annual SC-OCIS Roundtable, a thought-leadership platform for distinguished scholars, academicians, regulators and Islamic finance practitioners to discuss and exchange views on contemporary issues in Islamic finance.

Dr Amir Shaharuddin from the Islamic Science University of Malaysia (USIM) is the first Visiting Fellow of the SC-OCIS Scholar-in-Residence Programme for the academic year 2012. Dr Amir conducted research on the topic “Harmonisation of Shariah Rulings in Islamic Finance” to analyse the differences in practices between jurisdictions. His research attempts to formulate the basis upon which contemporary fiqh issues in Islamic finance can be resolved with minimal discrepancy. It is hoped that Dr Amir’s research will help to promote greater crossborder transactions and activities to spur further growth of Islamic finance in Malaysia as well as internationally.

## 1.0 Introduction

*Riba* (usury) is undeniably forbidden in the Islamic legal tradition. The prohibition is clearly declared in the Quran as evidenced in the verses 2:275–281. As *riba* is interpreted as interest by majority of Muslim contemporary scholars, the need to establish alternative interest-free financial institutions is obvious. As such, since in 1970s, Islamic financial institutions (IFIs) are established in many predominance Muslim countries. The IFIs offer financial products which are not only adhere to the rules described by the Shariah (Islamic law) but also provide reasonable returns to their depositors and shareholders. The emphasis on Shariah compliance paves the way for the Shariah scholars to play integral role in Islamic finance industry. In order to ensure that the operations of the IFIs are conducted in accordance with Islamic principles, Shariah boards which comprise experts in Islamic commercial transactions are set up. The Shariah boards primarily exist to perform an oversight role and collectively make *ijtihad*<sup>1</sup> on all matters related to IFIs’ operations. They are responsible in examining the new financial product structures and

deciding on the extent to which the products comply with the rules described by the Shariah. Besides, they are expected to monitor IFIs in carrying out the Shariah review, audit, risk management and research<sup>2</sup>.

Mohd Nazri Chik<sup>3</sup> makes an interesting survey with regards to the current state of Shariah advisory practices in the Sunni-dominant Muslim countries. He categorises the leading Shariah scholars who are actively advising IFIs worldwide into four main groups;

- (1) Saudis and Sudanese based-scholars such as Sheikh Abdullah Ibn Sulayman al-Mane’ea and Dr Abdul Rahman al-Atram;
- (2) the Gulf Co-operation Council (GCC) based-scholars such as Dr Abdul al-Satar Abu Ghudah, Dr Muhammad Ali. el-Qari and Nizam Yáqubi;
- (3) Pakistani based-scholars who are led by Taqi Uthmani; and
- (4) Malaysian based-scholars such as Dr Daud Bakar, Dr Akram Laldin and Dr Aznan Hasan.

<sup>1</sup> The endeavor of a Muslim scholar to derive a rule of divine law from the Quran and hadith to solve a contemporary problem.

<sup>2</sup> Bank Negara Malaysia, Shariah Governance Framework for Islamic Financial Institutions, 2011. [http://www.bnm.gov.my/guidelines/05\\_shariah/02\\_Shariah\\_Governance\\_Framework\\_20101026.pdf](http://www.bnm.gov.my/guidelines/05_shariah/02_Shariah_Governance_Framework_20101026.pdf). Retrieved on 15 April 2013.

<sup>3</sup> Mohd Nazri Chik, 2013. Head Shariah Division, Bank Islam Malaysia Bhd, interview held on 19 March 2013 in Kuala Lumpur.

They are said to have adopted slightly different approaches and orientations in supervising the Shariah aspect of their respective IFIs. Because of a few controversial rulings i.e. *bay' al-inah*, the Malaysian Shariah scholars are perceived to be more 'innovative' and flexible as compared to the rest of the group<sup>4</sup>. One of the justifications relied upon when adopting the controversial rulings is *maslahah* (public interest). *Bay' al-inah* for example is accepted in Malaysia, in view that the infant Islamic finance industry is in need of the simplest form of financing structure to compete with the established conventional banking institutions.

The different approaches in Shariah interpretation have led to the divergence of Shariah rulings in the industry. The scholars are often in disagreement when modifying the classical fiqh doctrines to satisfy the financial needs of current Muslims. As a result, a contract can be recognised in one country but rejected in another.

Although the juristic disagreement is acceptable from the fiqh perspective, its practice in the industry is thought to bring more disadvantages than benefits. It is felt that the lack of consistency in Shariah rulings has created uncertainty and confusion among the industry players. For instance, due to unresolved fiqh issues of *bay al-dayn* (sale of debt), issuers and investors become confused about the legality of sukuk trading in the secondary market. If this fiqh disagreement remains, not only a cross-border instrument cannot be created, but the industry may also lose its stakeholders' confidence and acceptance in the future.

In contrast, unvarying Shariah rulings will arguably stimulate the growth of the industry. It will consolidate the interpretations of Shariah and this will enable the industry to expedite its product development and reduce the risk of non-compliance. Industry practitioners have long advocated that the absence of globally accepted Shariah standard is an intervening factor that impedes the strategic plan in positioning Islamic finance into the mainstream economy. Therefore, given the era of globalisation in which Islamic financial institutions are operating, the idea of harmonising Shariah rulings has come to constitute an issue of concern mainly among the industry practitioners. It should be noted however, that the discussions have mostly been held in

conferences and forums with only a few working papers published in academic journals. During a conference in Dubai, Shamshad Akhtar, the former governor of State Bank of Pakistan was of the opinion that:

“the diversity provided by different schools of thoughts in Islamic law on same issues at times creates confusion in the minds of the public, but if properly harmonised across the globe, the diversity can become a great strength for the industry”<sup>5</sup>.

