

## **SHARI'AH ADVISOR'S OPINIONS ON THE ESSENTIALITY OF SHARI'AH GOVERNANCE FRAMEWORK FOR ISLAMIC CAPITAL MARKET IN MALAYSIA**

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**Abstract:** Board of directors play the significant role for the success of any business organization since they set the strategic objectives and vision statement which are the leading direction for the companies to follow. Because of the essential role of the board of directors, the corporate governance system has been introduced to ensure that board of directors discharge their responsibilities to the best interests of the shareholders. The failure of the giant companies such as Lehman Brothers and Enron is the example of the poor corporate governance. Conventional corporate governance system is essential in the conventional business environment and the same concept applies to the Islamic financial institutions. They need good *Shari'ah* governance which can mold and direct them to comply with *Shari'ah* in all aspects. This paper proposes the best *Shari'ah* governance practices to mold Islamic capital market activities. Currently, there is no *Shari'ah* governance standards specific to Islamic capital market. This market is the backbone of the Islamic financial institutions because it is the avenue for the investment and liquidity management where the Islamic financial institutions can rely. The structured interviews were conducted to explore the core factors which should be included in preparing the best *Shari'ah* governance practices for Islamic capital market. Thirteen *Shari'ah* advisors are interviewed and it is found that the main components that should be included are related to Islamic accountability and responsibility; independency and objectivity; competency; confidentiality and commitment; consistency; *Shari'ah* audit and review; transparency and disclosure; corporate responsibility and ethicality. In addition to that, five more specific questions were asked for each main component and all the findings have generally the minimum mean value of 4. Thus, it is important for the future policy makers, industrial players and *Shari'ah* advisors to know the distinguished factors which should be the main parts of *Shari'ah* governance practices.

**Keywords:** *Shari'ah* Governance, Framework, Islamic Capital Market & *Shari'ah* Advisors.

### **INTRODUCTION**

In parallel with corporations coming into existence, corporate governance also appeared as an important component. The agency theory, where focus is placed on the agency relationship between the agents and owners and the potential conflict between the two, is the foundation from which most codes on corporate and governance literature are derived. When the word 'agents' is mentioned it means the managers, whereas the word 'owners' refers to the shareholders. As observed by Htay et. al., (2013) and Bonazzi & Islam (2007) agency cost arises from the conflict of interests between the owners and the agents, resulting in negative impacts on the companies, such as adverse selection and moral hazard.

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The case is more complex in modern times, as the accountability of directors does not only involve the owners but also other parties including the customers, the suppliers, and even the employees, known as the stakeholders. By observing this evolution in corporate governance, responsibilities towards the stakeholders is also included in the shareholder-centred role of the directors, adding the concepts of stakeholder theory to present-day corporate governance guidelines, in addition to the agency theory. A problem-solving approach in resolving emerging problems has been applied in the overall progress of the development of the conventional corporate governance codes.

Even with such guidelines in application, one yet witnesses corporate governance failures, as was the case with the international corporations Healthsouth, Jinro Ltd, Pamalat, Tyco, Worldcom, and Enron (Htay et. al., 2013). Further advancement is needed to enhance the effectiveness of existing codes, which leads the researchers to believe that such flaws can be attributed to the man-made nature of these guidelines, being based on the human reasoning following the scrutinisation of past events and prophesising potential future predicaments, while in the long run humankind has limited knowledge given, whereas the all-knowing is only God.

The quest for eternal happiness is a core essence in Islam, which is known in its Arabic term *asal-falāḥ*. Being an ultimate goal, directors of corporations are not exempted from this aim. Directors who adhere to Islamic principles being the underlying concepts of the companies they represented, are expected to put *al-falāḥ* as their overreaching aims and to adhere to the *Shari'ah* rules and regulations in their dealings, their management of the company's affairs, economic decisions, as well as business dealings. Directors' accountability in this context is undeniably important to provide guidance to the management and employees in running the company's business and operations in line with the *Shari'ah* principles. As such a good Islamic corporate governance system requires two factors, namely: awareness of accountability and *falāḥ* as a spiritual motivating factor.

