

# **IFSA 2013: COMMENTARIES ON ISLAMIC BANKING AND FINANCE**

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## Chapter ①

# INTRODUCTION AND GENERAL COMMENTS

### 1.1

#### Background

The enactment of the Islamic Financial Services Act 2013 (IFSA 2013), was approved by the Malaysian Parliament in December 2012, and received the royal assent on 18 March 2013. It was later published in the *Gazette* on 22 March 2013, and came into force on 30 June 2013. However, in a later announcement, the Governor of Bank Negara Malaysia (BNM) announced that a two-year grace period was given to the banking industry to comply with the Act. Hence, once the two-year grace period is over, it will be in full force, and must be complied with by all Islamic bankers in Malaysia.

IFSA 2013 marks an important milestone in modernising the laws in Malaysia's financial sector. These new laws are the culmination of more than six years of work which started concurrently with the review of the Central Bank of Malaysia Act 1958,<sup>1</sup> and involved a wide-ranging review of the various laws for the regulation and supervision of the financial sector, with particular consideration on important changes that were occurring across the domestic and global financial landscapes. The review and modernisation of the laws governing the financial sector in Malaysia ensure that these laws continue to be relevant and effective in preserving financial stability and supporting the growth of the Malaysian financial system and the economy.

Over the decade, the focus of and the approach to financial sector regulation and supervision have evolved substantially, not only in Malaysia but also internationally. As the financial system has become more diverse, sophisticated and interconnected, financial regulation has correspondingly evolved from detailed and prescriptive rules to a principle-based approach that combines greater supervisory judgment and intensity with high-level

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1 Repealed by the Central Bank of Malaysia Act 2009.

principles of sound practice that can be applied to institutions according to the nature, scale and complexity of their activities. There has also been a fundamental re-orientation of the focus of financial supervision to take into account system-wide developments and risks, in addition to the traditional focus on individual financial institutions. It involves a widening of the scope of oversight to include the supervision of financial groups and non-bank financial institutions which engage in financial intermediation activities. Beyond prudential regulation, the other aspects of financial sector regulation such as business conduct regulation that focuses on consumer protection and financial inclusion have also become more prominent, driven by changing demographics, the increasing complexity of financial products and public policy goals to alleviate poverty, improve equity and enhance growth.

Another important feature in the development of Malaysia's financial system is the role of Islamic finance and its growing significance. The development of a comprehensive legislation for Islamic finance has further extended the frontier of financial regulation in the country. These developments have had significant role in shaping the key statutes which were introduced over the decade and form part of the legal framework for the financial sector, including the Development Financial Institutions Act 2002 (DFIA 2002), Payment Systems Act 2003 (PSA 2003)<sup>2</sup> and the Malaysia Deposit Insurance Corporation Act 2011 (MDICA 2011). The enactment of the new central bank legislation in 2009, the Central Bank of Malaysia Act 2009 (CBMA 2009), and the FSA and IFSA in 2013 capped off the series of comprehensive legislative reforms that have been undertaken.<sup>3</sup>

Prior to the drafting of IFSA 2013, BNM issued the *Financial Sector Blueprint 2011-2020* in December 2011. As noted in the Blueprint itself, "the 10-year Blueprint is a strategic plan that charts the future direction of the financial system as Malaysia transitions towards becoming a high value-added, high-income economy". The Blueprint notes that "... [g]iven the more challenging international environment, emphasis will increasingly be placed on enhancing the resilience of Islamic finance, including in liquidity and crisis management, to complement the ongoing efforts in strengthening

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2 Repealed by the Financial Services Act 2013.

3 [http://www.bnm.gov.my/files/publication/fsps/en/2012/cp03\\_001\\_box.pdf](http://www.bnm.gov.my/files/publication/fsps/en/2012/cp03_001_box.pdf). Accessed on 31 December 2014.

the relevant regulatory and legal framework for Islamic finance and in promoting greater harmonisation in Shariah interpretations.” This is exactly what IFSA 2013 quests to achieve.

As the brief introduction to IFSA 2013 states, it is “[a]n Act to provide for the regulation and supervision of Islamic financial institutions, payment systems and other relevant entities and the oversight of the Islamic money market and Islamic foreign exchange market to promote financial stability and compliance with Shariah and for related, consequential or incidental matters.” The Act combines and replaces four then existing statutes, namely, the Payment Systems Act 2003, the Exchange Control Act 1953, the Islamic Banking Act 1983 (IBA 1983) and the Takaful Act 1984.<sup>4</sup> Hence, it is a comprehensive law governing both the Islamic banking industry and the takaful industry. However this book will focus solely on the banking aspects of IFSA 2013.

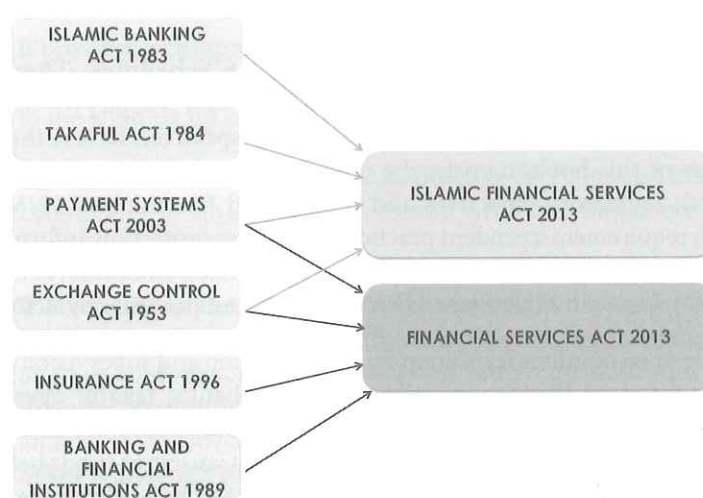


Diagram 1.1 IFSA and FSA 2013

4 While the repeal of IBA 1983 and Takaful Act 1984 is mentioned in s. 282 of IFSA 2013 as well as in the definition of “Repealed Acts” in s. 2, the repeal of the Payment Systems Act 2003 and the Exchange Control Act 1953 is not mentioned in the Act. This is instead stated in FSA 2013, the twin sibling of IFSA 2013. Since all provisions of IFSA 2013 mirror those of FSA 2013, save for certain additional provisos concerning Shariah compliance, it is safe to conclude that IFSA 2013 has also incorporated the provisions of the Payment System Act 2003 and the Exchange Control Act 1953.



# IFSA 2013: COMMENTARIES ON ISLAMIC BANKING AND FINANCE

The enactment of the Islamic Financial Services Act 2013 (IFSA 2013) has marked an exceptional milestone in the development of the domestic Islamic financial industry. With a strong industrial bedrock created over 30 years, Malaysia has yet again pioneered the enabling legislative reformation vital for industrial fluidity and harmonisation.

While the Act caters to all regulatory and supervisory aspects of the industry, this book aims to provide a succinct commentary on the provisions within the Islamic Banking parameters. As the nature of legislative demands change from a detailed and prescriptive approach to one which is principle-based, this book provides a perfect companion to assist readers in understanding and navigating the current legislative maze.

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