

SHARIAH ADVISORY BOARD OF ISLAMIC FINANCIAL INSTITUTIONS – CROSS BORDER PRACTICES

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Abstract

The role and function of Muslim scholars, particularly of the Shariah advisory or supervisory board are very significant, in both development and the enhancement of Islamic banking and finance industry. Their contribution has been a great spur to the success of Islamic banking and finance, not only in winning the confidence of shareholders and the public, but also in innovations resulting in products suitable for modern and prudent banking activities. The board's responsibility has been generally perceived as both supervisory and consultative in ensuring that Islamic financial institutions adhere strictly to shariah rules and principles in their operations. Shariah compliance is the very essence of an Islamic bank and its banking business. The *raison d'etre* and role of Shariah advisers acting as supervisory council are crucial, because the responsibility to ensure shariah compliance is vested in these advisers. However, the practices with respect to the Shariah supervisory board may differ from one bank to another and from one jurisdiction to the other. Various issues are pertinent to the position and functioning of this board, such as its legal status, the authority for appointing its members, the scope of its role and functions, the composition of its members, the *modus operandi* of its decision making, the shariah audit of the application of fatwas issued by it and so forth. These issues deserve a thorough examination as it may bring different legal consequences to industry operations as a whole. This paper will highlight the different practices of jurisdictions on the shariah advisory or supervisory board of Islamic financial institutions. The practices in Malaysia, Indonesia, Pakistan, Kuwait and Bahrain will be analysed, as regards to the appointment, legal status and other related matters relevant to the shariah advisory or supervisory board of the Islamic financial institutions (IFIs). Different legal framework of Islamic banking and finance in different countries, consequently may result to different legal status accorded to the board, and different roles and functions that each of the board may have to uphold.

TOWARDS ISLAMIC WORLDVIEW BASED CORPORATE GOVERNANCE FRAMEWORK

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Abstract

The importance of having a good corporate governance system is highlighted by many theories and governance literature to reduce agency problems. Most of the codes on CG derive recommendations from the concept of agency theory. The said theory and one of the earliest reports on CG, i.e. Cadbury Report (1992) in UK focused specifically on shareholder oriented nature of governance, i.e. the relationship between capital providers and board of directors only. Later on, the accountability of directors has been extended to other stakeholders, i.e. social and environmental aspects. Therefore, if the trend of the evolution of the corporate governance is observed, shareholder-centred role of the directors has been integrated with responsibilities towards the stakeholders. It can be summarized that the current CG guidelines are a combination of the concepts of stakeholder theory and agency theory. Hence, overall progress of the development of the conventional CG codes has been done with a problem solving approach by tackling emerging problems. Moreover, even with the existence of the guidelines, CG failures still exist. Hence, the effectiveness of the existing codes are questionable since they are not concrete solutions. It might be for the reason that they are man-made guidelines and based on the human reasoning after examining past events and predicting possible future problems. Furthermore man has limited knowledge given by God and only God is all knowing. Therefore, the researcher would like to propose Islamic worldview based corporate governance framework (IWBCGF) which is founded on the divine teachings with the expectation that if directors follow the code of conduct of IWBCGF, it will guide the directors to perpetual solutions of the current and future CG problems.