Accountability in Islam is described as having a two-fold essence, where the first or prime accountability arises through the concept of vicegerency where by man is a trustee of Allah's (s.w.t) resources, and the secondary accountability is established by a contractual relationship between man, as in this case between a manager and an owner (investor), or between the management and the employees (Shahul Hameed, 2000). This is the distinguishing factor between directors who adhere to Islam and those who do not, since the latter lack this primary accountability due to their belief in the secular worldview which distances the religious perspective from daily activities. Islamic teachings are therefore embedded into the corporate governance system when the Islamic perspective is upheld, which includes the concepts of *ḥisbah* (*Shari'ah* auditing), and Shuratic decision making as noted by Abdul Rahim (1998).

Providing strategic direction to companies to ensure that they have adequate internal control to achieve objectives and to monitor the performance of top management is a central role of corporate governance. For Islamic financial institutions, the strategic direction shall always be aligned towards complying to the principles of *Shari'ah*, and thus the need for Islamic corporate governance which certain key concepts, as mentioned above, to be imbued in the concept. In view of this, the Islamic Financial Services Board (IFSB), Bank Negara Malaysia (BNM) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) have issued *Shari'ah* governance framework for Islamic Financial Institutions focusing on Islamic Banking and Takaful. *Shari'ah* Governance serves as a mechanism to control companies to ensure that the whole operating activities of the companies are brought in line with *Shari'ah*. However, there is no specific *Shari'ah* governance framework for Islamic Capital Market even though *Shari'ah* compliance is the central value of any Islamic capital market activities, hence such should be maintained by all means.

Serving as an alternative form and narrowing the gap of competition with the conventional counterparts is an essential objective of the evolution of Islamic capital markets, making it an integral constituent in the development of Islamic banking and finance. As a result, Islamic capital market has improved the allocation and mobilization of funds for the prospects of *Shari'ah* compliant investments not only by the Islamic banks but also private investors who are concerned with Islamic investment. To ensure the comprehensive *Shari'ah* compliant environment for Islamic capital market, there are a number of areas or infrastructure that need to be enhanced.

Underlying assets and securitizations have led to a variation of innovations in complex financial activities and instruments, leading to various risks distribution and exposure to active credit management. For instance, there were several instances of Sukuk defaults. This leads one to question if proper *Shari'ah* supervision were conducted prior to the defaults, shedding light on the concern of finding the right avenue in order to mitigate such risks and defaults.

Upon perusing the aforementioned, a robust governance system is vital in the Islamic capital market to eventually enhance the integrity of the whole Islamic financial system and attain a greater degree of confidence and satisfaction among investors. In Islamic capital market the process of *Shari'ah* compliance and governance is the ultimate intermediary which means that the instruments and activities in the Islamic capital market must uphold the tenets of *Shari'ah*. However, when looking at the case of Malaysia there is a gap in providing a proper and uniform standard of *Shari'ah* governance in the Islamic capital market, hindering the process of *Shari'ah* compliance (Kasim et. al., 2013; Kasim et. al., 2013; Kasim et. al., 2014; Hassan & Salman, 2017).

Therefore, the objectives of this paper are to examine the reasons behind the need or lack of need in having a *Shari'ah* governance framework for the Islamic capital market in Malaysia, to peruse the views of *Shari'ah* advisors towards the need of a *Shari'ah* governance framework for the Islamic capital market, and to reveal the necessary components for the proposed *Shari'ah* corporate governance framework for the Islamic capital market. This paper seeks to sketch out a proposal of *Shari'ah* governance framework by incorporating the principles acknowledged by the globally recognized corporations such as IFSB, AAOIFI and BNM. It is anticipated that these principles will provide solutions to present and future predicaments.

This paper is systematized into five sections. Section two discusses the essentiality and importance of *Shari'ah* governance. Section three gives a brief picture of the research methodology, whereas section four enlightens and explicates the findings of *Shari'ah* advisors' perspectives on the need of *Shari'ah* governance framework for Islamic capital market in Malaysia. Section five concludes the paper.

### **THE ESSENTIALITY OF SHARI'AH GOVERNANCE**

Resolving issues can be attained with a robust governance system, strengthened with transparent financial information disclosure and efficient auditing, making governance anon-negotiable aspect of institutional success. Among the earliest in the evolution of conventional corporate governance is the Cadbury Report issued in 1992 in the United Kingdom, whereas of date, up to 99 countries are regarded to have good practices for governance (European Corporate Governance Institute, 2014). Not only nations have contributed to this success but also trans-national establishments which include the Commonwealth Association and the Organization for Economic Co-operation and Development (OECD). Corporate governance guidelines have been founded by both of these establishments for their member countries to follow. On the opposite side, there are also corporate failures such as the Enron Corporation and the Lehman Brothers, which serve as reminders of the need for good governance practices.

