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Securities Commission
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COMCEC

ISLAMIC CAPITAL MARKET CAPACITY BUILDING PROGRAMME:

Workshop Report and Recommendations

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3, Persiaran Bukit Kiara, Bukit Kiara
50490 Kuala Lumpur, MALAYSIA
www.sc.com.my

COMCEC COORDINATION OFFICE

Department of International Programs and Projects
Necatibey Cad. No:110/A
Yüce-tepe, Ankara, TURKEY
www.comcec.org

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ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
ADR	Alternative dispute resolution
CIS	Collective investment scheme
COMCEC	Standing Committee for Economic and Commercial Cooperation of the Organization of Islamic Cooperation
ETF	Exchange-traded fund
ICD	Islamic Corporation for the Development of the Private Sector
ICM	Islamic capital market
IFI	Islamic financial institution
IFSB	Islamic Financial Services Board
IFSI	Islamic financial services industry
IOSCO	International Organization of Securities Commissions
ISRA	International Shariah Research Academy for Islamic Finance
IWM	Islamic wealth management
OIC	Organisation of Islamic Cooperation
REIT	Real estate investment trust
RSA	Regulatory and supervisory authority
SAC	Shariah Advisory Council
SC Malaysia	Securities Commission Malaysia
SIDC	Securities Industry Development Corporation
SPE	Special purpose entity
SRI	Sustainable and responsible investment
WAEMU	West African Economic and Monetary Union

FOREWORD

The Islamic finance industry has registered steady and significant growth of about 10 to 15 per cent, annualised over the past 15 to 20 years, which included the highly volatile and uncertain period of the Global Financial Crisis. From its humble beginnings of primarily serving the demands and preferences of the domestic market of the respective jurisdiction, the industry has – especially in recent years – expanded beyond geographical borders to take on a more international dimension.

Such internationalisation has been more prominent in the Islamic capital market (ICM) segment of the industry, particularly in the areas of sukuk and Islamic fund management. Recently, these segments witnessed a number of encouraging trends and developments that will further drive more activities and transactions in ICM at regional and global levels. For instance, several non-Muslim jurisdictions namely the UK, Hong Kong, Luxembourg and South Africa had issued sovereign sukuk; product offerings continue to broaden such as Islamic stapled securities and sustainable and responsible investment sukuk; and global fund management companies and international legal firms had set up dedicated Islamic finance teams. These significant developments reflect not only greater awareness but also more importantly the growing acceptance for Islamic finance and ICM. The acceptance, and therefore participation by various stakeholders that cut across religious lines demonstrate that the value proposition of Islamic finance and ICM is indeed universal.

While it still represents a very small proportion of global financial assets and activities, Islamic finance has significant room and potential for further growth in current markets as well as expansion into new jurisdictions. It is therefore very apt and timely for capital market and financial market regulators to enhance capacity in order to enable and facilitate more transactions in the ICM, including cross border activities through collaborations both at bilateral and multilateral governmental and regulatory, as well as at business and institutional levels. Such collaborations will contribute towards building scale and enhancing efficiency of the Islamic finance industry and its players, which in turn will strengthen their capabilities and competitiveness.

It is important for jurisdictions that aim to build or improve their ICM and Islamic finance industry as a whole, to undertake a systematic and structured approach to ensure an orderly and sustainable growth path. An effective approach should involve addressing issues and gaps in the relevant areas in order to capitalise on opportunities and reap the benefits from greater internationalisation of ICM.

With that in mind, the Standing Committee for Economic and Commercial Cooperation of the Organisation of Islamic Cooperation (COMCEC) and Securities Commission Malaysia co-organised the Islamic Capital Market Capacity Building Programme from 31 May to 4 June 2015, where the outcome of discussions and proposals has been compiled in this *Workshop Report and Recommendations* to cover key areas which need to be addressed in developing policy recommendations for the enhancement of the ICM. These include issues in the Shariah, legal and regulatory areas as well as in ICM products and services. It is hoped that this report could serve as a guide for regulatory and supervisory authorities, practitioners, academicians and other interested parties.

On behalf of the Securities Commission Malaysia, in our capacity as Chair of the Islamic Finance Task Force of the COMCEC Capital Markets Regulators Forum, I would like to extend my utmost appreciation and gratitude to COMCEC for its strong support of the work and initiatives undertaken by the Islamic Finance Task Force, and for providing the bulk of the funding that has made the Programme possible. I would also like to thank the subject matter experts/speakers, participants and secretariat for the support extended. The active interaction and discussions between the subject matter experts/speakers and participants, as well as among the participants themselves had been significantly valuable. The sharing of knowledge and experience, especially in an industry that is still relatively young like ICM, will help facilitate and accelerate the development of this industry for our common benefit.

Zainal Izlan Zainal Abidin

Executive Director
Securities Commission Malaysia
Kuala Lumpur, Malaysia

EXECUTIVE SUMMARY

The workshops on Islamic Capital Market Capacity Building Programme, held in Dubai, UAE from 31 May to 4 June 2015, were aimed at developing and strengthening domestic capacity, promoting awareness as well as identifying issues or gaps in ICM. The workshops provide sessions for the participants to brainstorm, share knowledge and experiences, and discuss potential policy recommendations on the development of ICM infrastructure in their respective countries. These sessions cover several key areas in ICM among others, legal and regulatory framework, Shariah principles and governance framework, products and services, talent development as well as strategy and policies for ICM development.

The workshops also exposed participants to several new frontier developments and innovations in ICM such as the bridging of halal industry and the Islamic financial services industry (IFS), development of *waqf* assets and the offering of Islamic wealth management services. More products have also been introduced into the markets such as Islamic crowdfunding, business trust and stapled securities.

From the workshops, it was observed that participants were able to:

- (a) express themselves on a **broad range of issues** including regulatory instruments required at the macro level (such as monetary policy and instruments, reserves and other financial safety nets), pricing mechanism for ICM products as well as other technical discussions on risk management;
- (b) appreciate the **sharing on various national masterplans** (for example, Malaysia, Indonesia, Kazakhstan, Nigeria and Kenya) which allow them to observe diverse regulatory approaches and models in developing ICMs. These serve as reference points for other interested up-and-coming markets and participants to analyse the various challenges in the implementation of such masterplans; and
- (c) develop **better awareness on Shariah aspects of ICM and best practices** (such as Shariah screening methodologies; Shariah governance framework and the practical role of Shariah scholars/advisers in ensuring due compliance with the Shariah throughout the ICM ecosystem).

These workshops also reaffirmed and established that:

- (a) **Capacity building remains crucial in developing the ICM ecosystem** in the Organisation of Islamic Cooperation (OIC) member countries. Participants were indeed very delighted with the organisers' efforts in facilitating the development of technical skills and overall capacity at their individual and organisational levels. They confirmed the need for similar initiatives to be continued and expanded, so that the benefits of the workshops can reach a wider audience;
- (b) Some regulatory and supervisory authorities (RSAs) may have the range of expertise and experience that other RSAs wish to learn or adopt. Hence, there is a **need to increase the level of engagement and interactions among RSAs**, whether on multilateral platforms (such as the Islamic Development Bank or COMCEC) or on bilateral platforms at the RSAs' own initiatives. More effective and efficient way in disseminating and sharing the expertise and experience should be explored;
- (c) Since the RSAs may be at different stages in development of their capital markets generally and ICM in particular, each of them has different requirements in establishing the necessary architecture and infrastructure. This diversity of needs, while obviously is a challenge, forms a genuine opportunity. In this regard, RSAs are **to adapt and identify their own tailor-made solutions at lower cost and faster learning curves**, considering that several RSAs which have a more developed ICM ecosystem can assist in providing different successful regulatory models and approaches.

Recommendations brought forward highlighted that it is vital to have strategic planning and policy implementation since there is no 'one-size-fits-all' strategy that can be adopted by the member jurisdictions. Strategies outlined should enable reviewing process according to priorities, feasibility and market dynamics. Therefore, this report provides several recommendations that can be considered by COMCEC and the RSAs within short to medium-term (one to three years) and long-term (more than three years).

