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Guiding Principles in Developing *Shari'ah* Governance Framework for Islamic Capital Market

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Abstract: *Shari'ah* compliance is the foundation of the Islamic financial markets, including Islamic capital market. From the beginning, the Islamic capital market (ICM) was developed to support the other two Islamic financial markets such as Islamic Banking and Takaful. Later on, it became the investment avenue for investors looking for *Shari'ah* compliant investment and financing. Presently, the *Shari'ah* governance framework and regulations have been implemented for Islamic banks and Takaful. On the contrary, there is lack of similar framework of Shari'ah Governance for the Islamic capital market. Malaysia having positioned itself as a hub of Islamic finance should introduce a *Shari'ah* governance framework for the Islamic capital market. Thus, the objective of this paper is to provide the principles on which the theoretical *Shari'ah* governance framework for the Islamic capital market can be developed. These principles are Islamic accountability and responsibility, independence and objectivity, competence, confidentiality and commitment, consistency, *Shari'ah* audit and review, transparency and disclosure, corporate social responsibility and ethicality. In addition, this paper discusses the *Shari'ah* governance practices in Indonesia, Bahrain, Pakistan, Kuwait and Malaysia. This write-up will be of interest to individual players, regulators, investors and the public.

Keywords: Shari'ah governance, Framework, Islamic Capital Market and Malaysia.

INTRODUCTION

The Islamic financial markets are based on certain core principles which are clearly outlined in the sources of *Shari'ah*. The Quran and Sunnah prescribe avoidance of interest and investing in non-*Shari'ah* compliant businesses. In addition, uncertainty, gambling and other elements are prohibited. The primary reason why Islam prohibits these elements is to avoid any party suffering from injustice at the hand of others (Zin *et. al.* 2011; Perry and Rehman, 2011; Saad and Mohamad; 2012; Khalichi, 2014). The practice of interest puts the borrower in a difficult position while favouring the rich lender whose money acts as an asset and helps him to accumulate more and more money. Regardless of the financial position of the borrower, the rich lender expects him to pay the principal and some additional amount as interest over and above it. This practice uses money as a commodity which not only guarantees the return of the principal but secures the receipt of interest when it is due. There is a flipside to this. The lenders will have no right to share the profit earned by the borrower except the predetermined interest.

The principal of equitable distribution of wealth, which is one of the objectives of the *Maqasid Shari'ah,* is against the practice of interest. However, interest is the main source of generating income in conventional financial practices of banking, insurance, and capital market and as a result, it will lead to social and economic injustice (Omar, 2011). The *Shari'ah* prohibits interest and the evidence is as follows.

O you who have attained to faith! Remain conscious of God, and give up all outstanding gains from usury, if you are [truly] believers; for if you do it not, then know that you are at war with God and His Apostle. But if you repent, then you shall be entitled to [the return of] your principal: you will do no wrong, and neither will you be wronged (Surah Al-Baqarah, 278-279)

Islam does not rule out risk as far as business activity is concerned (Rosly and Zaini, 2008). However, what it does prohibit is when one party creates uncertainty to the other in order to gain an advantage. For example, the conventional insurance practice is based on the same ground of uncertainty. Firstly, the subscribers are not sure of the intent of the premium. Secondly, the companies cannot predict if the future will hold gain or loss for them. It depends on whether the policyholders make a claim or not. If they do, the insurance company will treat it as an expense and, otherwise, the company makes a profit. The gain or loss is itself a matter of chance (Hussain and Pasha, 2011). Consequently, the existence of uncertainty in the insurance leads to gambling. The companies usually have the upper hand in deciding the premiums, which they use to their full advantage. They plan and charge a premium that is sufficient to cover any losses that the company anticipates and make profits.

The subprime crisis opened the eyes of the world to the uncertainty that is prevalent in conventional capital markets. In this crisis, a group of securitized assets were packed without revealing to the investors the components of the package. This was unfair to investors due to the lack of transparency. The true information remained hidden or was intentionally concealed by the issuers to gain an advantage. This illustrates the unethical practices in the conventional capital market (The Financial Crisis Inquiry Commission, 2011).

Islam clearly prohibits uncertainty as mentioned in the primary sources of the *Shari'ah*:

> O believers! Intoxicants and gambling (games of chance), dedication to stones (paying tribute to idols) and division by arrows (lottery) are the filthy works of Shaitan. Get away from them, so that you may prosper. By means of intoxicants and games of chance Satan seeks only to sow enmity and hatred among you, and to turn you away from the remembrance of God and from prayer. Will you not, then, desist? (Surah Al- Al-Ma'idah, 90-91).