With that being the case of conventional governance, *Shari'ah* governance also bears its fair share in this regard, with the aim of making sure that the business activities of Islamic financial institutions are in conformity with *Shari'ah* guidelines. A few internationally recognized establishments have set forth guidelines for best *Shari'ah*-compliant corporate practices, among which are the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB). There are a few countries that have already worked with Islamic financial institutions to produce a common *Shari'ah* governance framework, with Malaysia being a pioneer in this regard. The support of high quality

financial information disclosures and the implementation of *Shari'ah* auditing are vital in attaining adequate governance practices.

Islam is not alien to proper financial recording practices. Such is entrenched and embedded within the very fabric of the Qur'anic scriptures, as illustrated in the upcoming Qur'anic verse:

“O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So, let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses – so that if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be [too] weary to write it, whether it is small or large, for its [specified] term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For [then] there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is [grave] disobedience in you. And fear Allah. And Allah teaches you. And Allah is knowing of all things.” (Qur'an, Al-Baqarah: 282)

Known as the verse of the loan (*Āyah Al-Dayn*), these guidelines serve as a reminder to discharge duties while being conscious of Allah the Most Exalted and Majestic, while acting as a beacon for those in management to fulfilling their responsibilities towards both Allah and other fellow humankind. Everyone will conduct their duties accordingly when each and every one carries the fear of Allah the Most Exalted and Majestic within their consciousness. This also include the duties that the parties have to perform as by the contract executed. Parties are to eliminate doubt and dispute with the presence of trustworthy witnesses and recording of their contracts. By means of record and documentation, the Qur'an elaborates the way to attain justice in this regard.

Translating the requirement of documentation and disclosure in financial contracts, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, 2010) stated that the objective of the financial statements audit is to empower the auditor with the authority to express whether financial statements are prepared in accordance with *Shari'ah* rules and principles in all material respects or not. *Shari'ah* audit is defined as “the examination of an IFI's

compliance with *Shari'ah*, in all its activities particularly the financial statements and other operational components of the IFI that are subjected to the risk of compliance including but not limited to products, the technology supporting operations, operational processes, the people involved in key areas of risk, documentations and contracts, policies and procedures and other activities that require adherence to *Shari'ah* principles” (Syed Alwi, 2007). Consequently, as well as being well versed in technical standards, the auditor is additionally expected to bear qualities of trustworthiness, righteousness, professional behavior, professional, objectivity, integrity, independence, honesty, fairness, due care, confidentiality, and competence. This should be an integral part of the *Shari'ah* governance framework for all Islamic financial activities including Islamic capital market.

The Islamic capital market also bears the consequences of corporate governance on the capital market since the function and essence of these two parallel capital markets are relatively the same. However, the main focus of the Islamic capital market is to observe *Shari'ah* compliance in its financial instruments and operations, while also guaranteeing that the market is able to create a level playing field parallel with its conventional counterpart.

## RESEARCH METHODOLOGY

The objective of this research is to explore the opinions of *Shari'ah* advisors towards the need of *Shari'ah* governance framework for Islamic capital market in Malaysia. Hence, its respective research question is “What are the opinions of *Shari'ah* advisors towards the need of *Shari'ah* governance framework for Islamic capital market in Malaysia?”. This research uses qualitative research approach since it is in the exploratory in nature and it allows the researchers to find out more information to better understanding of the research (Acaps, 2012; Williams, 2011). Sekaran and Bougie (2010), also mention that qualitative method is the most suitable method to understand the situation better in the exploratory stage. Both primary and secondary data can be either qualitative or quantitative, for instance, the primary data is quantitative if it is collected from the survey questionnaire which includes closed-ended questions while it is qualitative if it is collected from the interview, observations and focus group discussions (Acaps, 2012).