Although the harmonisation of Shariah rulings in Islamic finance has increasingly become a popular topic, the issue of terminology has not received much attention. As a result, efforts towards harmonisation agenda are still far from satisfactory. Hence, the present article defines the term harmonisation and outlines its scope and contribution. It also discusses the views of Shariah scholars, industry practitioners and regulators on harmonisation agenda.

## 2.0 Harmonisation and Standardisation

There are two terms which are regularly quoted when discussing the subject; harmonisation and standardisation. As the two terminologies connote rather distinctive meanings, regulators, industry practitioners and Shariah scholars appear to be in disagreement when elaborating the issue. Most of industry practitioners who advocate the harmonisation seem to be confused over the term harmonisation as opposed to standardisation.

For most of them, the harmonisation of Shariah rulings means to create a sole authority such as the Supreme Shariah Board in the Islamic finance industry. Ignoring the regional and national differences, the Supreme Shariah Board will adopt the 'one-size-fits-all' approach in which its resolutions will become applicable to every institution. It will eliminate the need of Shariah board at every single IFI and thus, reducing the problem of lacking a number of Shariah scholars. Since IFIs are not required to maintain their Shariah boards at institutional level and to become the point of reference at all times, the global Shariah body will reduce

<sup>4</sup> Amir Shaharuddin, 2012. The Controversy of Bay al-Inah in Malaysian Islamic Bank, *Arab Law Quarterly*, Brill; Leiden, vol. 26, issue 4, p. 499-511.

<sup>5</sup> Shamshad Akhtar, 2006. Shariah Compliant Corporate Governance, A keynote address delivered at the Annual Corporate Governance Conference, Dubai, 27 November 2006

the time and cost in developing new financial products. The global Shariah body will 'harmonise' the diverse Shariah interpretation into one standard version and this will make the market fairer more efficient and more transparent<sup>6</sup>. Given the diverse Shariah governance models adopted by IFIs worldwide, in which different institutions have different governance models by which they set, measure, and monitor their compliance, such 'Standardisation' process is contended to be the key towards transition, from niche to mainstream position of Islamic finance<sup>7</sup>.

The successful international harmonisation of laws in the Western world has proven that the standardisation is possible. In the West, efforts to harmonise law across nations can be traced back to the early 19th century<sup>8</sup>. The setting up of the International Institute for the Unification of Private Law (UNIDROIT) marked the beginning of these efforts, although they were largely conducted in academic discourse during the initial stage. Similar to Islamic finance, the main driving force behind the harmonisation efforts is to enhance legal certainty and predictability. The establishment of supra-national institutions such as the European Union (EU) makes the harmonisation process become much more systematic. In order to create a single market, the EU commences the process of harmonising standards for goods and services throughout its 27 member states. In a full harmonisation process, the EU standards will substitute the diverse national rules, and member states are obliged to implement them. This is done by issuing Directives which impose obligations on states. Apart from the finance and banking industry, the full harmonisation is carried out on the aspect of the insurance of motor vehicle, cosmetics, fertiliser, transportation and telecommunication. However, there are also areas where minimum harmonisation is adopted. The EU sets the minimum standards and member states are free to choose more stringent measures<sup>9</sup>.

Thus, from the EU perspective, harmonisation is usually referred to a legislative process whereby various pieces of legislation are either brought together in one document, or

are at least co-ordinated<sup>10</sup>. The process eventually leads to the unification of law. Several questions arise, however, should Islamic finance adopt the same model? Is the ultimate aim of harmonisation of Shariah rulings able to create a single market like the EU does? If the answer is yes, the harmonisation of Shariah rulings would indicate that different legal systems, in which IFIs are present, are to be combined. It appears that the level of harmonisation discussed by experts in Islamic finance does not reach a point where the conversion and unification of Shariah rulings are envisioned. At this point in time, perhaps the unification is not needed. Rather, the diversity of legal opinions is still thought necessary by many parties. This is due to the understanding of the reasons as to why differences in Shariah rulings exist. Unlike the EU laws, the diversity of Shariah rulings in Islamic finance stems from the different approaches in interpreting the divine or scripture law. Shariah scholars who are advising IFIs are seen as interpreters of Allah's rules and Prophet Muhammad's *hadith* to Muslim bankers who do not understand the more intricate aspects of the revelation. The notion of interpretation implies that it will be almost impossible to 'standardise' human thinking and reasoning.

Since Shariah interpretation is viewed as the underlying reason for the disagreement, harmonisation refers to a process of determining certain rules and standard of interpretation which is to be used by the Shariah experts<sup>11</sup>. In other words, the harmonisation from this point of view is more of refining the interpretation of the methodology used by the Shariah scholars in solving modern financial problems. It is argued that by having an agreed method of interpretation, the consistency of Shariah rulings can be achieved. This opinion is based on the assumption that there is causal effect between the inconsistency of rulings and undefined methodology. However, the argument raises some basic questions. Is it true that the diversity of rulings is due to the inexistence of a defined methodology? What is the current methodology adopted by the scholars, then?

<sup>6</sup> Wafica Ali Ghoul, 2008. *The Standardisation Debate in Islamic Finance: A Case Study*, paper presented at the 8th International Conference in Islamic Economics and Finance, 19–21 December, 2011, Qatar.