The short to medium-term recommendations include:

- i. Replicate workshops in COMCEC member countries;
- ii. Expand workshops to include more advanced levels to support and facilitate capacity building of RSAs at more complex and sophisticated discussions;
- iii. Intensify opportunities for training and industry exposures through placement, secondment and/or exchange programme among RSAs;
- iv. Commission papers and organise public lecture programmes;

- v. Prepare a handbook or manual on the thought-process and success-factors in developing a masterplan or roadmap for ICM and Shariah governance framework; and
- vi. Develop a virtual library whereby the relevant handbooks or manuals can be made available and accessible to member countries.

The long-term recommendations include:

- i. Develop a Train-the-Trainer programme including the manual to intensify the facilitation and accessibility to capacity building in every RSA;
- ii. Organise a series of workshops with programmes focusing on initiatives to develop and promote securities investment among the OIC member countries;
- iii. Consolidate the technical know-how through an advanced ICM training programme;
- iv. Develop templates for information on ICM products and instruments;
- v. Establish a prestigious COMCEC fellowship programme to promote the higher level of awareness on ICM; and
- vi. Develop national masterplan or roadmap for ICM to be aligned according to the national economic agenda and/or financial system.

These workshops and their content were very welcomed and well received, as it was reflected in the good rating given by participants in the feedback forms. It was also highlighted that the workshops programme can be replicated and adapted by the respective RSAs (to organise similar events in their own countries). The knowledge from such workshops can help to enhance the depth of the RSAs technical knowledge and awareness on issues related to ICM.

CHAPTER 01

INTRODUCTION

The workshops on Islamic Capital Market Capacity Building Programme were intended to promote the development of ICM in the OIC member countries through capacity building initiatives and policy recommendations. The programme was targeted to the RSAs particularly senior level management who are responsible for the development of ICM in their jurisdictions.

Considering the different level of development of ICM in various jurisdictions in OIC member countries (ranging from having a well-developed ICM ecosystem to those that have just been initiated), two specialised ICM workshops were offered i.e ICM Workshop: Level 1 and ICM Workshop: Level 2, which were held from 31 May to 4 June 2015 in Dubai.

These workshops were targeted to equip participants to–

- (a) recognise the nature and significance of ICM ecosystem;
- (b) recognise the vital requirements for the development of ICM infrastructure;
- (c) identify appropriate and relevant strategy for the development of ICM; and
- (d) have the opportunity to generate policy recommendations for the development of ICM in their jurisdictions.

The programme was designed to offer an open learning environment to discuss strategies and share insightful experiences in developing ICM. It also highlighted possible development strategies to further the cause of ICM through thought-provoking ideas delivered by internationally experienced subject matter experts/speakers (Experts) via presentations, discussions on case studies, analysis, etc.

These ICM workshops also served as a platform for the participants to share and learn from each other's experience. Such interaction had enabled participants to better appreciate the importance of more collaborative arrangements among the RSAs. The workshops' full programme is appended in **Annex I**.

A total of 47 participants from 23 organisations in 17 countries took part in these workshops. The list of organisations is provided in Table 1 and participants is appended in **Annex II**.

Table 1

Participating Organisations

NO.	ORGANISATIONS
1.	Autoriti Monetari Brunei Darussalam
2.	Capital Market Authority of Oman
3.	Capital Market Development Authority, Maldives
4.	Capital Markets Authority, Kuwait
5.	Capital Markets Board of Turkey
6.	Central Bank of Sudan
7.	Development Bank of Turkey
8.	Dubai Financial Services Authority
9.	Islamic Corporation for the Development of the Private Sector (ICD)
10.	Islamic Research and Training Institute (IRTI)
11.	Jordan Securities Commission
12.	Ministry to the Prime Minister in Charge of Economy and Finances, Cote D'Ivoire
13.	Money and Credit Direction, Ministry of Economy, Finances and Plan, Senegal
14.	National Bank of Kazakhstan
15.	National Bank of the Kyrgyz Republic
16.	Palestine Capital Market Authority
17.	Securities and Commodities Authority, UAE
18.	Securities and Exchange Commission of Pakistan
19.	Securities & Exchange Organization of Iran
20.	Securities Commission Malaysia
21.	Standing Committee for Economic and Commercial Cooperation of the Organization of Islamic Cooperation (COMCEC)
22.	State Committee for Securities of Azerbaijan
23.	Union of Arab Securities Authorities



Opening Speech by Zainal Izlan Zainal Abidin, Executive Director, Securities Commission Malaysia

Workshops Structure

The workshops were divided into two levels:

(a) LEVEL 1

It was a two and a half day programme, designed primarily for member countries that have minimal or limited exposure to ICM. This workshop aimed at providing equal emphasis on developing specific human capacity and skills as well as institutional capacity for ICM development including strategies and policies.

From the workshop, participants would be able to recognise the nature and significance of the ICM ecosystem comprising the legal and regulatory framework, products' key features and the role of the key stakeholders in contributing to the development of ICM and IFSI globally.



Participants of ICM Workshop: Level 1

(b) LEVEL 2

It was also a two and a half day programme, designed as a platform for discussion and clarification of selected topics, and sharing of experiences targeted to countries which have experienced some advancement in ICM. This workshop placed greater emphasis in the development of institutional capacity due to progress level of their respective ICMs.

The workshop enabled participants to identify gaps and policy recommendations necessary for the development of ICM infrastructure to strengthen their efforts towards building successful ICM in their respective jurisdictions.

The three Experts who led the workshops were:

- (a) Professor Dr Ashraf Md Hashim, Chief Executive Officer of ISRA Consultancy;
- (b) Dr Aida Othman, Director of ZICO Shariah Advisory Services; and
- (c) Madzlan Mohamad Hussain, Partner and Head of Islamic Financial Services Practice, Zaid Ibrahim & Co.

Their profiles are appended in **Annex III**.

These Experts brought with them wealth of knowledge and experience in their home country i.e Malaysia, as well as in other countries where they have played a role in or contributed to ICM development. In addition to the discussion on key ICM developments, both Experts and



Participants of ICM Workshop: Level 2

participants discussed the impact of globalisation on supervisory responsibilities such as consolidated supervision, cross-border capital flow, and information sharing between regulators; which aimed to achieve a more comprehensive and coherent international supervision on ICM development.

It was also interesting to note that besides sharing general challenges such as low public and regulators' awareness of ICM in some countries, participants also highlighted their observations on specific challenges such as centralised policy decisions process when countries are under monetary unions and/or entrenched secular legal framework that may limit or restrict official recognition of activities driven by any religious values (such as and including ICM). There are also situations where countries are hampered by international economic sanctions and embargo; hence diverting the focus of stakeholders from their capital markets.

From the interactive sessions, participants acknowledged that more frequent knowledge and experience sharing between regulators may assist them in helping to resolve each other's challenges. This can similarly be adapted for the development of ICM in their respective jurisdictions.

In addition to the Experts, these workshops were moderated by Wan Abdul Rahim Kamil, an ICM Consultant and by Sivalingam Navaratnam, General Manager and Head of Consultancy and International Programmes of Securities Industry Development Corporation of Malaysia (SIDC). These workshops further benefited from additional insights on ICM provided by the Islamic Corporation for the Development of the Private Sector (ICD) and Dubai Financial Services Authority (DFSA).

A brief overview and highlights of the presentations made by the Experts, including the issues and challenges discussed by the participants, are presented in Chapters 2 and 3. The full presentation slides are available for download in the COMCEC Capital Markets Regulators Forum (COMCEC-CMR) website at www.comceccmr.org. Other useful materials on ICM especially from the RSAs' perspectives can also be found in various reports in the COMCEC-CMR website.



Introduction of ICM by Wan Abdul Rahim Kamil, ICM Consultant



Ice-breaking Session

CHAPTER 02

HIGHLIGHTS OF THE WORKSHOP PRESENTATIONS

2.1 ICM DEVELOPMENT

The introductory sessions on ICM were designed to provide an overview of the global ICM to participants, including its historical and current state development in major markets, the relationship between ICM and the rest of the IFSI ecosystem, and how it complements the broader capital market and economy of a country.