The practices of uncertainty and gambling are interrelated. The practice of speculation and short-selling in the capital market is prohibited in Islam (Iqbal and Mirakhor, 2011). Speculation and short-selling are prohibited because it has a similar nature to gambling. Gambling is clearly prohibited in the *Shari'ah* as evidenced in the following verses:

> They question thee about strong drink and games of chance. Say: In both is great sin, and (some) utility for men; but the sin of them is greater than their usefulness. And they ask thee what they ought to spend. Say: That which is superfluous. Thus Allah maketh plain to you (His) revelations, that haply ye may reflect (Surah al- Baqarah, 219).

The *Shari'ah* prohibits Islamic financial institutions from investing in certain business activities. Islamic banks and Takaful operators, therefore, cannot get involved in non-*Shari'ah* compliant business such as trading in pork, alcohol, and drugs. In addition to investing in these prohibited business activities, it is also not allowed to finance the companies whose business activities are not in line with the *Shari'ah*. Thus, Islamic financial institutions are required to find investments that not only generate the good return but are also *Shari'ah* compliant (Wan Azmi, 2007).

The three inseparable components that form the Islamic financial markets are Islamic banks, Takaful companies and the ICM. The ICM is the most important market out of the three because it is necessary for the survival of the other two. It is not only instrumental in providing an avenue for Islamic banks and Takaful companies to manage their liquidity but also serves as a platform for investment (Wan Azmi, 2007).

The essence of Islamic finance is *Shari'ah* compliance. The Islamic financial markets were thus created with a view to ensure it. However, unfortunately, many researchers reported that the ICM failed to meet *Shari'ah* requirements. Among them, Dusuki (2009) calls ICM products innovative which question its *Shari'ah* compliance. The industrial players and regulatory bodies concentrate on the legal forms of the *Shari'ah* compliant contract rather than the substance of the products. In addition, during the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) annual meeting in Bahrain in November 2007, Sheikh Taqi Usmani made the remark that almost 85% of Sukuk issued in the GCC were not *Shari'ah* compliant and the Sukuk market is falling (Thomson Reuters Zawya, 2014). According to Wan Azmi (2007), it is crucial for ICM to have an efficient regulatory framework, especially concerning the *Shari'ah*, for future development.

A healthy *Shari'ah* governance structure and its effective implementation can be one of the most important factors in making all business activities *Shari'ah* compliant. International organisations like AAOIFI and Islamic Financial Services Board (IFSB) have provided *Shari'ah* governance principles for Islamic banks. Moreover, in Malaysian context the *Shari'ah* governance framework has been issued by the Central Bank of Malaysia for Islamic Banks and Takaful companies. However, there is no comprehensive *Shari'ah* governance framework for the Islamic capital market in Malaysia. This paper looks closely into the *Shari'ah* sources upon which *Shari'ah* governance principles for ICM can be developed.

THE ISLAMIC CAPITAL MARKET IN MALAYSIA

A cursory glance at Malaysia's Islamic finance market reveals that its landscape has significantly changed since the 1970s. In its early stage, the Islamic capital market did not play a significant role in the Islamic financial market (Wan Abdullah et.al, n.d.). Its role was simply that of a facilitator for the Islamic banks and Takaful operators in Malaysia. Later in the 1990s, many organisations began to source for funds from the ICM to finance their operations, which remarkably improved its position because it functions expanded from supporting the other Islamic financial institutions to the companies which needed financing or investing (Securities Commission, 2001).

In 1990, Shell MDS Sdn. Bhd issued Islamic public debt security, and it was the milestone of the evolution of ICM in Malaysia. It was followed by the issuance of Islamic equity unit trust by the Arab Malaysian Unit Trust Berhad in 1993. BIMB Securities Sdn. Bhd. became the first full-fledged Islamic stockbroking company in 1994. The *Shari'ah* Advisory Council was founded in 1996 to provide guidance on *Shari'ah* matters involved in ICM activities. The Guthrie Sukuk was the first global corporate Sukuk, and it was issued in 2001. These activities caused a paradigm shift in the international Islamic financial market.