<sup>7</sup> KPMG, 2006. *Making the Transition from Niche to Mainstream Islamic Banking and Finance: A Snapshot of the industry and its Challenges Today*. <http://us.kpmg.com/microsite/FSLibraryDotCom/docs>, retrieved on 23 April 2013.

<sup>8</sup> Jose Angelo Estrella Faria, 2009. *Future Direction of Legal Harmonisation and Law Reform: Stormy Seas or Prosperous Voyage?* International Institute for the Unification of Private Law (UNIDROIT).

<sup>9</sup> Paul McMahon, 2009. *Harmonisation of Laws*, Lavelle Coleman Solicitors, Dublin, Ireland.

<sup>10</sup> Michael G. Faure, 2000. *Defining Harmonisation, Codification and Integration*. *European Environmental Law Review*, June 2000, p.174–182.

<sup>11</sup> Muhammad Ali al-Qari, 2010. *Governance Standards and Protocol on Shariah Decision and Making Process*, *Proceeding of Securities Commission of Malaysia-Oxford Centre for Islamic Studies Roundtable and Forum, 15-16 March 2010, Kuala Lumpur*.



To what extent is the discussion at the IFIs level conducted before rulings are issued? While the investigation of the issues is beyond the scope of this research, the examination on the Islamic jurisprudence literature, however, reveals a different account.

Despite the fact that Muslim jurists have developed extensive hermeneutic science which is exemplified in Islamic legal theory (*usul a-fiqh*) and Islamic legal maxims (*qawaid fiqhhiyyah*), differences in fiqh still exist. In theory, both bodies of knowledge should provide formulae for Shariah scholars in interpreting the divine sources and should be able to assign them into 'harmonised' rulings. However, the predictable result of the Shariah interpretation is seldom accomplished because there is always some kind of tension between an approach to legal interpretation that aims to satisfy the demand of practicality, with an approach that strives to maintain consistency with an overarching prescriptive hermeneutic<sup>12</sup>. Perhaps, this explains why it is so difficult to predict a jurist's response to an unprecedented question, even assuming his perfect mastery of *usul a-fiqh* and *qawaid fiqhhiyyah*. On this argument, the refined interpretation method is believed to bring little benefit in harmonising the Shariah rulings.

Islamic finance is undoubtedly a dynamic industry where evolutions and changes continue to take place. In this capacity, modern Shariah scholars have to give more practical considerations when deducing new rulings for Islamic finance, as compared to family law matters. A rising number of discussions among contemporary Shariah scholars, recently on *maslahah* (public interest) and *maqasid al-Shariah* (objective of Islamic law) clearly suggest this phenomenon. Due to the perceived thought that Islamic finance has deviated from its original objectives, discussions regarding the two principles have increasingly received wider attention. Given the emphasis on the practical aspect in deducing new rulings, the disconnection between *fiqh* and *usul a-fiqh* would be more apparent. As practical considerations vary depending on country jurisdictions and market localities, Shariah boards will be likely to issue different rulings despite their mastery on new methods of interpretation. It goes without saying

that the theory of interpretation developed by the classical jurists is insignificant. In *usul a-fiqh*, there is discussion on *al-ta'arrul wa al-tarjih* (conflict in preference). In dealing with diverse rulings, the past jurists had outlined four possible steps that could be taken. The first is to combine the different rulings. The combination is possible, particularly when the jurists could find a meeting point between the different views. There are different rulings which can be combined and applied in a harmonious way. However, sometimes different *fiqh* rules cannot simply be reconcilable. In such a situation, the jurists will resort to *tarjih* –which is to prefer one rule to another. Then, if the *tarjih* is not possible (due to strong justification of each rule), the jurists would choose *naskh* (abrogation). However, the *naskh* can only take place with clear injunction from the Quran or hadith of the Prophet (pbuh). Finally, in the event in which neither of the steps mentioned is able to solve the differences, the jurists would settle for *tawqif* by which no position is taken until further investigation is conducted. The steps are meant to be a helpful guide for Shariah scholars in dealing with juristic disagreement. However, as rightly observed by Kamali, the formulae seem unable to solve the diversity of Shariah rulings in which the Islamic finance industry is facing. In the first place, discussions on harmonisation will not be raised should the above theory succeed in reconciling the disagreement among the Shariah boards<sup>13</sup>.

Therefore, in the writer's view, the best definition to describe the harmonisation in the current context is 'a process of minimising major differences among Shariah boards and to promote mutual respect among them'. Thus, harmonisation does not mean seeking a sole authority in issuing Shariah rulings; rather it allows a diversity of legal opinions. Harmonisation neither intends to close the 'gate' of *ijtihad* nor to permit total disparity which will result in the lack of authority. The primary aim of harmonisation is to minimise major differences as much as possible between the Shariah boards<sup>14</sup>. This could be achieved by promoting crossborder discussions to seek for the best solution for the industry. By invoking mutual respect, the harmonisation effort stresses the importance of (1) a reciprocal relationship between all Shariah boards in Muslim countries; (2) to promote the notion of agree to disagree; (3) to resolve

<sup>12</sup> Sherman A. Jackson, 2002. *Fiction and Formalism: Towards a Functional Analysis of Usul al-Fiqh* in Bernard G. Weiss (ed.), *Studies in Islamic Legal Theory*, Brill, Leiden.

<sup>13</sup> Hashim Kamali, 2010. *Proceeding of Securities Commission of Malaysia-Oxford Centre for Islamic Studies Roundtable and Forum, 15-16 March 2010, Kuala Lumpur*.

