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Routledge Handbook of Corporate Law

Edited by Roman Tomasic

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The *Routledge Handbook of Corporate Law* provides an accessible overview of current research in the field, from an international and comparative perspective.

In recent years there has been an explosion of corporate law research, as this area of law continues to develop rapidly throughout the world. Traditionally, Anglo-American corporate law theory has dominated debates and publications; however, this handbook readdresses the balance by exploring the treatment of corporate law in both Europe and Asia, as well as developments in the US and UK. Bringing together a wide range of key thinkers in the field, this volume is divided into three main parts:

- Thinking about corporate law
- Corporate law principles and governance
- Some cross-cultural comparisons

Providing up-to-date and authoritative articles covering all the key aspects of corporate law, this reference work is essential reading for advanced students, scholars and practitioners in the field.

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Company law and corporate governance in Malaysia

Harmonisation of *Shariah* and the common law

Aiman Nariman Mohd-Sulaiman and Shanthy Rachagan

1 Introduction

The last two decades have seen prolific company law reform and corporate governance transformation internationally. The changes have been attributed to various factors ranging from changes to shareholding demographics, the growth and impact of technology on corporate law and practice to new business and investment models. An added dimension to corporate law and governance reform is the growth of Islamic capital markets and the Islamic financial services industry. This development has intensified interest about *Shariah* principles in commerce, particularly its interaction with conventional company law and practice.

This chapter analyses how and to what extent *Shariah* principles in commerce are considered in modern company law within a common law jurisdiction. The analysis is posited within the legal and regulatory framework of Malaysia, which has a strong common law tradition but has developed Islamic commercial law in parallel with the common law as exemplified in its Islamic capital market and Islamic financial services sector.

Malaysia is a prime example of a jurisdiction that has successfully applied *Shariah* principles alongside conventional common law in relation to the capital market. The market capitalisation of *Shariah*-compliant securities in 2014 stood at RM1.01 trillion or 61.3 per cent of total market capitalisation of the stock exchange, which was worth RM1.65 trillion (Securities Commission 2014). Similar to the equity market, Malaysia's bond market also comprises conventional and *sukuk* or *Shariah*-compliant bonds. The *sukuk* market consists of Islamic debt securities which are structured to comply with *Shariah* principles of which a primary principle is prohibiting the charging of *riba*' or usury.¹

1 *Sukuk* are certificates of equal value that represent an undivided interest (proportional to the investor's interest) in the ownership of an underlying asset (both tangible and intangible), usufruct, services or investments in particular projects or special investment activities.

'Professor Roman Tomasic has done a good job in bringing together the work of leading corporate law scholars from several jurisdictions and which tackles some of the important contemporary issues that face us in this dynamic, extensive and ever-changing area of law that affects so much and so many, not only in the commercial world, but in life generally. The impressive scholarship that adorns the pages of the book demonstrate clearly that there remains much to be debated and decided in corporate law in the world of today. This book clearly deserves to be read and digested by all corporate scholars and students.'

Andrew Keay, *Professor of Corporate and Commercial Law, University of Leeds.*

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