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Edited by
M. KABIR HASSAN
MICHAEL MAHLKNECHT

Islamic Capital Markets

Products and Strategies

M. Kabir Hassan
Michael Mahlkecht

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The Dispute Resolution Framework for the Islamic Capital Market in Malaysia: Legal Obstacles and Options

Umar A. Oseni* and M. Kabir Hassan**

4.1 INTRODUCTION

With the growing global awareness of Islamic banking and finance products and the need to explore alternative modes of investment and securities, the Islamic capital market now commands increasing global attention in both developed and developing countries across the world. The recent global financial meltdown has led the stakeholders in global finance to other alternative modes which may contribute to global financial stability. The world has come to understand and appreciate the significance of Islamic finance in the global financial system. Therefore, the Islamic capital market is a significant option to financial products and services in the modern international markets (Ali, 2008).

This recognition has encouraged the steady growth of new products as well as efforts at development and promotion. The establishment of the Dow Jones Islamic Market Index and the FTSE Global Islamic Index Series is testimony of the international recognition of the tremendous potential represented by the Islamic capital market.¹

Islamic bonds were first issued successfully in 1983 by the Malaysian Government when the Government Investment Issue or GII (formerly known as the Government Investment Certificate or GIC) was issued (OICU-IOSCO, 2004).

The expansion of Islamic banking and financial services has opened more vistas for further research in the legal framework regulating the products emanating from the sector. The tremendous growth in the global share index of Islamic bonds (*sukuk*) may invariably trigger an increase in the number of disputes within the industry. This chapter examines the need for an appropriate legal framework for resolving disputes that may arise among the market participants. Disputes usually arise among operators and investors, investors and the commission, operators and the commission, and even among the investors themselves.

Due to the unique nature of the Islamic capital market, the legal framework must include both the dispute resolution aspect as well as the dispute avoidance mechanism to regulate the matrixes of the financial products in the market. This research focuses on the Islamic capital market in Malaysia which is a pioneering model in the modern world. It is argued that the regulatory matrix must totally comply with the Shariah principles especially issues of dispute avoidance and resolution. In the light of the spirit of the Capital Market and Services Act 2007