According to Easwaramoorthy & Zarinpoush (2006), interviews allows the researcher to gather the information through conversation, and it can be conducted face-to-face or over the telephone. They further mention that the interview can be structured, semi-structured or unstructured interviews. In this research, primary data are collected by structured interviews and it will be gathered by interviewing the *Shari'ah* Advisors in Malaysia. In preparing the interview questionnaire, five-point Likert-scale is used. The prior researchers who use five-point are Htay & Salman, (2013), Salman & Htay (2014), Islam & Rahman, (2017), Lone, Aldawood & Bhat, (2017).



No.	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
<i>Higher Education</i>														
Ph.D.	√		√	√		√	√	√	√	√	√	√	√	11
Masters		√			√									2
<i>Education Background</i>														
Shari'ah	√	√		√	√	√	√		√	√	√		√	10
Law			√					√				√		3
<i>How long have you been providing Shari'ah advisory services?</i>														
5Years						√	√	√				√		4
10 Years			√								√			2
More than 10 Years	√	√		√	√				√	√			√	7
<i>In which industry, are you currently advising?</i>														
Islamic Banking	√	√	√	√	√	√	√	√	√	√	√	√	√	13
Takaful	√	√	√						√	√			√	6
Islamic Capital Market	√	√	√						√		√			5

Table 1 describes the background information about the interviewees. The information includes gender, age range, education background and experience. Overall, seven out of thirteen interviewees are female and the six interviewees are males. The majority of the respondents are aged between 41-50 years (10 interviewees), followed by the age ranges of 30 to 40 (2 interviewees) and above 60 (1 interview). The majority of the interviewees are the PhD. holders (11 interviewees) and two interviewees are master degree holders. Most of the interviewees have *Shari'ah* background (11 interviewees) and rest are from Law background (2 interviewees). In the case of experience, seven (7) interviewees have more than ten years' experience; four (4) of them have five years' experience and two (2) of interviewees have ten years' experience. All interviewees are currently advising Islamic banks; six (6) of them are advising Takaful companies and five (5) of them are *Shari'ah* advisors for Islamic Capital Market.

### **Opinions on the Need of *Shari'ah* Governance Framework for Islamic Capital Market**

All the *Shari'ah* advisors collectively agree that there is a need of *Shari'ah* governance framework for Islamic capital market in Malaysia. However, there is no comprehensive research has been done in terms of the contents that should be part of the *Shari'ah* governance framework for Islamic capital market in Malaysia. This view supports the findings that this research highlighted on the absence of comprehensive research on this topic and thus making this research significantly important.



### **The Need of *Shari'ah* Governance Framework for Islamic Capital Market in Malaysia**

Islamic capital market should have *Shari'ah* governance system to ensure that non-*Shari'ah* compliant practices and unethical issues can be minimized. From the beginning, the introduction of Islamic capital market is to offer the products and services similar to the conventional products while complying with the teaching of Islam. Without having the formal *Shari'ah* governance code or framework, it is not easy to build the confidence of the investors and the Islamic capital market is moving forward without adequate *Shari'ah* paddling. The important role of *Shari'ah* governance for Islamic capital market is highlighted as follows:

“*Shari'ah* governance framework should be established in Islamic capital market and it should be the foremost step. The ultimate aims of having *Shari'ah* governance framework is to eliminate *Shari'ah* non-compliant practices and to minimize the unethical issues as much as possible. Once the practice is in line with *Shari'ah*, automatically non-complaint and unethical issues will not exist anymore” (SA, 5).

“To ensure that there are proper process and procedures are implemented to ensure *Shari'ah* compliant (SA, 6).

The *Shari'ah* governance framework is utmost compulsory to ensure end-end *Shari'ah* compliance. Once the framework is established, the market will get the confidence to invest because of the enhanced accountability, transparency and confidentiality and *Shari'ah* commitment” (SA, 8).

“Transparency of the information is important. There should be the reports from the *Shari'ah* board regarding *Shari'ah* compliance. *Shari'ah* governance framework for Islamic capital market is compulsory to ensure end-end *Shari'ah* compliance” (SA, 13).

*Shari'ah* governance is a mechanism to ensure *Shari'ah*-compliance in the whole operating activities of the companies, keeping in mind that *Shari'ah* compliance is the core value of the Islamic capital market and must be upheld without excuse. Therefore, good and effective *Shari'ah* governance practices is needed in the Islamic capital market where companies' business and activities are directed towards *Shari'ah*-compliance at all times.