2.1.1 Overview

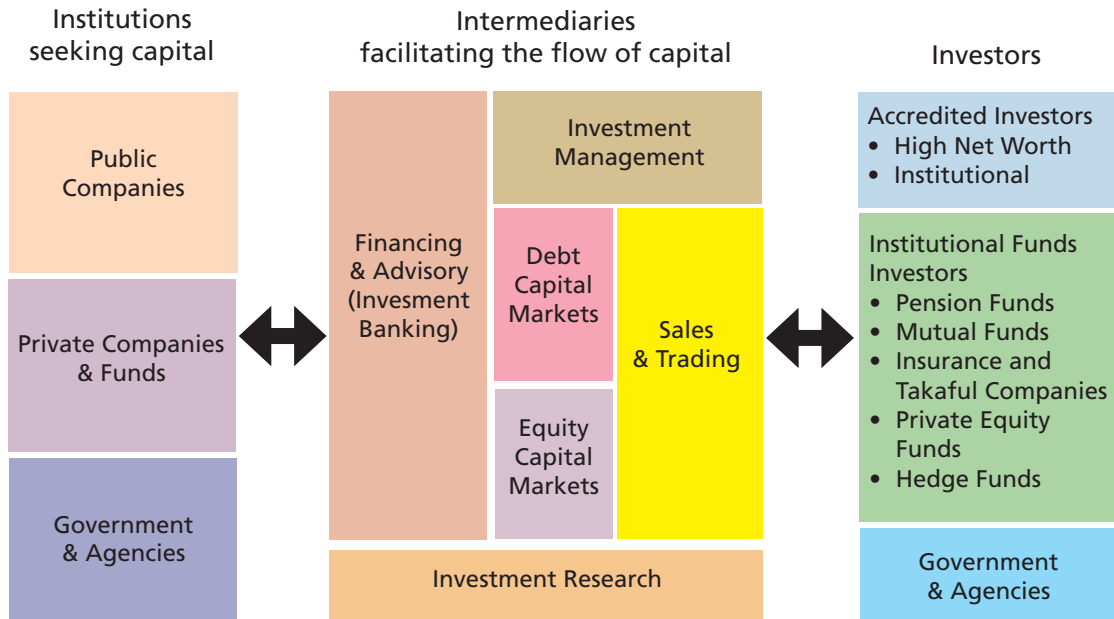
The capital market is a channel through which the wealth of savers, depositors or investors is put into long-term productive use by moving them to institutions that are seeking such capital. Beyond merely being made up of the debt and equity capital markets, a robust capital market also comprises investment banking, investment management and research. The capital market is, in practice, often divided into two types: a primary market for newly issued securities and a secondary market for trading existing securities. Market intermediaries play the critical role of facilitating efficient movement of the capital flows. (Diagram 1)

Key players in capital market transactions include issuers, investors, regulators, stock exchanges, investment/principal advisers, legal advisers, etc. The capital market is significant as it improves the allocation of capital based on supply and demand, facilitates investors to earn returns based on their risk-taking ability, mobilises idle savings to more productive units in the economy and plays a part in improving the national financial policy framework.

ICM is essentially a market where Shariah-compliant securities are issued and traded. This includes Shariah-compliant stocks, sukuk, as well as Islamic hedging instruments. To ensure compliance with the Shariah parameters, there are usually two levels of compliance; the first level excludes activities which are principally involved in usury (*riba*), ambiguity (*gharar*), gambling (*maisir*) and prohibited goods and services. The second level of compliance determines the level of involvement, among others, the operation of business entity, utilisation of proceeds, etc. (Diagram 2)

Diagram 1

Intermediaries Facilitate Capital Flows



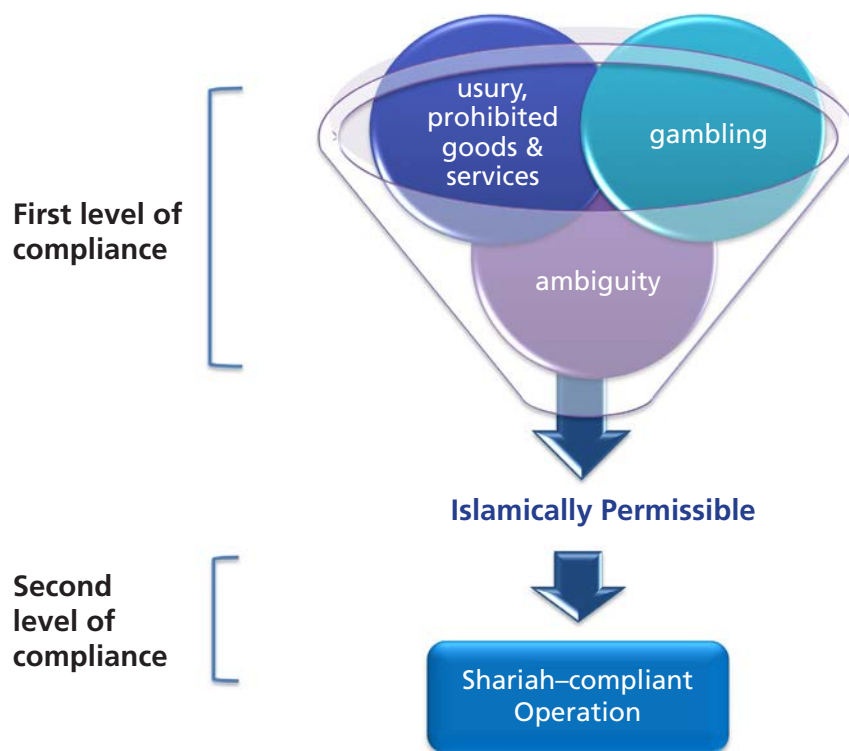
Source: Presentation by Wan Abdul Rahim Kamil at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

In this way, ICM broadens the existing capital markets by expanding the industry players while promoting risk sharing and ethical financing or investment.

ICM shares similarities with the conventional capital market in the sense that–

- (a) companies and governments also use ICM to raise funds;
- (b) ICM includes primary market (e.g. IPOs that are placed with investors through underwriters) and secondary markets (including through stock exchanges); and
- (c) ICM has similar market participants – in fact conventional fund managers and institutions can also invest in ICM products and instruments (albeit on the contrary Islamic fund managers and institutions are prohibited from investing into Shariah non-compliant capital market products and services).

Diagram 2
Levels of Shariah Compliance



Source: Presentation by Wan Abdul Rahim Kamil at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

In this respect, ICM and conventional capital markets are clearly distinguishable as, for ICM (Diagram 3):

- (i) certain restrictions apply, for instance, the relevant companies and/or issuers must be engaged primarily in Shariah-compliant business activities and/or the proceeds obtained typically should be used for Shariah-compliant purposes; and
- (ii) not only the structure of the ICM products and instruments has to be Shariah compliant; the operation of relevant companies and/or issuers themselves are typically Shariah compliant.

Diagram 3

Differences Between ICM and Conventional Capital Market

KEY FEATURES	ISLAMIC CAPITAL MARKET	CONVENTIONAL CAPITAL MARKET
Business activity	In the equity market, the core activity of a company must only be involved in Shariah-compliant business activities.	The company has unrestricted business activities for the equity market.
Use of proceeds	The proceeds obtained are typically used for Shariah-compliant purposes for equity and debt markets.	In the equity and debt markets, there is no restriction on the proceeds obtained by the company.
Market exposure	A larger market base can be enjoyed by Islamic investors and conventional investors.	A market which is not acceptable to Islamic investors.
Additional features for sukuk/bond:		
Structure type	The structure consists of asset, investment and/or debt-based.	It is only a debt-based structure.
Asset requirement	The asset is required.	The asset is not required unless for asset-backed securities.