When the S*ukuk* was introduced, ICM became more popular. It provides the investment avenue not only for Takaful companies and Islamic banks but also for the investors who look for *Shari'ah* compliant investments (Nazar, 2011; Ahmad and Radzi, 2011). It has become a tool to manage risk and liquidity. Moreover, it can be used for portfolio diversification and stabilisation of the Islamic financial markets (Iqbal and Tsubota, 2006).

There are three broad categories of the ICM, namely; the derivatives market, the equity market and the debt market. The derivatives market deals with Islamic profit rate swap, Islamic foreign exchange swap, and Islamic cross currency swap. The equity market comprises Islamic unit trust, Islamic real estate investment trusts, Islamic stockbroking, Islamic indexes and *Shari'ah* compliant securities. The Islamic debt market incorporates Islamic securities, Islamic medium term notes, Islamic commercial papers, and exchangeable *Sukuk*.

ICM has grown rapidly, and Malaysia has become the global leader for Sukuk. (Price Waterhouse Coopers, 2008). Bursa Malaysia Berhad, the Securities Commission, and the Labuan Offshore Financial Services Authority are the regulatory bodies for the Sukuk market in Malaysia. The banking and insurance sectors of Malaysia are under the jurisdiction of the Central Bank, Bank Negara Malaysia (BNM), while the Securities Commission (SC) Malaysia governs the capital market. The Labuan Offshore Financial Services Authority (LOFSA) supervises the issues related to the offshore finance industry. Presently, the capital market of Malaysia is managed and regulated by the Capital Markets and Services Act 2007, the Securities Industry (Central Depositories Act) 1991, the Securities Commission Act 1993, the Companies Act 1965, the Offshore Companies Act 1990 and the Labuan Offshore Securities Industry Act 1995.

In August 2006, the Malaysia International Islamic Financial Centre (MIFC) was launched. The major organisations involved in the launch were the financial and market regulators of Malaysia, including the Central Bank of Malaysia, Securities Commission Malaysia (SC), LOFSA and Bursa Malaysia, along with industry participation from the banking, Takaful (Islamic insurance) and capital market sectors in Malaysia. The main aim for this launch was to promote Malaysia as a centre for International Islamic Finance. The main areas of focus of this centre are Sukuk origination, Islamic Fund and Wealth Management, International Islamic Banking, Takaful and International Takaful (Islamic insurance) and Human Capital development. In addition, the Securities Commission, along with other regulatory bodies, also contributed significantly in devising a conducive regulatory framework to fortify and sustain Malaysia as an international Islamic Capital Market hub.

The growth of the Malaysian Islamic Capital Market has been rapid. Malaysia has left behind every Muslim country as far as Islamic capital market infrastructure is concerned. The government has provided immense support, pressurising the growth of Malaysian Islamic Capital Market. The policies and incentives provided by the government have given great impetus to the success of ICM development. It has also provided a wide range of incentives in its budget (2007-2010) to attract local and international players to participate in the market. This movement was further strengthened by taking initiatives and measures like aiding the entry of foreign intermediaries and a conducive tax system. Malaysia remains to be the worldwide leader in the sukuk market, accounting for 54.3% of the global sukuk outstanding as at end-2015.[3]

DOMINANT *SHARI'AH* GOVERNANCE MODELS

Islamic financial markets cannot function without *Shari'ah* compliance. This drove many international organisations such as AAOIFI and IFSB to issue *Shari'ah* governance principles. Countries like Malaysia which support the development of Islamic finance have moved to develop their own *Shari'ah* governance models and put them in practice. Bank Negara Malaysia has taken the initiative to implement the Shari'ah governance framework. At the national level, the Shari'ah Advisory Council (SAC) has the highest authority and each individual Islamic financial institution is required to have its own Shari'ah advisory board.

In Indonesia, the National *Shari'ah* Board was introduced in 1999. It was formed by the Indonesian Council of Ulamas, and it functions as an independent body and issues *Shari'ah* rulings on the products of Islamic banks in Indonesia. Bank Indonesia duly recognises the fatwa (Islamic religious ruling) issued by the National *Shari'ah* Board and issues regulations for Islamic banking products.

Pakistan has its own SAC at the State Bank, in addition to a *Shari'ah* advisory board at the institutional level. However, there is a *Shari'ah* governance framework in Pakistan. The members of SAC in Pakistan can be a part of the *Shari'ah* advisory board at the institutional level on the condition that they serve only one institution (Radzi, and Muhamed, 2012; Hasan, 2007; Hasan, 2010).