### **The Essential Components for *Shari'ah* Governance Framework**

Nine questions were asked to find out the interviewees' opinions on the essential components of *Shari'ah* governance framework for Islamic capital market in Malaysia. They are related to Islamic accountability and responsibility, independence and objectivity, competency, confidentiality and commitment, consistency, *Shari'ah* audit and review, transparency and disclosure, corporate social responsibility and ethicality. The mean values of all the questions are more than 4 and thus, it can be

**TABLE 2: THE ESSENTIAL COMPONENTS FOR SHARI'AH GOVERNANCE FRAMEWORK**

<i>S.No.</i>	<i>Description</i>	<i>Mean</i>
1.	Islamic Accountability and Responsibility	4.8
2.	Independency and Objectivity	4.9
3.	Competency	4.8
4.	Confidentiality and Commitment	4.7
5.	Consistency	4.7
6.	<i>Shari'ah</i> Audit and Review	4.8
7.	Transparency and Disclosure	4.8
8.	Corporate Social Responsibility	4.2
9.	Ethicality	4.8

generally concluded that it is necessary to have the above stated nine components in the *Shari'ah* governance framework. Due to the essential nature of nine components, more detail questions are asked for each component and the following paragraphs explained about them.

#### ***Islamic Accountability and Responsibility***

*Shari'ah* board members are the governing body in any Islamic financial institutions in order to ensure that their activities are in line with *Shari'ah*. They hold the supervisory authority over the overall business operations and activities of the companies as regards to *Shari'ah* matters. They should be responsible and accountable for their views and decision on matters related to *Shari'ah* compliance. Five questions are asked to examine the interviewees' perspective on the accountability and responsibility. Those questions are concerned with the existence of a written policy on the roles and responsibility of each *Shari'ah* committee, having the highest authority in decision making related to *Shari'ah* matters, availability and assessment of documents by the *Shari'ah* committee, the support to the *Shari'ah* committee, responsibility of the members for the *Shari'ah* compliance of all the business activities of the company. The findings show that the minimum mean value of those five questions is 4.5 and these five sub-components are important and they should be assessed regularly by the higher authority. By having tight regulations imposed on the *Shari'ah* committee, it will alert them to be accountable for their actions and decision; and thus, their effective supervision on *Shari'ah* compliance. Since the *Shari'ah* compliance is not the sole responsibility of the *Shari'ah* committee members, but also the management of the companies, the interview questions have also asked on whether the management is responsible in creating favourable atmosphere for the *Shari'ah* committee to ensure that they can discharge their responsibility effectively. The findings conclude these five-

sub components are essential factors to be considered in structuring the *Shari'ah* governance framework for Islamic capital market in Malaysia. The *Shari'ah* committee will not be able to ensure *Shari'ah* compliance without the help of the management of the companies.

**TABLE 3: ISLAMIC ACCOUNTABILITY AND RESPONSIBILITY**

<i>S.No.</i>	<i>Description</i>	<i>Mean</i>
1.	There should be a written policy on the roles and responsibility of the <i>Shari'ah</i> committee.	4.8
2.	The <i>Shari'ah</i> committee should be the highest authority in decision making related to <i>Shari'ah</i> matters.	4.6
3.	The management of the company must ensure that the <i>Shari'ah</i> Committee have access to the relevant documents to discharge their responsibilities i.e. in giving <i>Shari'ah</i> decision.	4.8
4.	There should be assigned staff to support the needs of the <i>Shari'ah</i> committee members.	4.7
5.	The <i>Shari'ah</i> committee should be responsible for the <i>Shari'ah</i> compliance of all the business activities of the company.	4.5