<sup>14</sup> Akram Laldin. 2013. Managing Director of International Shari'ah Research Academy (ISRA), interview held on 5 April 2013 Kuala Lumpur.

disagreement through debate, not open criticism; and (4) to inspire the willingness to reverse ruling and accept changes over time.

### 3.0 Views on Harmonisation

As noted earlier, due to the unclear apprehension of the term harmonisation, contemporary Shariah scholars and industry practitioners have adopted two opposing viewpoints with regard to the efforts in harmonising Shariah rulings in Islamic finance. There are advocates and critics of the agenda. Market leaders and regulators are those who repeatedly express their support towards the harmonisation efforts<sup>15</sup>. This group believes that the existence of defined Shariah standards will provide certainty in the Shariah interpretation when solving contemporary fiqh issues in Islamic finance. For regulators, such certainty is crucial in order to formulate prudential regulatory framework, which becomes a precondition for the industry's sustainable growth. The absence of prudential regulations will expose the IFIs into systemic instability which eventually leads to industry failure. Meanwhile, for the practitioners, harmonised Shariah rulings will bring clarity on the permitted and prohibited transactions across all jurisdictions. This will assist them to create cross-border instruments in tapping into larger international market. Hence, the progressive harmonisation of Shariah rulings in this respect is viewed by the market leaders and regulators as the driver towards greater integration of Islamic finance with the mainstream economic system<sup>16</sup>.

Besides, the harmonisation of Shariah rulings is important to maintain stakeholders' confidence. This is because the lack of uniformity has led to a perception that the Shariah interpretations in the industry are poorly regulated. The pronouncement of Sheikh Taqi Usmani, the chairman of the Shariah Board of Accounting Auditing Organization for Islamic Financial Institutions (AAOIFI) in November 2007 is a good example to demonstrate the problem. Taqi Usmani

had sent shockwave throughout the industry by declaring that 85 per cent of sukuk issued in GCC countries are non-Shariah compliant. He was of the opinion that the equity-based sukuk of *mudharabah* and *musharakah* mirrors the conventional bonds in the way that they offer fixed and guaranteed returns to investors. 'For current sukuk, risk is not shared and reward is not shared according to the actual venture of proceeds. About 85 per cent of sukuk are structured this way', he told the Reuters<sup>17</sup>. The pronouncement had affected the industry where the number of sukuk issuance was reduced in 2008. Following the pronouncement, the new issuers are forced to revisit their sukuk structure. Although the pronouncement might be seen as a corrective measure undertaken by the AAOIFI, it did raise some serious questions about the Shariah-compliant status of the previous sukuk issued and the capability of their Shariah advisory members. Therefore, the harmonisation of Shariah rulings among the religious authorities is hoped to be able to prevent such conflicting opinions and legal chaos.

The former secretary general of AAOIFI, Nedal Alchar puts forth his view that the harmonisation is important to prevent Shariah arbitrage in the industry<sup>18</sup>. According to him, the Shariah arbitrage could occur when a particular rule is preferred over another merely because of personal Shariah boards' inclination, not based on valid Shariah justifications. The difference of Shariah governance systems across IFIs worldwide makes the argument possible. In reality, there are IFIs which adhere to appropriate Shariah governance framework where their Shariah boards monitor all aspects of Shariah compliance throughout the financial products' lifecycle. However, there are also IFIs which are not properly supervised. The incident of Goldman Sachs' sukuk program worth \$2 billion in 2011 is an example of the problem. At least three of the eight scholars quoted in Goldman's provisional prospectus as endorsing the transaction said they had never even seen the document. This, understandably, had flagged up one of the major pitfalls in the current Shariah governance system<sup>19</sup>. The absence of a unified standard of Shariah governance

<sup>15</sup> Jamal Abbas Zaidi, 2008. Shari'ah Harmonisation, Regulation and Supervision, paper presented at AAOIFI-World Bank Islamic Banking and Finance Conference, 10-11 November 2008, Manama Bahrain.

<sup>16</sup> Zeti Akhtar Aziz, 2007. Governor's Opening Remarks at the third IFSB Seminar on Legal Issues: Survey on Legal and Shari'ah Issues in the Islamic Financial Services Industry, 28 March 2007, Kuala Lumpur Convention Centre.

<sup>17</sup> Arabian Business, 2007. Most sukuk 'not Islamic' body claims, <http://www.arabianbusiness.com/most-sukuk-not-islamic-body-claims-197156.html>. Retrieved on 5 March 2013.

<sup>18</sup> Nedal Alchar, 2010. *Proceedings of Securities Commission of Malaysia-Oxford Centre for Islamic Studies Roundtable and Forum, 15-16 March 2010, Kuala Lumpur*.

<sup>19</sup> Sophie McBain, 2012. Islamic Finance's 'Scholar Problem': Why are Shariah Scholars are paid so Much?, <http://www.spearswms.com/asset-management/32000/islamic-finance-scholarproblem-why-are-shariah-scholars-paid-so-much.html>. Retrieved on 15 April 2013.

particularly in terms of the guideline on Shariah interpretation, board appointment, composition, qualification and etc. exposes the IFIs into significant Shariah risks. Hence, it is strongly argued that the existence of Shariah standards will protect the industry from any misuse and violation of Shariah principles by irresponsible party.