In Kuwait, any conflict in *Shari'ah* issues could be referred to the "Fatwa Board" under the Ministry of *Awqaf* and Islamic Affairs. In 2016, the Governor of the Central Bank of Kuwait (CBK) announced that the CBK Board of Directors had decided to issue instructions on "*Shari'ah* Supervisory Governance for Kuwaiti Islamic Banks.". It covers both internal and external *Shari'ah* auditing, the scope and objectives of the audit as well as the qualifications required of *Shari'ah* auditors. Kuwaiti Islamic banks are required to fulfil all the *Shari'ah* compliant requirements before the instruction takes effect on January 1, 2018.[4]

In Bahrain, all banks are required by the Central Bank of Bahrain Rule to set up an independent *Shari'ah* Supervision Committee to comply with governance standards of AAOIFI for Islamic financial institutions. These include accounting standards as well as *Shari'ah* pronouncements issued by the *Shari'ah* Board of AAOIFI from time to time. There is a clear legal requirement for establishing a *Shari'ah* board in Islamic financial institutions in Bahrain. If any bank fails to do so, it will be treated as non-compliance with the directive of Central Bank of Bahrain and so what is the consequences (Radzi and Muhamed 2012).

The United Arab Emirates has its *Shari'ah* board at the institution level supervised by the SAC at the central level without any restrictions on *Shari'ah* advisors. (Hasan, 2007; Hasan, 2010).

It can thus be concluded that these countries have Shari'ah governance framework but with different approaches.

RESEARCH METHODOLOGY AND SCOPE

This paper proposes the guiding principles of *Shari'ah* governance using secondary sources such as articles, governance guidelines, internet resources and primary sources of *Shari'ah* such as the Quran and Sunnah. It focuses on *Shari'ah* compliance without which it is futile to propose the *Shari'ah* governance principles.

The guiding principles often vary from place to place, industry to industry and as per jurisdiction leading the paper to focus on the Islamic capital market in Malaysia.

SHARI'AH GOVERNANCE PRINCIPLES

The designing of the ICM products is based on the Islamic principles, which have been carefully derived from the sources of the *Shari'ah* (Kassim, 2010). The paper proposes that the *Shari'ah* governance for ICM should be founded on principles listed below. Alternatively, *Shari'ah* governance is crucial if ICM activities are to be maintained in line with the *Shari'ah*.

The Standing Committee for Economic and Commercial Cooperation of the Organisation of Islamic Capital Market (2013) proposed an urgent need of *Shari'ah* governance framework, especially for ICM. The framework, nevertheless, may vary depending on jurisdiction and structure of the products and services. It further voices the importance of incorporating *Shari'ah* principles into the domestic law so as to smoothen the implementation. It is believed that, in the end, a healthy *Shari'ah* governance would lead the Islamic finance industry to its ultimate objective of achieving the *Maqasid Shari'ah* (Kasim *et. al.*, 2013).

This paper proposes that Shari'ah governance for ICM should be built on the following principles. These principles are based on the sources of Shari'ah related to the governance and AAOIFI, IFSB and BNM.

Islamic Accountability

All the human beings are under an obligation to be thankful to Allah for creating us, as Allah mentions:

> O Prophet, remind mankind about incident when your Rabb brought into existence the offspring from the loins of Adam and his descendants (virtually each single individual of mankind) and made them testify about themselves. Allah asked them: "Am I not your Rabb?" They all replied: "Yes! We bear witness that You are." This We did, lest you mankind should say on the Day of Resurrection: "We were not aware of this fact that You are our Rabb and that there will be a Day of Judgement (Surah Al Aa'raf, 172).

In Islam, it is believed that Allah created everything, so everything belongs to Him. As far as humans are concerned, they have been given a very restricted or delegated ownership. Consequently, human beings are required to follow what Allah wants. He gave Islam to humankind as a comprehensive religion so that it becomes easy to know what He wants and thus follow His orders.

Islam covers not only rituals but also commandments for worldly matters (Salihu *et. al.* 2011). While the former includes rulings on prayer, paying zakat, fasting and performing Hajj, etc., the latter part governs our behaviour as Allah's trustees and our actions as moral beings. How people are dealing with other human beings and fare in our business activities will be answerable in front of Allah on the Day of Judgment, when He will judge all our deeds, as mentioned in the following sources of the *Shari'ah*.