### ***Independency and Objectivity***

Independence of *Shari'ah* board members from the management is important to ensure that they can provide the objective opinions and guidance on the institutions. Five specific questions as provided in Table 4 are asked to know the aspects to be included in the *Shari'ah* governance framework for independence and objectivity of *Shari'ah* committee members. The minimum mean value of these questions is 4 and hence, it can be summarized that independency and objectivity of the *Shari'ah* committee is the essential criteria for the effective functioning of the *Shari'ah* committee. To ensure independence, the appointment of *Shari'ah* committee shall be made by the nomination committee, upon approval by the Securities Commission Malaysia and not by any individual members of the board of directors or the management. To avoid conflict of interest and objectivity of the decision, the appointed *Shari'ah* committee shall not have any direct interest with the company such as being the employee or holding a substantial share in the company. For the purpose of consistency and guidance, a specific criteria's for choosing the *Shari'ah* committee should be established, this can be known as the "fit and proper" criteria which may include the criteria on probity, personal integrity and reputation; competency and capability; and financial integrity (Section 69 of Islamic Financial Services Act 2017). The assessment of *Shari'ah* committee should be conducted annually by the company through the exercise of the *Shari'ah* audit not only to ensure independence and objectivity but also overall performance of the *Shari'ah* committee.

**TABLE 4: INDEPENDENCY AND OBJECTIVITY**

<i>No.</i>	<i>Description</i>	<i>Mean</i>
1.	Nomination committee should list down the criteria in choosing the <i>Shari'ah</i> committee members.	4.5
2.	In appointing the <i>Shari'ah</i> committee members of the company, the company should get the approval from the Securities Commission Malaysia.	4.5
3.	All <i>Shari'ah</i> committee members should not be employees of the company.	4.7
4.	Independence of <i>Shari'ah</i> committee members should be assessed annually.	4.0
5.	There should be a formal procedure and the specific criteria to assess independence and objectivity of <i>Shari'ah</i> Committee.	4.0

### ***Competency***

Independence and objectivity of *Shari'ah* committee alone is not sufficient to mold the *Shari'ah* compliant practices in Islamic financial institutions. The *Shari'ah* committee must also be competent person to uphold such a huge responsibility. Hence, five questions are asked regarding competency of the *Shari'ah* committee. They are related to educational background, freedom to seek the opinions of external experts, the need of having members from different knowledge background, and the need of understanding the operational aspect of the Islamic financial institutions. The minimum mean value of five questions is 4.1. Thus, it can be summarized that competency of the *Shari'ah* committee is the key factor for effective oversight function and supervision of the *Shari'ah* compliance of the Islamic Capital Markets.

**TABLE 5: COMPETENCY**

<i>No.</i>	<i>Description</i>	<i>Mean</i>
1.	The majority of <i>Shari'ah</i> committee members should hold a bachelor degree in <i>Shari'ah</i> (Fiqh or Usul al-Fiqh).	4.6
2.	<i>Shari'ah</i> committee members can seek the opinion of external experts if necessary.	4.6
3.	<i>Shari'ah</i> committee members should comprise of members from different areas of expertisesuch as finance, law, accounting, economics and <i>Shari'ah</i> .	4.1
4.	The management must provide adequate training to <i>Shari'ah</i> Committee.	4.6
5.	<i>Shari'ah</i> committee members should understand the operational aspect of the company.	4.6

### ***Confidentiality and Commitment***

Since *Shari'ah* committee members are informed on all the necessary information related to the operating activities of Islamic financial institutions that they

advising, it is necessary to keep all the information private and confidential, especially against the competitors. Five questions related to the confidentiality and commitments are asked and they are concerned with providing *Shari'ah* advisory service to more than one company, disclosing the confidential information to outsiders, attendance of meeting and number of companies that the committee members can serve. The minimum mean value is 3.8 and the highest is 4.7. Hence, it can be assumed that the confidentiality of the information is very important to be kept by the *Shari'ah* committee. Confidentiality of information is important to ensure that the Islamic financial institutions do not lose their competitive advantage by letting the outsiders or competitors know their inside information.

**TABLE 6: CONFIDENTIALITY AND COMMITMENT**

<i>No.</i>	<i>Description</i>	<i>Mean</i>
1.	<i>Shari'ah</i> committee members should not provide service to more than one company in the same industry.	3.8
2.	<i>Shari'ah</i> Committee should disclose the number of companies if he/she is advising in case of multiple companies.	4.7
3.	<i>Shari'ah</i> committee members should keep discussions in meetings and inside information confidential.	4.7
4.	<i>Shari'ah</i> Committee must attend at least 80% of the <i>Shari'ah</i> Committee meeting.	4.7
5.	There should be a policy on the maximum number of the companies that each <i>Shari'ah</i> committee member can serve.	4.4