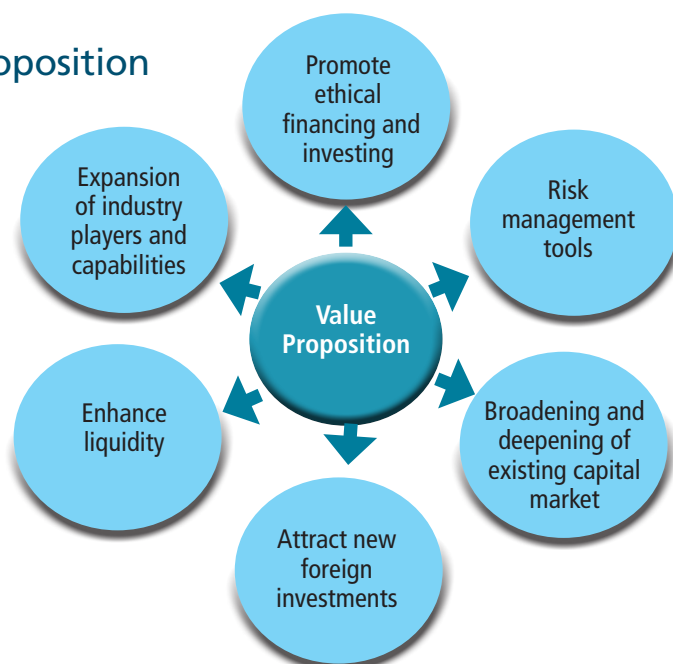
Source: Presentation by Wan Abdul Rahim Kamil at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

The rapid expansion of ICM in the past few decades proves that the global investment community is becoming more receptive to the value proposition of ethical investing, including but not limited to ICM products and instruments (Diagram 4). However, this raises new challenges to RSAs who need to be more prepared and better equipped in regulating and supervising ICM players and activities as the size has expanded several times compared to its initial stage.

The potential size for the global ICM is undeniably substantial as its market base can comprise both Islamic and conventional investors. As a testament to this and for illustration purpose, the market capitalisation of the companies in the Dow Jones Islamic Market World Index as at December 2014 stood at US\$23.5 trillion. (Table 2)

While the most developed ICM are mainly in OIC member countries such as Bahrain, Malaysia, Saudi Arabia and UAE, the global outlook of ICM remains promising with global financial centres in even non-Muslim majority countries such as Luxembourg, Hong Kong and the UK, having readily adapted their legal and tax frameworks to accommodate Islamic finance.

Diagram 4
ICM Value Proposition



Source: Presentation by Wan Abdul Rahim Kamil at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Table 2
Global Size of Islamic Finance

Breakdown of Islamic Financial Segments by Region (US\$ billion, 2014 YTD*)

	Banking Assets	Sukuk Outstanding	Islamic Funds Assets	Takaful Contributions
Asia	203.8	188.4	23.2	3.9
GCC	564.2	95.5	33.5	9.0
MENA (exc. GCC)	633.7	0.1	0.3	7.7
Sub-Saharan Africa	20.1	1.3	1.8	0.6
Others	54.4	9.4	17.0	0.3
TOTAL	1,476.2	294.7	75.8	21.5

*Data for banking and takaful as of 1H2014, while for sukuk and funds as of 3Q2014 from Islamic Financial Services Industry Stability Report 2015, IFSB

Market Capitalisation of Dow Jones Islamic Market World Index: US\$23.5 trillion[^]

[^] Dow Jones Islamic Market World Index Fact Sheet, December 2014

Source: Presentation by Wan Abdul Rahim Kamil at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

The development of ICM internationally is also supported by an array of infrastructure institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the Islamic Financial Services Board (IFSB), the International Islamic Financial Market (IIFM), the International Islamic Liquidity Management Corporation (IILM) and the Islamic International Rating Agency (IIRA).

Growth drivers include the role of IFIs in creating the demand and expanding the supply for Shariah-compliant products and services, need for high quality liquidity management instruments and rising demand for infrastructure financing. Key drivers for further development of ICM include–

- (i) co-operation between regulators and industry players to develop and innovate products based on internationally acceptable standards;
- (ii) regulators to ensure enhanced awareness and understanding of ICM products and strict regulatory oversight to ensure compliance; and
- (iii) market-wide initiatives to strengthen Shariah governance and best practices.

Similar to any market, ICM needs a conducive ecosystem in the form of complementary building blocks and enabling environment which not only accommodates but also proactively support its growth and development.

In line with the above, the current economic climate allows a wealth of opportunities to grow ICM further. This includes opportunities for development in areas such as Islamic funds and wealth management, Islamic crowdfunding, halal industry as well as SRI.

2.1.2 Prerequisites for ICM Development

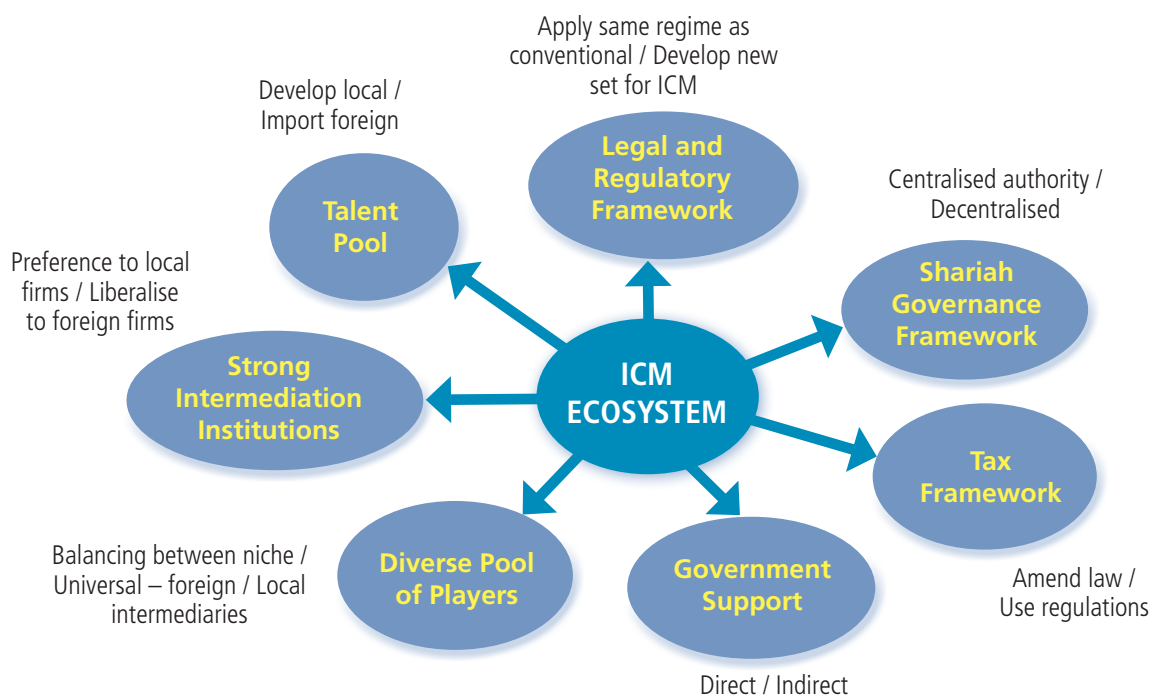
A robust ecosystem for ICM means having adequate diversity, liquidity and sustainability. A jurisdiction can opt and decide whether to have an ecosystem which is:

- (i) **Niche** – i.e having specialised institutions which offer specific types of products and services; and catering to specific markets only;
- (ii) **Multi-business** – i.e wider composition of institutions, capable of offering a broader range of products and services; and catering to a larger range of market demands; or
- (iii) **Full-fledged** – i.e a complete ecosystem with diverse types of institutions capable of offering the full spectrum of ICM products and services; and catering all range of market demands.

There are several ways of developing the ICM ecosystem and each jurisdiction must determine its own needs and requirements. Ideally, a robust ICM ecosystem should have an effective legal and regulatory framework, Shariah governance framework and tax framework; diverse pool of talents; strong intermediation institutions and government support, and effective market discipline.

There is a diverse range of approaches that can be taken advantage of especially in acknowledgement that there is no 'one-size-fits-all' solution (Diagram 5).