> He knows whatever is in the Heavens and whatever is in the Earth. Allah has full power over everything. On the Day of Judgement, when every soul will be confronted with whatever good it has done - as for its evil deeds, it will wish they were a long way off. Allah warns you to have His fear. Allah is full of kindness for His devotees (Surah Al Imran, 30).

Accounting in Islam is just not means of accountability of financial reporting. It looks beyond the financial and technical aspect and recognises socioeconomic justice and fairness (Muwazir *et. al.*, 2006;

Suandi, 2013). The interests of shareholders and creditors need to be protected, but that should not mean interests of other members of target group should be left out. The accountants' core intention while preparing the financial reports should not only be for the sake of satisfying the shareholders and creditors and fulfil a regulatory requirement, but also to discharge their accountability towards the other stakeholders.

According to Islam, accountability refers to the concept of dual accountability also known as Islamic accountability. While the conventional accountability is between humans, the Islamic accountability makes us accountable to God. In Islam, accountability is to Allah (s.w.t), which is called primary accountability. This is the accountability which accountants need to observe in addition to the conventional concept of accountability (Basri and Abdul Khalid, 2012), as evidenced by the following verse:

> How many townships have rebelled against the commandments of their Rabb and His Rasools! Stern was Our reckoning with them and exemplary was Our punishment (Surah At Talaq, 8).

Allah (s.w.t) created us to submit to Him. As Muslims, who feel indebted to Allah for creating us we display our gratefulness in many ways, one of them being abiding by the *Shari'ah*. Islam being a comprehensive religion does not only touch upon religious activities, but it also covers a person's business activities and other daily activities. The concept of secondary accountability exists in Islam because humans have a contractual relationship among themselves.

The additional accountability that exists in the form of primary accountability requires the accountants to pay equal attention to the needs of the stakeholders as well as *Shari'ah* compliance while they prepare financial reports.

The *Shari'ah* are subjected to primary accountability towards Allah and secondary accountability towards the Islamic financial institutions where they have a contractual relationship. Out of the two, primary accountability should be given priority.

It is also believed that we are in this world for a purpose. The world acts as a temporary place to test us whether we achieve *falah* (eternal happiness) or not in the Hereafter. *Falah* can only be achieved by following the *Shari'ah* in all the aspects of the worldly life. *Shari'ah* board members must keep in mind this awareness while discharging their duties, as the ultimate test of their dedication is to implement Islamic accountability to achieve *falah* in the Hereafter.

Independence and Objectivity

The *Shari'ah* board and the management should be two separate entities and independent. The governance codes and guidelines require the board of directors and the management be separated. This concept is similarly applicable for *Shari'ah* board members. The Shari'ah board members are the immediate persons with whom the Islamic financial institutions interact to get advice on Shari'ah compliance.

Shari'ah board should be remunerated sufficiently to attract commitment from them but it should also be noted that a control mechanism implemented shall impair their independence. This will ensure that the members provide objective opinions related to the *Shari'ah*. Their independence from management is important to ensure them to give objective and independent opinion to ensure overall Shari'ah compliance and thus to maintain the public confidence in the Islamic financial institutions.

If the responsibility of advising the Islamic finance institutions is coupled with the intention of getting the reward from Allah, the *Shari'ah* board members can thus implement the principle of independence and objectivity by providing objective judgment.

Competence

Competence describes the qualification and experience of *Shari'ah* board members. These members are the most responsible individuals when it comes to *Shari'ah* matters. Their role is to supervise end to end processes of the company providing products and services. This ensures that all the activities are carried out according to *Shari'ah*. Although it is the responsibility of the management to implement the *fatwa* issued by the *Shari'ah* board members, the *Shari'ah* compliance remains the primary duty of the *Shari'ah* board members. The *Shari'ah* board members are the most important players in Islamic finance activities. This is proved by the fact that no products or services are offered without their approval. Therefore, they should be competent enough to deliver according to the requirements of the companies. They should have the full knowledge of what qualification and experience are necessary to become *Shari'ah* board members, and they should only apply for a position if they are worthy enough. In the case of Malaysia, the Islamic financial institutions are required to get the approval from the BNM to appoint the *Shari'ah* advisors for their Islamic financial institutions. Thus, competence is very important to ensure that all involved parties are fairly dealt with, and the image of the *Shari'ah* compliant products remains morally correct and reliable.