### ***Consistency***

*Shari'ah* committee is the leading committee which provides the advices, suggestions as well as approval that their serving institutions need to consistently follow in order to ensure that the institution's activities are compliant with *Shari'ah* in all aspects. Regarding this, five specific questions are asked. Those questions are related to product approval, resolving the *Shari'ah* issues, proper documentation, responsibility of management, the implementation of SOP and consistent opinion. The minimum mean value is 4.5 and thus, proving that the consistency of the *Shari'ah* committee's decision and implementation is important factor in *Shari'ah* governance framework for Islamic capital market institutions. If there is no consistency in *Shari'ah* opinions, or where the *Shari'ah* committee have divergent opinions, there will be no clear direction or guidance that the employees can follow. Consequently, Islamic capital markets institutions may be exposed to non-*Shari'ah* compliance and legal risks.

TABLE 7: CONSISTENCY

No.	Description	Mean
1.	Meeting should be held frequently to ensure that the new products can be approved and any arising <i>Shari'ah</i> matters can be resolved on a regular basis.	4.8
2.	Proper documentation should be done on how the <i>Shari'ah</i> committee reaches the decision and it should be made known to the relevant department.	4.6
3.	The management is responsible to monitor the employees for complying with the resolutions made by the <i>Shari'ah</i> committee.	4.7
4.	The management should provide the standard operating procedure (SOP) for overall <i>Shari'ah</i> compliance process in the company.	4.7
5.	<i>Shari'ah</i> committee members should be aware that their opinion should be consistent.	4.5

### ***Shari'ah Audit and Review***

To achieve the *Shari'ah* compliance practices in the Islamic financial institutions, it is not sufficient by having the *Shari'ah* committee and *Shari'ah* compliant procedure. Check and balance is necessary and thus, the role of *Shari'ah* audit and *Shari'ah* review cannot be ignored. Five questions related to *Shari'ah* audit and review that are posted to the interviewee are the importance of having *Shari'ah* internal audit department, the reporting procedure by this particular department regarding the *Shari'ah* audit findings, preparing and approval of *Shari'ah* audit plan, frequency of *Shari'ah* review exercise to complement *Shari'ah* audit and qualification requirement of *Shari'ah* auditors and reviewers. Since the minimum mean value is 4.5, it can be highlighted that in the Islamic financial institutions, including Islamic capital market, the *Shari'ah* audit and review plays very significant role for ensuring the *Shari'ah* compliance of the institutions.

TABLE 8: SHARI'AH AUDIT AND REVIEW

No.	Description	Mean
1.	There should be a <i>Shari'ah</i> internal audit department in the company.	4.5
2.	The <i>Shari'ah</i> internal audit department should be allowed to directly report to the <i>Shari'ah</i> committee, Audit Committee and board of directors.	4.8
3.	The plan for the <i>Shari'ah</i> audit for the whole year should be prepared by the <i>Shari'ah</i> internal audit department and tabled to the <i>Shari'ah</i> committee, audit committee and the board of directors for approval.	4.5
4.	A <i>Shari'ah</i> review should be conducted frequently such as on monthly basis.	4.6
5.	<i>Shari'ah</i> auditors and <i>Shari'ah</i> reviewers must have <i>Shari'ah</i> relevant qualification.	4.8

### *Transparency and Disclosure*

Transparency and disclosure about the *Shari'ah* committee and their functions are important for the Islamic financial institutions for gaining the public confidence and good reputation. Five questions related to this aspect are presented to the interviewees. The questions are on the importance of having *Shari'ah* compliant report as part of the annual report, details of non-*Shari'ah* compliant events encountered and how they are resolved, purification of non-*Shari'ah* compliant income, profile of *Shari'ah* committee and the report on their attendance. The minimum mean value is 4.3 and hence, confirm the positive feedback on the need of such material information about the *Shari'ah* committee that must be included in the annual report so that shareholders, regulators as well as the general public are aware of the commitment of Islamic capital markets towards the *Shari'ah* compliance.