However, the majority of the contemporary Shariah scholars appear to disagree with the idea of standardising Shariah rulings. They prefer to maintain the diversity of Islamic legal opinions in this respect. The main argument is that the diversity of legal opinion in Islamic finance occurs within the scope of legitimate interpretation of non-definitive matters<sup>20</sup>. For instance, it is argued that the Shariah scholars do not dispute over the prohibition of *riba* but disagree as to what extent a particular financial product resembles *riba*, and vice versa. While Allah has clearly declared the prohibition of *riba* in the Quran, He does not prescribe the actual action of how it should be avoided. Thus, the Shariah boards of IFIs interpret the non-self-evident legal texts of the Quran and the Sunnah and review their relevance in the context of modern financial transactions. The practice is absolutely permitted from Shariah point of view. As the interpretation often deduces new Shariah rulings, the exercises are classified as collective *ijtihad* (*ijtihad jamai*)<sup>21</sup>. In the course of producing these new rulings, disagreement among the Shariah scholars is inevitable.

This is due to the nature of Islamic law itself that recognises the division of definite (*qat'i*) and speculative (*zanni*) evidence in which the latter necessitates the diversity of scholarly opinions. Based on the understanding of the *ijtihad* concept, disagreement among the Shariah boards happens within the notion of right versus right situation<sup>22</sup>. The rulings are thought to be equal because they are supported by valid proof and evidence. Regardless of the country origin, there is no Shariah board which is superior to another. As stipulated in an Islamic legal maxim, '*al-ijtihad la yanqidu bi al-ijtihad* – a rule made by a jurist (*ijtihad*) shall not be nullified by another *ijtihad*. This mutual

respect between the Shariah boards forms the basis of harmonisation.

However, another sets of questions promptly emerge; is this a reality in the Islamic finance industry? What is the level of mutual respect and understanding among the Shariah boards across Muslim countries? Do the Shariah boards of the GCC respect and acknowledge the opposing opinions held by others outside their region, and vice versa? We shall explain the answers when we discuss ways to carry out the harmonisation agenda. At this juncture, however, it is important to note that the majority of Shariah scholars opine that the diversity of Shariah rulings in Islamic finance industry should be maintained because at least it has provided some wonderful cases of study in examining fiqh advancement in the modern time<sup>23</sup>.

Additionally, being confined in one Shariah opinion is deemed contradictory to the once-prevalent practice of past Muslim scholars. The history of early formation of madhhab (Islamic schools of law) demonstrated that diversity of legal opinion was always appreciated and conducted in harmony. The norm of which Islamic legal traditions are developed is in opposition to the idea of Standardisation. It was reported that the Abbasid Caliph Abu Ja'far al-Mansur (re. 754-775) had once tried to standardise the conflicting and divergent Shariah verdicts issued by judges during his reign. The Caliph had asked Imam Malik's permission to use his *al-Muwatta'*, a compendium of the sunnah of the Prophet as known and practiced in Medina as the law of Abbasid kingdom. Imam Malik disagreed with the Caliph and said;

'O Commander of the faithful! Do not do that. Because the people have received various reports, heard several statements, and transmitted these accounts. Each community is acting upon the information they have received. They are practicing and dealing with others in their mutual differences accordingly. Dissuading the people

<sup>20</sup> Akram Laldin. 2013. Managing Director of International Shari'ah Research Academy (ISRA), interview held on 5 April 2013 Kuala Lumpur.

<sup>21</sup> Aznan Hasan, An Introduction to Collective Ijtihad (Ijtihad Jama'i): Concept and Application, The American Journal of Islamic Social Science, 20:2

<sup>22</sup> Muhammad Ali al-Qari, 2010. Governance Standards and Protocol on Shariah Decision and Making Process, Proceedings of Securities Commission of Malaysia-Oxford Centre for Islamic Studies Roundtable and Forum, 15-16 March 2010, Kuala Lumpur.

<sup>23</sup> Frank E. Vogel, 2000. Ijtihad in Islamic Finance, Proceedings of the Fifth Harvard University Forum in Islamic Finance: Dynamic and Development, Cambridge, Massachusetts, Harvard University, p. 121-123.

from what they are practicing would put them to hardship. Leave the people alone with their practices. Let the people in each city choose what they prefer<sup>24</sup>.

Malik's refusal however, is argued to have occurred in a different context. In that period of time, the Sunnah was scattered across Muslim provinces, following the migration of Companions from Hijaz to Iraq, Syria and Yemen. The network of communication during the early period of madhab formation almost did not exist. Due to diverse geographical location and limited means of transportation, Muslim jurists could barely meet each other to discuss fiqh issues and exchange arguments. Therefore, Malik was reluctant to make his *al-Muwatta'* a standard book in governing the law of Abassid empire because he knew that his work was not comprehensive enough. As the Shariah doctrine was developing, there was a possibility that he did not include important hadiths and explain the contradictory rulings issued by other prominent jurists of his time. However, given the modern information technology of our time, the scenario is totally different. All imminent Shariah scholars in Islamic finance can be gathered on one platform to discuss and argue on a particular topic and possibly come out with one resolution. Currently, there are several international institutions which are set up for such purpose. The International Islamic Fiqh Academy based in Jeddah is one of them.