Confidentiality

While providing the advisory service, *Shari'ah* board members are required to be very discreet about the inside information of the companies. Malaysia has made it mandatory for the *Shari'ah* advisors that a member of a *Shari'ah* board of one institution cannot be a simultaneous member of another board of another institution within the same industry. However, the scarcity of *Shari'ah* advisors and an undefined procedure in some countries compels the advisors to be on multiple boards at the same time, sometimes even in same industry. The *Shari'ah* advisors know the nitty-gritty of the products and how they should be launched, as they are the ones to approve them. This calls for a very high level of confidentiality to be maintained by the *Shari'ah* board members. Any leakage of inside information to outsiders may prove detrimental for a company. Confidentiality itself is an obligatory act in Islam, as a believer is required to conceal other people's information. The *Shari'ah* board members should also follow this act.

Consistency

Consistency brings efficiency and effectiveness in the operations of companies regarding matters related to *Shari'ah*. Every fatwa or important decision made by the *Shari'ah* board should be properly managed. Well documented and properly communicated information ensures employees can apply the *Shari'ah* ruling in a consistent manner in similar issues. Lack of consistency may lead to unfair practices, which will harm the affected parties and may result in *Shari'ah* non-compliance.

Shari'ah Risk Management

Similar to the conventional financial institutions, Islamic finance activities always involve risk, which makes risk management an important part of Islamic finance markets. Furthermore, Islamic finance markets have an extra task to undertake, *i.e.*, *Shari'ah* risk management. Non-*Shari'ah* compliant activities will have a negative influence on the overall reputation of the industry. Investors and the general public might even lose confidence in it. Once the confidence of the investors is lost, it is almost impossible to get it back. Risk management is an essential doctrine, and it is backed by the following evidence:

> "O Yusuf! O person of truthfulness! Provide us explanation with respect to seven large cows which are being consumed by seven lean ones and seven green ears and further seven withered; maybe, I may go back to the citizens, perhaps they may know. "You will grow food for seven running years, and then leave whatever you harvest in its ear, except some which you may consume as food. Then at the close end of it shall come seven arduous years, that shall feed on what you had kept in reserve earlier, apart from a bit of it which you may preserve. Then after that there arrive a year wherein the subjects will be blessed with rainfall and in which they will press juice" He pronounced. (Surah Yusuf, 46- 49).

> "O my sons, do not set foot in the city by only one gateway: rather access by distinct entrances. Not that my advice can benefit you against the Will of God: None has the final decision but God: On Him do I have relied: and let those who trust rely on Him" (Surah Yusuf, 67).

The Central Bank of Malaysia, AAOIFI and IFSB have suggested a few mechanisms such as *Shari'ah* review, *Shari'ah* audit, *Shari'ah* international control system, etc. to minimise non-*Shari'ah* compliant risk. These steps were taken after acknowledging the demand of Islamic financial market for *Shari'ah* risk management.

Responsibility of Stakeholders

The responsibility of *Shari'ah* compliance does not have to be taken by the *Shari'ah* board members only. What is needed is a collective effort so that the objectives of the *Maqasid Shari'ah* are fulfilled. A favourable environment should be provided by the top management so that the expression of thoughts and opinions by the *Shari'ah* board is smooth and easy. Additionally, the decisions of the *Shari'ah* board members should be properly enforced wherever necessary. The staff, including the lower level employees and even the receptionists, should be provided with a proper training. This way the products as well the working environment will be *Shari'ah* compliant.

Frontline staff act as representatives. As such, it is important for them to portray themselves as *Shari'ah* abiding individuals. Shareholders need to encourage *Shari'ah* compliance, and block shareholders need to play a significant role. Regulators should monitor such compliance very seriously.

Muslims should prefer *Shari'ah* compliant financial markets to conventional markets whenever it is feasible. *Shari'ah* compliance is a collective responsibility of all Muslims, and the stakeholders should not forget it while discharging their duties.

Transparency and Disclosure

One of the methods used by the management to carry out their responsibility in an efficient way is to disclose the information about the company. Conflicts between the management and owners can be successfully minimised by ensuring the transparency. The disclosing of *Shari'ah* related information is essential to reveal that the Islamic financial institutions comply with *Shari'ah* in all aspects.

Corporate Social Responsibility

In conventional corporate governance, the concept of corporate social responsibility has been attracting a lot of attention. Performance remains the main focus of the board in the early stages of corporate governance as per the codes and guidelines, which is then broadened to include accountability to other stakeholders in addition to the shareholders. As per the conventional aspect, the support of stakeholders is essential for the long-term survival and profitability of the company. However, Islam takes the viewpoint of caring for the society (Dusuki, 2008; Hassan and Abdul Latiff, 2009). The responsibility to take care of the needs of the society is part and parcel of *Shari'ah* requirement.