**TABLE 9: TRANSPARENCY AND DISCLOSURE**

<i>No.</i>	<i>Description</i>	<i>Mean</i>
1.	The <i>Shari'ah</i> compliance report should be part of the annual report of the company.	4.8
2.	Details of non- <i>Shari'ah</i> compliant issues and their rectification should be provided in the annual report.	4.3
3.	The purification of non- <i>Shari'ah</i> compliant income should be clearly disclosed.	4.5
4.	The profile of the <i>Shari'ah</i> committee members should be disclosed in the annual report as well as on the company's website	4.4
5.	Meeting frequency and attendance of each <i>Shari'ah</i> committee member should be disclosed in the annual report.	4.5

### *Corporate Social Responsibility*

*Shari'ah* compliance does not focus only on the fact that the products and services offered by the Islamic financial institutions are free from interest, uncertainty, gambling and investment in non-*Shari'ah* compliant business activities. Looking from the broader view of *Shari'ah* compliance, the Islamic financial institutions are required to discharge their responsibility towards the society and their decision cannot be done solely based on profit. Thus, considering the need of the society should be part of parcel of the Islamic financial institution activities which is normally translated into their corporate social responsibility (CSR) policy. Five questions related to corporate social responsibility are asked and it is found that the mean value is 4.2 and hence, it is important for the Islamic capital market to discharge their corporate social responsibility as part of their inherent duty under Islamic teachings.

TABLE 10: CORPORATE SOCIAL RESPONSIBILITY

<i>No.</i>	<i>Description</i>	<i>Mean</i>
1.	The management should provide the benefits for the welfare of the employees.	4.5
2.	The management should not only prioritise the interest of the shareholders at the expense of other stakeholders.	4.5
3.	The management should discharge their corporate social responsibility (CSR) diligently.	4.4
4.	The management should ensure that the benefit of CSR activities contributes to the social welfare of the public.	4.2
5.	The management should get the approval from <i>Shari'ah</i> Committee for any CSR activities conducted.	4.4

### ***Ethicality***

Ethicality cannot be separated from business activities of Islamic banking, Takaful and Islamic capital market since it is part of the teaching of Islam. Five questions related to ethicality are forwarded to the interviewees that are the need of having ethical working atmosphere, enforcement of ethical code of conduct, availability of the company's code of ethics to the public and top down ethical awareness and culture among the employees and the management including the *Shari'ah* committee. The minimum mean value of 4.0 and thus, it is found that the ethics should be observed by the Islamic capital market institutions as part of their *Shari'ah* governance practices. Good ethical conduct is pivotal for the long-term survival of the institutions as well as for attaining the blessing from the Almighty.

TABLE 11: ETHICALITY

<i>No.</i>	<i>Description</i>	<i>Mean</i>
1.	<i>Shari'ah</i> committee members should initiate a <i>Shari'ah</i> compliant and ethical working environment in the company.	4.0
2.	The management should enforce the ethical codes of conduct in the company.	4.4
3.	Code of ethics of the company should be accessible to the public.	4.3
4.	Employees should be trained to understand the important role of ethics for the long-term survival of the company.	4.6
5.	<i>Shari'ah</i> committee members and the management should have good character and maintain the ethical code of conduct in advising the company.	4.6

### **CONCLUSION**

This paper is presented in five sections and the purpose is to highlight the importance of *Shari'ah* governance best practices in Islamic capital market which supports the investment and liquidity needs of Islamic financial institutions as well as the



businesses. Since the *Shari'ah* is the distinct feature which makes Islamic capital market different from conventional capital market. Thus, the Islamic capital market should be firmly monitored and guided to ensure that the market is operating in line with *Shari'ah*. It can be achieved by having the formal *Shari'ah* governance principles and thus, this paper explores on what are the components that should be included in the framework.

As discussed above, *Shari'ah* committees should be aware of Islamic accountability and responsibility, observe independence and objectivity, competent enough to guide, keep the confidential information and fully committed towards their tasks and responsibility, provide the consistent procedures and guidelines, oversees the *Shari'ah* audit and review, encourage the board of directors to disclose the adequate information about *Shari'ah* operational aspect, discharge the corporate social responsibility and observe the ethical code of conducts. These are the proposed main components to be included in the guideline and more specific points should be included.

This paper is written based on the interview results from thirteen *Shari'ah* advisors in Malaysia. Since this study is exploratory in nature, it is believed that this sample size of the interviewees is adequate enough to get essential ideas of the contents of best *Shari'ah* governance practices for Islamic capital market institutions.

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