#### 4.0 Conclusion

The harmonisation of Shariah rulings has become a regular topic of discussion in the Islamic finance industry. This is because the diverging Shariah rulings hinders the development of cross-border instruments and thus, impedes the plan to place Islamic finance in the mainstream economy. It is found that despite the increasing popularity of the topic, the term harmonisation is not clearly defined by previous researchers. As a result, many are confused with any effort for Standardisation. Some of the proponents advocate the need to set up a Supreme Shariah Board which will adopt the "one-size-fit-all" approach in issuing Shariah rulings in the industry. The idea, however, is rejected by most Shariah advisors. They still believe in the importance of maintaining a diversity of opinions. Hence, harmonisation in this research is defined as a process of minimising major differences and invoking mutual respect among Shariah advisors. Harmonisation is meant to seek the best practical solution, create minimum requirement standard and to be conducted within the notion of agree to disagree. Perhaps, future research can systematically strategise how this harmonisation can be accomplished.

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<sup>24</sup> Muhammad Khalid Masud, 2009. *Ikhtilaf al-Fuqaha: Diversity in Fiqh as a Social Construction*, in *Equality and Justice in the Muslim Family*, Zainah Anwar (editor), Selangor Malaysia.

## NEWS ROUND-UP

### 8th Islamic Markets Programme

The SC through Securities Industry Development Corporation organised the 8th Islamic Markets Programme (IMP) from 26 to 29 August 2013. This programme is designed to cater to a wide audience of both experienced practitioners and new entrants into the world of Islamic finance, especially for those involved in any aspect of Islamic finance in preparing these professionals in dealing with

Islamic products and institutions. Themed 'Widening Market Connectivity in Islamic Finance', the IMP attracted 53 local and international participants including Islamic finance practitioners, members of academia and regulators. Renowned speakers both local and international shared their expert views and experiences at the programme.

### Islamic Wealth Management public lecture

BNP Paribas-INCEIF Centre for Islamic Wealth Management presented its second public lecture on 5 September 2013. Datuk Ranjit Singh, SC Chairman, delivered the lecture on 'Positioning Malaysia as an Islamic Wealth Management Marketplace – A Regulator's Perspective'. In the lecture, the SC Chairman shared his perspectives on the prospects for the Islamic wealth management industry, Malaysia's role in this area, and the regulatory and other challenges that need to be addressed to facilitate the development of this industry and harness the opportunities it has to offer.



### 8th Shariah Advisers Workshop

The 8th Shariah Advisers Workshop themed "Ranking of Rights in Capital Market Products" was held on 24 October 2013. The workshop discussed various capital market products such as sukuk and bonds that provide different classes or ranking of rights to investors that apply the principle of tranching. The Shariah Advisers' Workshop is an annual event organised by the Islamic Capital Market Business Group since 2005. Throughout the years, the workshop has covered on various topics related to products and services offered in ICM. Participants comprised Shariah advisers registered with the SC and Shariah officers of the Islamic financial institutions. The workshop attracted more than 70 participants.



## SC receives Award for Best Fund Domicile of Choice

Zainal Izlan Zainal Abidin, SC Executive Director, Islamic Capital Market, claimed the award for Best Fund Domicile of Choice on behalf of the SC during the IFN Awards 2013 ceremony held on 19 February in Kuala Lumpur. The ceremony, honoured the finest in Islamic finance industry, was attended by more than 340 key industry practitioners from major Islamic finance markets worldwide.



## 9th Islamic Capital Market Graduate Training Scheme

The SC organised the 9th Islamic Capital Market Graduate Training Scheme (ICMGTS) which commenced on 30 August 2013. A total of 40 graduates underwent eight weeks' training on six technical ICM modules and five soft skills

modules. ICMGTS is designed for graduates to transform themselves into forward-thinking ICM professionals by acquiring sound technical knowledge and good communication skills to enter the industry.

## BNM-IRTI Islamic Liquidity Management Workshop, Kuala Lumpur

BNM in collaboration with the Islamic Research and Training Institute (IRTI) organised a workshop from 3 to 6 September 2013. This workshop provided a platform for learning and sharing of experiences for middle to senior management officials from central

banks and regulatory bodies involved in the policy and operations areas of Islamic liquidity management within their organisation. The SC's representative delivered a presentation entitled 'Innovative Sukuk Instruments for Liquidity Management'.

## 10th Kuala Lumpur Islamic Finance Forum, Kuala Lumpur

The Kuala Lumpur Islamic Finance Forum (KLIFF), organised by Centre for Research and Training (CERT) from 23 to 26 September 2013, gathered a pool of industry experts ranging from regulatory authorities, Shariah scholars, bankers, legal practitioners, takaful operators, consultants and academicians to share their views and experiences in

developing Islamic banking and finance around the globe. The Executive Director of ICM was one of the panellists for a session entitled 'Islamic Finance – The Road Ahead' and participated in a KLIFF Roundtable entitled 'Waqf and Islamic Finance'.

## **ASEAN Wealth Management Summit, Kuala Lumpur**

ASEAN Wealth Management Summit, organised by FT Live in association with Labuan IBFC on 26 November 2013, discussed the fast-moving evolution of the wealth management industry which is placing Southeast Asia at the forefront. The event gathered pool of industry participants from both conventional and Islamic fields to

provide their expert knowledge and analysis via keynote presentations, panel sessions and onstage interviews. The SC Executive Director of ICM was one of the panelists for a session entitled 'The Expansion of Malaysia's Wealth Management Industry and the Development of Its Regulatory Framework'.

## **Islamic Financial Services Board Seminar, Dhaka**

The Islamic Financial Services Board (IFSB) organised a seminar on 'Prospects and Challenges in the Development of Islamic Finance for Bangladesh' on 23 and 24 September 2013. It examined the regulatory best practices and pre-conditions needed to sustain an orderly development

of Islamic finance, while seeking to identify the advantages Islamic finance can bring to Bangladesh. The SC Executive Director of ICM spoke for a session entitled 'Islamic Capital Markets and Liquidity Management: Facilitating Shariah-Compliant Financing and Investments'.