Keywords

Corporate governance, Islamic accountability, Board of directors



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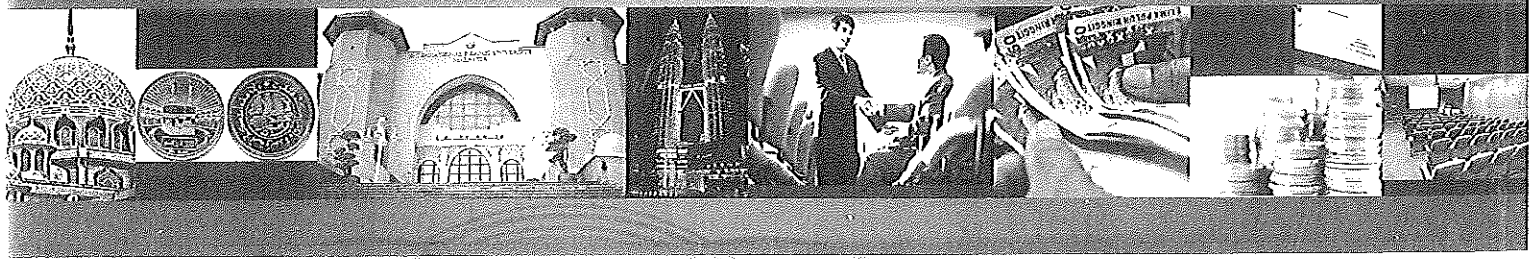


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DAY 01
[cont'd]
15 June 2010
Tuesday

11.00 a.m. – 1.00 p.m.

PARALELL SESSION 2

VENUE

PAPER

ROOM NO
MM17**PAPERS (2A)****Theme : Corporate governance and the role of *Shari'ah* boards in cross border practices**

Islamic Banking and Finance Today: Professional Ethics and Cross Border Practice and Litigation,
Adeyemo, Lateef Kayode & Mobolaji, Hakeem Ishola, MALAYSIA & NIGERIA

Corporate Governance for Islamic Financial Institutions,
M. Javeed Mansoor, SRI LANKA

The Application of *Fatawa* / Resolutions by the Judge in Contemporary Islamic Finance in Malaysian Civil Justice System,
Mohd Zakhiri Md Nor, MALAYSIA

Shari'ah Advisory Board of Islamic Financial Institutions - Cross Border Practices,
Rusni Hassan, Uzaimah Ibrahim, Nurdianawati Irwani Abdullah, Akhtarzaite Abd Aziz & Mohd Fuad Md Sawari, MALAYSIA

Towards Islamic Worldview based Corporate Governance Framework,
Sheila Nu Nu Haty Muhammad Akhyar Adnan, Hafiz Majdi Abd Rashid & Shahul Hameed Hj Mohamed Ibrahim, MALAYSIA

Corporate Governance of Australian Banking : A lesson in Law Reform or Good Fortune,
Michael Peters, AUSTRALIA

ROOM NO
MM18**PAPERS (2:B)****Theme : The economic connotations of Islamic banking and customer acceptance**

Customer Satisfaction of Islamic Banking Products in Pakistan,
Faisal Karim & Irfa Ejaz, PAKISTAN

The Role of *Haji* in the Growth of the Islamic Banking and Finance: A case study of *Tabung Haji* (Malaysian *Haji* Fund) ,
Ibrahim Olatunde Uthman, NIGERIA

Economic Role of Islamic Banks: Obstacles and Possible Solutions,
Rasem N. Kayed & Ahmed A. Ibrahim, PALESTINE & BAHRAIN

The Financial Implications of Globalization on the Islamic Banking System: Facts and the Events,
Torki Al-Fawwaz & Khalid Lafy Al. Naif, JORDAN

ROOM NO
MM19**PAPERS (2:C)****Theme : Advancement of Islamic banking in new jurisdictions: challenges and perceptions**

Legal Obstacles in Establishing Islamic Banking in Maldives,
Aishath Muneeza & Ismail Wisham, MALAYSIA

Islamic Finance in the US: What Are the Challenges to Overcome in order for the Industry to
Subsist Viably under Secular Regulation?, Fatimah S. Baeshen, USA

Accommodating Islamic Banking and Finance in New South Wales,
Salim Ali Farrar, AUSTRALIA

Banking Sector Consiladation Crisis: Islamic Banking as a Credible Alternative System in Nigeria,
A.S.Santhapparaj & Muhammad Yusuf, MALAYSIA

Islamic banking in Sri Lanka And Malaysia: Choice of Laws, Conflict of Laws And Court Jurisdiction,
Rusni Hassan & Mohamed Nafees, MALAYSIA

PROGRAM DAY 1 [Parallel Session 2] on next page