Diagram 5
Diverse Range of Approaches



Source: Presentation by Madzlan Mohamad Hussain at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

RSAs may also learn from each other depending on the maturity level and the developmental goals in their respective markets. One can observe the distinctive goals of each RSA for ICM from the various masterplans or roadmaps that have been launched by different RSAs; for example:

- (a) In the development of Malaysia's ICM, the *Capital Market Masterplan* (2001–2010) first focused on foundation-building; and subsequently the *Capital Market Masterplan 2* (2011–2020) shifted towards promoting internationalisation of ICM with a more competitive and dynamic market that can be very innovative and with high standards of corporate as well as Shariah governance;
- (b) Indonesia's new ICM roadmap in 2015 aims to strengthen supervision over existing products while promoting and educating the public on ICM as means to expand its resources;
- (c) Kazakhstan, in its roadmap launched in 2014, acknowledges that it needs further adaptation of the local legislation to the specificities of Islamic finance in relation to taxation, prudential supervision of Islamic financial institutions (IFIs) and elimination of registration barriers in respect of such institutions. It also faces shortage of experienced personnel in dealing with Islamic products; and low financial literacy and poor awareness of the population and business entities about Islamic finance products; and hence would focus on addressing these gaps;
- (d) Nigeria, in aiming to become a regional hub for ICM in Africa, has formulated its 10-year Master Plan (2014–2024) with strategic objectives to build a strong regulatory foundation focusing on accommodating new products; and
- (e) Kenya, also aiming to be a regional hub for ICM in Africa, outlines programmes to enhance the efficiency and integrity of its capital market infrastructure while strengthening the capacity of its capital market authority.

An example of typical impediment and possible plan of actions for France in respect of Islamic finance is illustrated in Diagram 6.

Diagram 6

Typical Impediment and Possible Plan of Actions for France

Examples of Typical Impediments	Examples of Possible Plan of Actions
1 No local track record in Islamic finance	• Launch pilot projects
2 Perception that the French government's support of Islamic finance lacks consistency	• Introduce an empowered public owner who is responsible for supporting the development of Islamic finance
3 Lower returns on investments compared with developing countries	• Market as an opportunity for broader access to secure euro-based investments , allowing portfolio diversification
4 High implementing costs for Islamic finance	• Invest in standardisation of Shariah framework for example, creating replicable product structure, contract or project documentation, or investing in education for internal and external players
5 Perception of negative attitudes toward Islam	• Label as " participative Shariah-compliant finance ", which seems to be well perceived by investors • Market Islamic finance development as support for economic growth for French and foreign stakeholders
6 Legal "insecurity" and high government influence on business	• Launch as campaign to show that France encourages investments into real economy and current changes are conjuncture-related

Source: Presentation by Madzlan Mohamad Hussain at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

2.1.3 Strategies and Policies for ICM Development

In ensuring the ICM can be developed in a strategic and orderly manner, the recommended steps forward is to prepare a blueprint which would allow an RSA to understand:

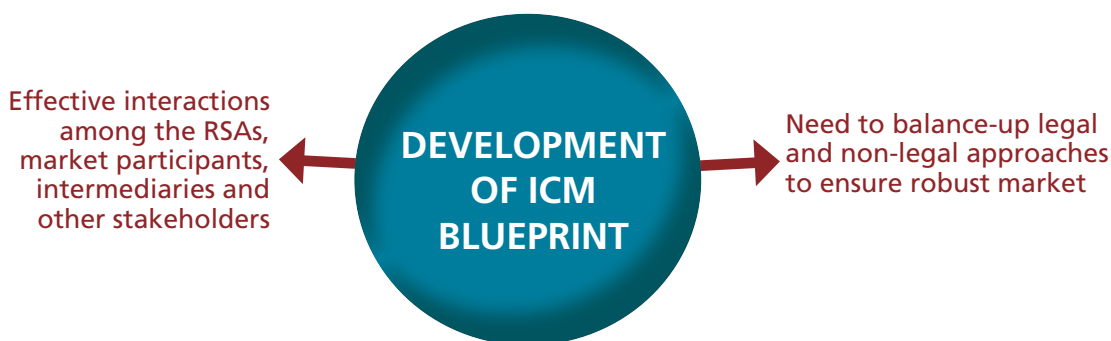
- (a) where its national capital market stands;
- (b) where its ICM is now;
- (c) where it wants its ICM to be; and
- (d) how to get there and materialise the visions.

The blueprint would also allow the RSAs to gauge and understand the markets and stakeholders' views so that RSAs can form a plan that most (if not all) stakeholders will buy into it, with realistic goals and objectives. Effective communication ensures that the plan can be understood and executed as well as subject to review which means there can always be additional adjustments and improvements.

Different markets have varying levels of regulatory frameworks suitable for ICM. When doing the stock-taking and fact-finding for the purpose of the national blueprint, RSAs can take the opportunity to interact with market participants, intermediaries and other stakeholders in the IFSI (not only ICM). RSAs can also consider legal and non-legal approaches which should balance-up accordingly, in order to create a conducive environment for ICM and ensure its diversity, liquidity and sustainability. (Diagram 7)

Diagram 7

Developing Strategic Ecosystem and Framework



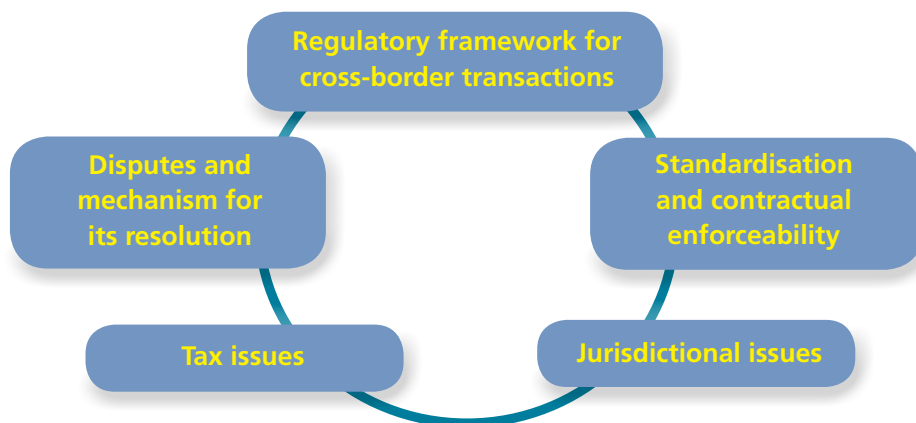
Source: Presentation by Madzlan Mohamad Hussain at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

The government has a significant role to play in developing ICM, as it can exercise certain powers which may not be in the hands of the RSAs. For example:

- (a) The government may directly participate in markets through government-linked investment companies and state-owned enterprises.
- (b) The government can also promote capital market development and financial innovation through training and business activities.
- (c) The government must determine the legal framework which governs capital markets, providing governance, regulatory institutions and settlement systems. Moreover, effective enforcement of these frameworks has significant implications for capital markets.
- (d) The negotiation of international agreements may enhance capital mobility, harmonisation and mutual recognition.
- (e) The government policies which foster innovation, sound fiscal, demand and savings management, and taxation, all have significant indirect effects on capital markets including ICM.

Issues which may arise in relation to ICM development include taxation, standardisation and contractual enforceability, jurisdictional issues as well as mechanisms for dispute resolution and the available regulatory frameworks to facilitate cross-border transactions (Diagram 8).

Diagram 8
Issues and Challenges



Source: Presentation by Madzlan Mohamad Hussain at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

2.2 LEGAL AND REGULATORY FRAMEWORK

Sessions on legal and regulatory framework provided clarity about rules and regulations that would be applicable to support the development of ICM in the participants' jurisdictions. They also discussed the different approaches in regulating ICM.

The most important success factor that helps countries with well-developed IFSI, such as Malaysia and Bahrain becoming leading jurisdictions in the global IFSI generally, is the clarity in the legal and regulatory framework. This helps to strengthen public confidence and awareness by adequately equipping RSAs with the right powers and mandate; protecting investors and market participants; delivering and distributing information in transparent and timely manner through internationally accepted reporting standards; as well as providing clear and credible dispute resolution avenues.

Market participants and investors feel protected and confident to carry out transactions and activities when:

- (a) They are clear about the rules and regulations that would be applicable to them;
- (b) They can predict and/or anticipate how these rules and regulations will be applied to them and their activities, as the relevant RSAs are transparent, consistent and accountable in implementing these rules and regulations; and
- (c) Rules and regulations are compatible to international standards and best practices.

On the contrary, the market participants and investors would not be able to carry out their transactions and activities with confidence if the rules and regulations are unclear, how these rules and regulations will be applied and/or enforced are unclear, and the rules and regulations are far from the internationally recognised standards and best practices.