## **IFSB – ADB Conference on Islamic Finance for Asia: Development, Prospects and Inclusive Growth, Manila**

The Islamic Financial Services Board (IFSB) and the Asian Development Bank (ADB) jointly hosted a conference on Islamic Finance for Asia: Development, Prospects and Inclusive Growth in Manila, Philippines from 4 to 5 November 2013. The conference aimed at creating greater awareness of the opportunities brought about by Islamic finance to the Asian region. It also explored issues related to further developing the Islamic financial services industry,

its current state of progress and challenges as well as seeking to create greater opportunities for interaction and co-operation among the members of IFSB and ADB. At the conference, the SC Executive Director of ICM delivered a presentation entitled 'Islamic Capital Market: The Role of Sukuk Development'. He also chaired a session on 'Legal and Regulatory Issues for Islamic Finance Post-Crisis'.

## MALAYSIAN ICM – FACTS AND FIGURES

### Shariah-compliant securities on Bursa Malaysia

	Dec 2013	Dec 2012
Number of Shariah-compliant securities	650	817
Total listed securities	911	923
% to total listed securities	71.4%	88.5%
Market capitalisation (RM billion):		
Shariah-compliant securities	1,029.62	942.15
Total market capitalisation	1,702.15	1,465.68
% to total market capitalisation	60.5%	64.3%

### Equity market indices

Equity market indices	31 Dec 2013	31 Dec 2012	% change
FBM KLCI	1,866.96	1,688.95	10.5%
FBM EMAS Shariah	13,051.60	11,520.73	13.3%
FBM Hijrah Shariah	14,323.63	12,674.93	13.0%
DJIM Malaysia Titans 25	1,057.59	994.11	6.4%

### Sukuk

Corporate sukuk approved	Dec 2013	Dec 2012
Number of sukuk*	50	41
Size of sukuk (RM billion)	99.63	71.09
Size of total bonds approved (RM billion)	148.07	103.30
% of size of sukuk to total bonds approved	67.3%	68.8%
<b>Total sukuk issued (RM billion)</b>	<b>Dec 2013</b>	<b>Dec 2012</b>
Size of sukuk issued	275.71	326.50
Size of total bonds issued	501.92	637.40
% of sukuk issued to total bonds issued	54.9%	51.2%
<b>Total sukuk outstanding (RM billion)</b>	<b>Dec 2013</b>	<b>Dec 2012</b>
Size of outstanding sukuk	512.1	474.50
Size of total outstanding bonds	1,031.0	1,006.80
% of outstanding sukuk to total outstanding bonds	49.7%	47.1%

\*including combined issuance with conventional

Chart 1  
KLCI and Shariah index 1 year performance

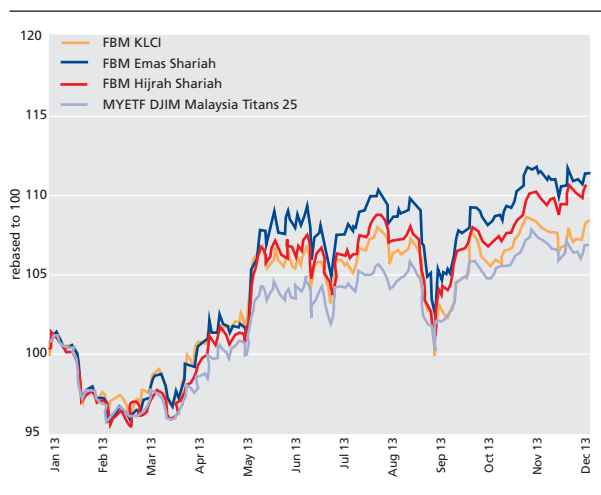
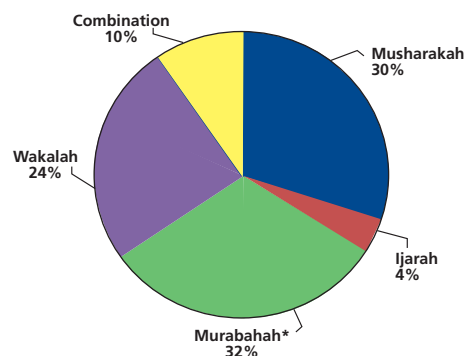


Chart 2  
Size of corporate sukuk approved based on Shariah principle in 2013



\* Including combined issuance with conventional



### Sukuk listing on LFX as at 31 December 2013

No.	Issuer name	Listing date
1.	Petronas Global Sukuk Ltd – USD1.5 Billion Due 2014	14 Aug 09
2.	1Malaysia Sukuk Global Bhd – USD1.25 Billion Due 2015	8 Jun 10
3.	Danga Capital Bhd – SGD600 Million Trust Certificates Due 2015	12 Aug 10
4.	Danga Capital Bhd – SGD900 Million Trust Certificates Due 2020	12 Aug 10
5.	Wakala Global Sukuk Bhd – USD1.2 Billion Due 2016	7 Jul 11
6.	Wakala Global Sukuk Bhd – USD800 Million Due 2021	7 Jul 11
7.	Danga Capital Bhd – CNY500 Million Trust Certificates Due 2014	21 Oct 11
8.	Pulai Capital Limited (Khazanah) – USD357.8 million due 2019	22 Mar 12
9.	Indah Capital Limited – SGD600 Million Trust Certificates Due 2019	25 Oct 13