Ethicality

In Islam, business and ethics cannot be separated. The ethical guidelines for business are derived from the Quran and Sunnah. The *Shari'ah* advisors are therefore required to abide by this rule. Islam has encouraged us to carry out trade ethically (Htay *et. al.*, 2013). As role models, the *Shari'ah* advisors should keep an eye on the operations of the companies to make sure that the environment is ethical and Islamic. They should give adequate support so that Islamic financial markets are known to be ethical markets. Every level of organisation should be adequately educated to ensure ethical awareness. Top management should give attention on the ethical working environment.

CONCLUSION

Shari'ah governance is a mechanism to control the companies to ensure that the whole operating activities of the companies are in line with Shari'ah. The core value of the Islamic capital market is Shari'ah compliance and it should be maintained by any means. This paper touches upon how ICM evolved in Malaysia and how successful certain countries have been in implementing Shari'ah governance practices. Shari'ah governance principles have been proposed in this paper. These points should form a strong base for efficient Shari'ah governance for ICM. The guideline has suggested a comprehensive framework of the best practices. It includes all aspects of Islamic accountability and responsibility, independence and objectivity, competence, confidentiality and commitment, consistency, Shari'ah audit and review, transparency and disclosure, corporate social responsibility and ethicality. The proposed practices are expected to be of interest to individual players, regulators, investors specifically and the public. This paper is based only on literature. Hence, future researchers need to look deeper into the perception of regulators and Shari'ah advisors to be aware of the best practices for ICM in Malaysia.

NOTES

[3]https://www.sc.com.my/post_archive/malaysian-capital-market-grows-across-all-segments/

[4]http://www.cbk.gov.kw/en/images/Shariah-Governance-Islamic-Banks-10-122718-2.pdf

REFERENCES

Ahmad, W., and Radzi, R. M. (2011), Sustainability of Sukuk and Conventional Bonds during Financial Crisis: Malaysian Capital Market. *Global Economy and Financial Journal,* 4(2), 33-45.

Basri, H. and Abdul Khalid, S.N. (2012), Examining Accounting and Accountability Issues in Religious Context: Insight from Literature. *Aceh International Journal of Social Sciences.* 1(91). pp. 24-31.

Bursa Malaysia. (2009), Islamic Capital Market. *http://www.iefpedia.com/english/wp-content/uploads/2009/10/The Islamic-Capital-Market.pdf*

Dusuki, A. W. (2008), What does Islam say about corporate social responsibility? *Review of Islamic Economics,* 12(1), 5-28.

Dusuki, A.W. (2009), Challenges of Realizing Maqasid al-Shariah (Objectives of Shari'ah) in Islamic Capital Market: Special Focus on Equity-Based Sukuk. 3rd USM-ISDEV International Islamic Management Conference on Islamic Capital Market, 28th and 29th October 2009, USM, Penang.

Hasan, A. B., and LAWS, A. I. K. O. (2007), Optimal Shariah Governance in Islamic Finance. Islamic Finance News, 4(14), 7.

Hasan, Z. (2010), Regulatory framework of Shari'ah governance system in Malaysia, GCC Countries and the UK. Kyoto *Bulletin of Islamic Area Studies,* 3(2), 82-115.

Hassan, A., and Latiff, S. B. A. (2009), Corporate social responsibility of Islamic financial institutions and businesses: Optimizing charity value. *Humanomics,* 25(3), 177-188.

Htay, S. N. N., Salman, S. A., and Meera, A. K. M. (2013), Let's Move to" Universal Corporate Governance Theory". *Middle East Journal of Scientific Research,* 15(7).

Hussain, M. M., and Pasha, A. T. (2011), Conceptual and operational differences between general takaful and conventional insurance. *Australian Journal of Business and Management Research,* 1(8), 23-28.

Iqbal, Z. and Mirakhor, A. (2011), 2nd Edition. An Introduction to Islamic Finance. John Wiley and Sons.

Iqbal, Z. and Tsubota, H. (2006), Emerging Islamic Capital Markets-A Quickening Pace and New Potential. Euro money:International Debt Capital Markets Handbook. *http://treasury.world bank .org/cmd/pdf /Euro money_ 2006_ Handbook _International _Debt_ Capital_Markets.pdf*

Kasim, N., Htay, S. N. N., and Salman, S. A. (2013), Shariah governance for Islamic capital market: A step forward. International Journal of Education and Research. 1, 1-14.