Theoretically, there are three basic models/approaches for supervision of capital markets¹; namely:

- (a) **Fraud and Abuse Inhibition approach** – This approach (while adopting the precept of *caveat emptor* i.e let the buyers beware) concerned with ensuring that investors should not be deliberately misled. On this premise, in certain markets (such as the United States) insider dealing is regarded as a 'fraud on the market' as a whole. This approach promotes frameworks that ensure investors are provided with reliable and relevant information;

¹ Barry A.K. Rider, 'Legal Aspects of Islamic Asset Securitization', in *Strategies for the Development of Islamic Capital Markets: Infrastructure and Legal Aspects of Islamic Securitization* (2011), Kuala Lumpur.

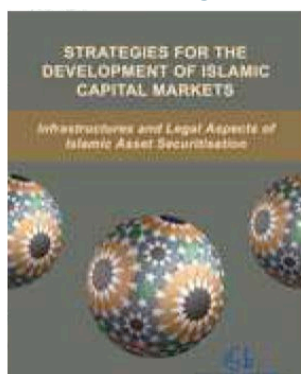
- (b) **Merit approach** – This approach requires the market and/or its regulator to intervene to warn investors (often by list or specific intervention) as to the relative merits (and demerits) of an investment on some jurisdictions. Investment opportunities and transactions will need to conform to a national plan or be subject to certain regulatory controls. Investors’ protection mechanisms may range from analogous liability for latent defects to notions of fitness and suitability; and
- (c) **Fair Dealing approach** – This approach gives effect to the reasonable expectations of the client to be treated fairly based on a set of objective criteria. For example, those who act for professional investors may be required to exhibit less caution in the advancement of their clients’ interests than those who knowingly are acting for a vulnerable private client.

Over time, there have been substantial changes in the way RSAs view the shaping of their legal and regulatory frameworks, as a result of the perceived inadequate supervision and heavy public criticisms over the reluctance of RSAs to intervene during the global market failures. Further references for legal framework and effective regulatory framework are highlighted in Diagram 9.

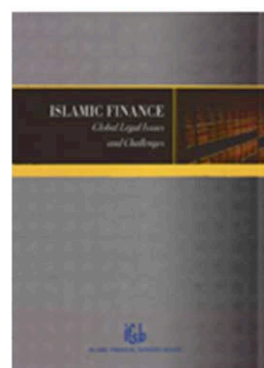
In 2004, IOSCO published the *Islamic Capital Market Fact Finding Report* which was intended to be an assessment of the ICM landscape with the aim to create dual objectives. Firstly, it was to create awareness of ICM developments to the wider community of securities regulators, and secondly, to be able to assess the application of the IOSCO Objectives and Principles within the securities regulation worldwide.

Diagram 9

Recommended Reference for Modelling the Legal Framework and Effective Regulatory Framework



‘Strategies for the Development of Islamic Capital Markets – Legal Aspects of Islamic Asset Securitisation’ by the Islamic Financial Services Board, 2011



‘Islamic Finance – Global Legal Issues and Challenges’ by the Islamic Financial Services Board, 2008

Source: Presentation by Madzlan Mohamad Hussain at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Subsequently, in 2008, IOSCO made further assessment on this topic and the findings were published in the *Report on the Analysis of the Application of IOSCO Objectives and Principles of Securities Regulation for Islamic Securities Products*. This was an update of the work that was done earlier. Conclusions from both reports affirmed that the IOSCO Principles are generally applicable for ICM. However, there are several areas for enhancements among which are related to disclosures.

An effective legal and regulatory framework for ICM requires among others, facilitation of the Shariah principles within the existing regulatory framework; implementation of a tax regime that accommodates ICM transactions; and strengthening the sustainability or competitiveness of ICM.

To illustrate how legal and regulatory framework for ICM should be developed, the case studies of Malaysia, Saudi Arabia and Indonesia can be referred. Observations are as follows:

- (a) In Malaysia, a robust ICM legal and regulatory framework has been developed to include features such as a centralised Shariah authority to address Shariah issues in ICM products and services, trust law framework for creation of special purpose entities for fund management or asset management purposes, rating requirements for bonds and sukuk issuance, and a well-established debt recovery/corporate bankruptcy framework within the judicial system. It can be noted that the central Shariah authority framework is also practised in countries such as Brunei Darussalam, Indonesia, Iran, Pakistan and Sudan.
- (b) In Saudi Arabia, the establishment of the Capital Market Authority (CMA-SA) in 2003 as the independent RSA allowed a more structured and focused development of legal and regulatory framework for its capital market. Among the milestones are the opening up of the market to foreign participants in 2008 and the introduction of new platform for sukuk trading in 2009. The CMA-SA also established dispute resolution tribunals to address public complaints and resolve disputes among market participants.
- (c) In Indonesia, the Otoritas Jasa Keuangan (OJK) – the financial services authority established in 2011, merged two regulators i.e Badan Pengawas Pasaran Modal (the capital market regulator) and Lembaga Keuangan (the financial industry regulator) to regulate and supervise both the Indonesian capital market and financial market respectively. The OJK is guided by several national blueprints on development of its financial markets including ICM. It also works closely with its national council of Shariah advisers.

In view of this, RSAs should consider to include adoption of the relevant international standards as part of its ICM regulatory framework; develop long-term masterplan or roadmap as well as strengthen the Shariah governance framework. Furthermore, a national masterplan or roadmap is a critical strategic document to chart the development of ICM with clear directions, goals and mechanisms. (Diagram 10)

Diagram 10

Best Practices for Regulating ICM



Source: Presentation by Madzlan Mohamad Hussain at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

2.3 SHARIAH

Sessions on Shariah compliance and governance framework are incorporated into the workshops in order to give participants a direct opportunity to gain better understanding and knowledge on the various aspects of Shariah applicable in the context of developing ICM.

2.3.1 Shariah Principles

Shariah is a set of norms, values and laws that encompasses all dimensions of the Islamic way of life. While there are overarching objectives of the Shariah, in the economic sense, the objectives may be described as fair distribution and circulation of wealth. The Shariah therefore forms the basis of Islamic financial principles, mechanisms and goals.

The Shariah prohibits *riba* as it views money not as a commodity but a means of exchange. Thus, profit must be derived from an entrepreneurial venture either in the form of investments or through trading of goods or services. The Shariah also prohibits *gharar* which refers to elements of uncertainty or ignorance in the actions or documentation of the parties over the substance in a transaction. A common form of *gharar* is when the intended consequences are hidden from a contracting party.

While both *riba* and *gharar* may be divided into several types, the general rule in Islamic finance and commerce is permissibility, except when the activities involve prohibited acts i.e *riba* and *gharar*. While *riba* and *gharar* are undisputedly prohibited, what and how much would tantamount to the prohibition may be subject to the determination and interpretation of the competent Islamic jurists (*faqih*).

As ICM standards are being developed, certain transactions may transform from being prohibited to be permissible if the *gharar* element can be eliminated from the contract through structuring and commercially negotiated mechanisms. Similarly, certain permissible transactions may transform into becoming impermissible due to insertion of prohibited elements into the contracts. (Diagram 11)

Diagram 11

Shariah as the Basis in Islamic Financial System

PRINCIPLES	MECHANISMS	GOALS
<ul style="list-style-type: none"> • The Core: <ul style="list-style-type: none"> – The prohibition of <i>riba</i> – The avoidance of <i>gharar</i> – The engagement in real economic activities – Avoidance of forbidden activities • The Ethical Principles <ul style="list-style-type: none"> – Fair and transparent financial dealings – Commitment of Islamic values 	<ul style="list-style-type: none"> • Observing the principles governing the contracts (<i>'aqd</i>) • Forms/structures in line with the substances/goals • Observing the criteria of efficient, effective, fair, just and transparent 	<ul style="list-style-type: none"> • Aims to realise the <i>maqasid al-Shariah</i> in the whole dimensions: <ul style="list-style-type: none"> – Micro goals: related to the individuals – Macro goals: related to the society – System goals: related to the system itself

Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

2.3.2 Shariah Compliance and Governance Framework

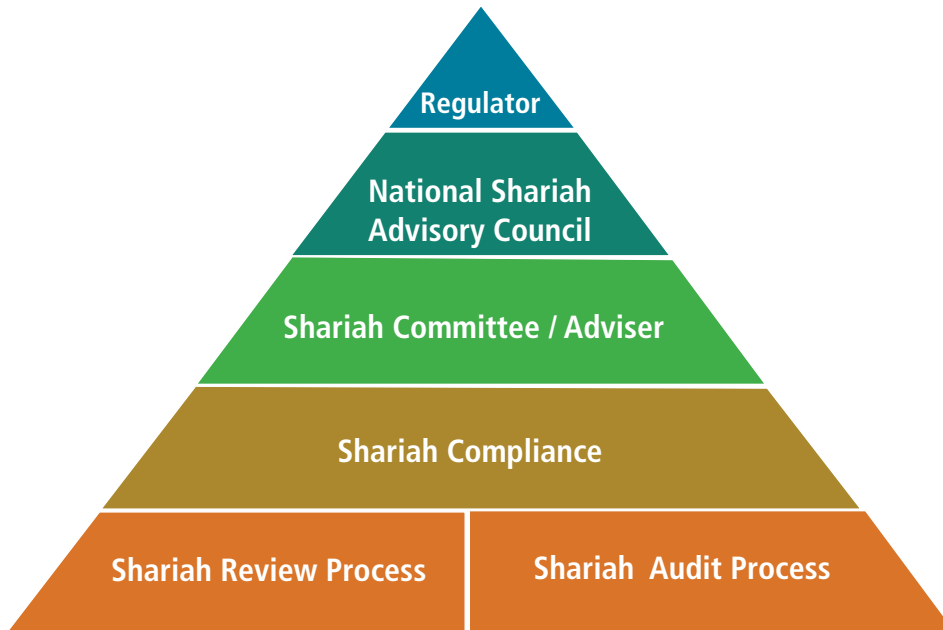
Shariah compliance and Shariah governance are central to a robust ICM ecosystem. RSAs may consider several Shariah governance systems and framework that they are most comfortable with, to fit within their own regulatory and supervisory mandates. They may even consider gradually moving from one approach to another; for example from deregulated Shariah governance approach to a centrally-regulated approach.

The models or approach in developing Shariah governance framework include the following:

- (a) **Regulated Centralised Framework:** whereby a national Shariah Advisory Council (SAC) which advises regulators on Shariah matters and issues rulings and decisions to be implemented by industry players. They are also responsible among others, in ensuring Shariah-compliant product and services, and protecting investors' interests. For example, in Malaysia, the power and authority of the SAC is institutionalised by various regulatory authorities and legislations such as the *Capital Markets and Services Act 2007*, and the *Central Bank of Malaysia Act 2009*. These frameworks also provide for strict requirements for the appointment of Shariah advisers by the IFIs, and establishment of support functions such as Shariah compliance unit, Shariah review process and Shariah audit process. (Diagram 12 and 13)

Diagram 12

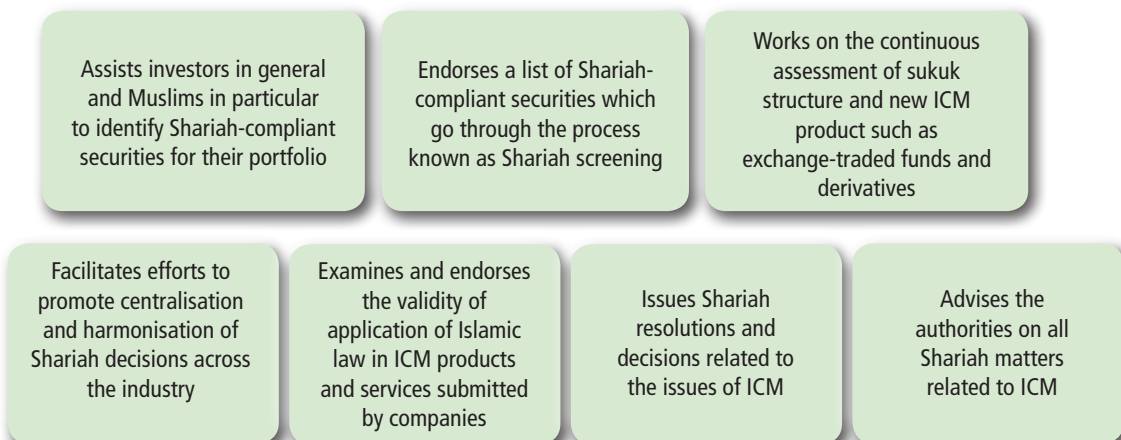
Regulated Centralised Framework



Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Diagram 13

Roles of the National Shariah Advisory Council



Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

- (b) **Regulated Decentralised Framework:** whereby corporations offering ICM products and services are required to incorporate internal Shariah advisory boards. The national SAC, if at all, is only responsible for Shariah's consultation without any legally mandated powers (this is often the case for the Gulf Cooperation Council (GCC) and other Middle East countries).
- (c) **Unregulated:** whereby companies offering ICM products and services follow market practices rather than abiding to any internal Shariah advisory board (this is often the case for most of the western and other countries where Muslims are minorities).

Some countries such as Brunei Darussalam, Indonesia, Iran, Malaysia, Pakistan and Sudan have adopted a centralised Shariah authority to address issues relating to Shariah compliance (and breaches, if any) within their broader legal and regulatory framework for ICM. A majority of the OIC member countries (and therefore their RSAs) do not have such centralised authority and this may, to a large extent, limit their ability to access and consult qualified and competent Shariah scholars who can provide appropriate advice on Shariah compliance aspects of ICM transactions and activities.

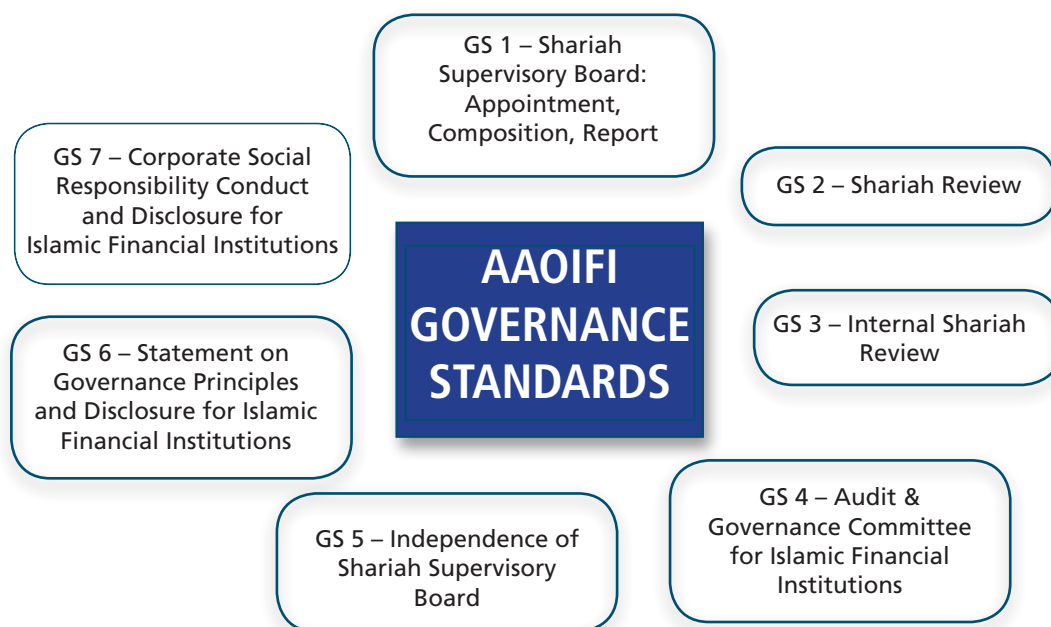
While RSAs may adopt different Shariah governance frameworks to ensure that market participants in their ICM adhere to Shariah (as represented to the public in relation to the ICM products that they offer), RSAs should ensure that the governance framework covers two levels of compliance; namely ex-ante and ex-post.

Shariah governance, as a framework and system, is guided by sources of Islamic law (i.e the Quran and Sunnah). Therefore, a comprehensive Shariah governance framework must have a complete system with governance structures and processes that are dedicated towards ensuring Shariah compliance of the entity that is governed by it.

Multilateral international organisations such as the IFSB has issued *Guiding Principles on Corporate Governance* (IFSB-3) and *Guiding Principles on Shariah Governance System* (IFSB-10); while AAOIFI has issued *Governance Standards* (GS1-GS7) (Diagram 14). These international standards and best practices can help RSAs and IFIs to benchmark and apply the Shariah governance systems.