Source: Labuan International Financial Exchange (LFX)

### Sukuk listing under Bursa Malaysia's exempt regime as at 31 December 2013

No.	Issuer name	Listing date
1.	Indah Capital Limited	25 Oct 13
2.	Sime Darby Global Bhd	30 Jan 13
3.	Axiata SPV2 Bhd	19 Sep 12
4.	Pulai Capital Limited	22 Mar 12
5.	Wakala Global Sukuk Bhd	7 Jul 11
6.	IDB Trust Services Limited (Islamic Development Bank)	1 Dec 10
7.	Malaysia Airports Capital Bhd	30 Nov 10
8.	AmlIslamic Bank Berhad	1 Oct 10
9.	Tadamun Services Bhd (Islamic Development Bank)	24 Aug 10
10.	1Malaysia Sukuk Global Bhd (Government of Malaysia)	8 Jun 10
11.	Sime Darby Bhd	28 Jan 10
12.	Khazanah Nasional Bhd	31 Dec 09
13.	Danga Capital Bhd	31 Dec 09
14.	Rantau Abang Capital Bhd	31 Dec 09
15.	CIMB Islamic Bank Bhd	29 Dec 09
16.	GE Capital Sukuk Limited (General Electric)	30 Nov 09
17.	Cagamas MBS Bhd	14 Aug 09
18.	Petronas Global Sukuk Limited	13 Aug 09

For more information on Sukuk listed on Bursa Malaysia, please visit [www.bursamalaysia.com](http://www.bursamalaysia.com)

### Islamic assets under management (AUM)

(RM billion)	Dec 2013	Dec 2012
Islamic AUM of FMCs	97.5	79.60
Total industry	588.41	505.10
% Islamic AUM of FMCs to total industry	16.6	15.8%

Note: The AUM includes assets that are sourced from collective investment schemes as well as private mandates

### Number of launched funds

Unit trust fund (UTF)	Dec 2013	Dec 2012
Islamic UTF	178	169
Total industry	595	589
NAV Islamic UTF (RM billion)	42.82	35.36
NAV total industry (RM billion)	335.51	294.85
% to total industry	12.8%	12.0%

Wholesale funds (WF)	Dec 2013	Dec 2012
Islamic WF	52	41
Total industry	193	171
NAV Islamic WF (RM billion)	16.43	16.22
NAV total industry (RM billion)	59.45	52.48
% to total industry	27.6%	30.9%

Exchange-traded funds (ETF)	Dec 2013	Dec 2012
Islamic ETF	1	1
Total industry	5	5
Market cap Islamic ETF (RM billion)	0.31	0.29
Market cap total industry (RM billion)	1.03	0.92
% to total industry	30.1%	32.6%

Real estate investment trusts (REIT)	Dec 2013	Dec 2012
Islamic REIT*	4	3
Total industry	17	16
Market cap Islamic REIT (RM billion)	14.14	3.47
Market cap total industry (RM billion)	33.13	24.59
% to total industry	42.7%	14.1%

\* including one stapled securities (equity + REIT)

**List of Islamic fund managers as at 31 December 2013**

No.	Company
1.	Aberdeen Islamic Asset Management Sdn Bhd
2.	Amlslamic Funds Management Sdn Bhd
3.	Amundi Islamic Malaysia Sdn Bhd
4.	Asian Islamic Investment Management Sdn Bhd
5.	BIMB Investment Management Bhd
6.	BNP Paribas Investment Partners Najmah Malaysia Sdn Bhd
7.	CIMB-Principal Islamic Asset Management Sdn Bhd
8.	Eastspring Al-Wara' Investments Bhd
9.	Franklin Templeton GSC Asset Management Sdn Bhd
10.	Guidance Investments Sdn Bhd
11.	i-VCAP Management Sdn Bhd
12.	Kenanga Islamic Investors Bhd
13.	KFH Asset Management Sdn Bhd
14.	Maybank Islamic Asset Management Sdn Bhd
15.	Muamalat Invest Sdn Bhd
16.	Nomura Islamic Asset Management Sdn Bhd
17.	RHB Islamic Asset Management Sdn Bhd
18.	RHB Islamic International Asset Management Bhd
19.	Saturna Sdn Bhd

**List of companies offering Islamic stockbroking services as at 31 December 2013**

No.	Company	Type
1.	BIMB Securities Sdn Bhd	Full Fledged
2.	Affin Investment Bank Bhd	Window
3.	AmInvestment Bank Bhd	Window
4.	CIMB Investment Bank Bhd	Window
5.	Jupiter Securities Sdn Bhd	Window
6.	Maybank Investment Bank Bhd	Window

Wisdom to advise comes with continuous learning.

## Shariah Advisor Programme (i-Advisor)

March - June 2014



### Programme Modules

The i-Advisor modules emphasise essential Islamic Capital Market (ICM) topics that practitioners will find relevant for their work such as: Fundamentals of Shariah rulings, regulatory and legal requirements, accounting, auditing, taxation, sukuk and equity in ICM as well as contemporary Shariah issues.

### Target Audience

- Shariah advisors
- Practitioners in Islamic finance
- Academicians
- New ICM entrants

To register, log on to [www.sidc.com.my](http://www.sidc.com.my)

Contact the i-Advisor Secretariat at 03-6204 8549/8664/8040

or email us at [sidc@sidc.com.my](mailto:sidc@sidc.com.my) to find out more.

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 Malaysia, please contact the following persons at the Islamic Capital Market Business Group:

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