Kassim, S. H. (2010), Global Financial Crisis and Integration of Islamic Stock Markets in Developed and Developing Countries. Institute of Developing Economies, Japan External Trade Organization.

Khalichi, A El., Humayun, K. S., Arouri, M., and Teulon, F. (2014), Are Islamic equity indices more efficient than their conventional counterparts? Evidence from major global index families (No. 2014-091).

Muwazir, M.R., Muhamad, R. and Noordin, K. (2006), Corporate social responsibility disclosure: A Tawhidic approach. Jurnal Syariah, 14(1): 125-142.

Nazar, J. K. (2011), Regulatory and financial implications of sukuk's legal challenges for sustainable sukuk development in islamic capital market. In 8th International Conference on Islamic Economics and Finance (Doha).

Omar, M. N. (2011), The Islamic view on money and its implication for financial instruments. *ISRA International Journal of Islamic Finance,* 3(1), 161-167.

Perry, F. V., and Rehman, S. S. (2011), Globalization of Islamic finance: myth or reality?. *International Journal of Humanities and Social Science,* 1(19), 107-119.

Pricewaterhouse Coopers. (2008), Malaysia. Asia's Financial Hub. *http://www.pwc.Com/en_MY /my/ assets/ publications/ Islamic-Finance-Hub.pdf*

Rosly, S. A., and Zaini, M. A. M. (2008), Risk-return analysis of Islamic banks' investment deposits and shareholders' fund. *Managerial finance,* 34(10), 695-707.

Radzi, R. M., and Muhamed, N. A. (2012), An International Comparative Study on Shariah Governance Supervision of Sukuk Defaults. *Journal of Islamic Economics, Banking and Finance,* Vol. 8 26 No. 3.

Saad, N. B. M., and Mohamad, N. E. A. B. (2012), Sukuk in Malaysian Capital Market. In 3rdInternational Conference on Bussiness and Economic Research.

Salihu, Adelabu, A., Odukoya, Abdul Jubreel, B. (2011), The Approach of Fiqh to Islamic Economic System: The Role of Muslim Scholars. Kuwait Chapter of Arabian Journal of Business and Management Review Vol. 1, No.3; November 2011. page: 59-86.

Securities Commission. (2001), Capital Market Master Plan Malaysia. *http:// www. iiibf. org/media/cmp-malaysia.pdf*

Securities Commission. (2001), The Islamic Capital Market in Malaysia: Broadening the Islamic Financial Sector. Annual Report 2008, 24-35.

Standing Committee for Economic and Commercial Cooperation of the Organization of Islamic Capital Cooperation. (2013), Enhancing Infrastructure for Islamic Capital Market. *http:// www. Comceccmr. org/media/9532 /islamic% 20finance%20report_2013.pdf*

Suandi, A.B. (2013), Islamic accounting in Indonesia: A review from current global situation. *https://dspace.wul.waseda.ac.jp/dspace/bitstream/2065/40460/1/Shogaku Kenk yukaKiyo_77_Suandi.pd*

The Financial Crisis Inquiry Commission, (2011), The Financial Crisis Inquiry Report. Washington: U.S. Government Printing Office. *http://www.gpo.gov/fdsys/pkg/GPO FCIC/ pdf/ GPO-FCIC.pdf*

Thomson Reuters Zawya. (2014), Sukuk Perceptions and Forecast Study 2014. *http:/ /www .zawya .com/files/Islamic reports/tr-sukuk-perceptions-and-forecast-2014.pdf*

Wan Abdullah, W.R., Roudaki, J., Clark, M. (n.d.). The Evolution of the Islamic Capital Market in Malaysia. *http:// www. victoria. ac.n z/sacl/ about/ events/ past-events2/past conferences/6ahic/publications/6AHIC 75FINAL_ paper.pdf*

Wan Azmi, W.N. (2007), Creating an Effective and Efficient Regulatory Framework for the Islamic Capital Market. *http://klbs.com.my/v1/wp-content/uploads/2012/04/010 Regulatory-Framework.pdf*

Zin, M. Z. M., Ishak, S., Kadir, A. R. A., and Latif, M. S. A. (2011), Growth and Prospect of Islamic Finance in Malaysia. International Proceedings of Economics Development and Research, 5(1).