Diagram 14

AAOIFI Governance Standards



Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Considering that most jurisdictions do not have explicit provisions under the law on the legal effects of Shariah pronouncements by Shariah scholars and advisers to RSAs and IFIs especially when there is a dispute and the matter is brought to court, alternative dispute resolution (ADR) can be considered to lend better certainty and predictability. The ADR offers the flexibility to parties to select an arbitration or mediation panel comprising qualified Islamic finance specialists and Shariah scholars as well as the flexibility in setting out the ADR forum's own ground rules (thus removing concerns over competence of judges and costly proceedings in courts).

A group of dedicated ADR tribunals to resolve capital market disputes have been established in certain countries such as Malaysia, which has the Securities Industry Dispute Resolution Center; and Saudi Arabia, which has the Committee for Resolution of Securities Disputes and Appeal Committee for Resolution of Securities Disputes.

A recommended comprehensive Shariah governance framework should also provide for harmonisation, standardisation and mutual recognition of Shariah standards for cross-border activities by promoting standardisation of legal documents and interpretation; and ensuring product innovations are done in compliance with relevant Shariah principles. Furthermore, a comprehensive Shariah governance framework should also provide platforms to manage any conflict of laws (between Shariah and the local law, if any) and enforceability of Shariah contracts including through ADR forums.

2.4 PRODUCTS AND SERVICES

Sessions on ICM products and services are inserted into the workshops to provide participants with direct information on how ICM products and instruments are structured and how they could be distinguishable from any conventional instruments.

In order to regulate and supervise ICM, just as the case for conventional capital market, RSAs must be able to understand the products and instruments offered, the mechanics of their operations, risk profiles, and any unique features that they may have.

2.4.1 Sukuk

Product Structure and Behaviour

Sukuk refers to certificates indicating ownership or interests in Shariah-compliant assets whether tangible or not; and the assets may even be a mixed portfolio. The gains or income of sukuk comes in the form of profit or rental instead of interest and its proceeds are typically utilised for Shariah-compliant purposes. In practice, sukuk structures are guided by Shariah advisers who advise on the application of Shariah principles.

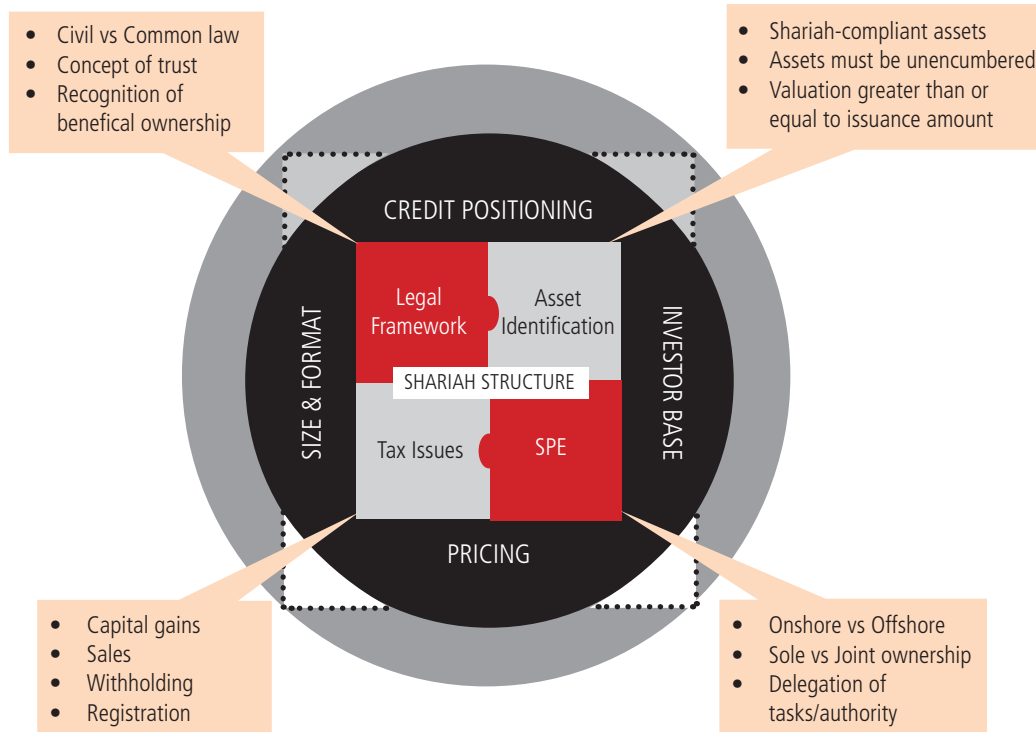
The introduction of sukuk has provided an alternative investment opportunity to a wide range of investors as it also caters to those seeking Shariah-compliant investments. Sukuk structures have evolved since its introduction from being based totally on tangible assets and employing only one underlying Shariah contract into complex sukuk involving a combination of Shariah contracts and other forms of assets. Several key considerations must be addressed when structuring a sukuk, for example, legal framework, asset identification, tax issues, Shariah structures, etc. (Diagram 15)

It is easily noticeable that the evolution of the sukuk market carries the characteristics similar to fixed-income instruments and bonds. The sukuk market has been developed from asset-backed to asset-based; and blended-assets to asset-light (requirement for tangible asset is minimal) sukuk structures. In the beginning, the requirement was 100% asset-backed with many regulatory difficulties, which led to the emergence of asset-based structures with no 'true sale' of the underlying assets. This was a dilution in the need for physical assets as blended-assets sukuk were recommended in some instances. After 2005, there was further watering down of requirements, leading to the development of asset-light sukuk. Due to criticisms, the current market trend has reverted to blended-assets sukuk.

Asset-based sukuk such as sukuk *ijarah* entitles the holders to claim against the issuer only; instead of any security interest or collateral rights to cause sale of the asset(s) to a third party. This is different from asset-backed sukuk (such as sukuk *musharakah*) where holders will have full recourse to the assets including the right to liquidate the assets at market value.

Diagram 15

Developing Sukuk: Key Structure Considerations



Source: Presentation by Dr Aida Othman at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Issues and challenges in the sukuk market

Issues and challenges often faced by players in the sukuk market include meeting the suitability of assets, legality of asset transfers, lack of secondary market trading, scarcity of sukuk supply, lack of legal and tax infrastructure, not globally accepted trading mechanisms and methodologies to determine accurate asset pricing and valuation.

Currently, sukuk still suffers from lack of secondary trading. This is contributed by the sukuk holders' preference to retain their sukuk until maturity instead of trading the sukuk on the secondary market given the high demand relative to supply. The continuing disparity in legal, tax and regulatory frameworks across various jurisdictions also remain a major challenge in internationalising the sukuk market or offering cross-border sukuk. Another lingering significant challenge for sukuk is in securing high ratings, as credit rating agencies tend to base their credit assessments on criteria used for conventional bonds despite the distinguishable risk profile of the sukuk.

In addition, the differing views among international Shariah scholars on the trading mechanisms and the tradability of sukuk pose a key challenge to achieve a global sukuk market. Differences in acceptability of certain sukuk structures are also limiting the marketability of such sukuk on the international front. Sukuk issuers seeking to maximise their investors base are now opting for structures that are more broadly accepted by most jurisdictions. Disparity in legal, tax and regulatory frameworks across various jurisdictions also narrow the scope for cross-border offering of sukuk and thus, hampers internationalisation of sukuk.

Strategies and Policies

In strategising the issuance of a sukuk, one must consider the legal framework, asset identification, tax issues and law on SPEs, credit positioning, investor base, pricing and size. Issues arising from sukuk structuring can revolve around the need for Shariah-compliant tangible assets, legal restrictions on the transfer of legal title and enforcement of the contractual terms.

Strategies for sukuk market growth include support from RSAs, clear national strategy, integrated Shariah and regulatory framework, legal clarity, co-ordination among various authorities, deepening support infrastructures, and expanding global reach.

An example of expanding the global reach in sukuk market is the launching of the SRI sukuk framework by SC Malaysia in 2014. The SRI sukuk framework aims to facilitate an ecosystem that is conducive for investors and issuers in line with the global trend towards ethical investments and good corporate governance. Some of the eligible SRI projects under the framework are illustrated in Diagram 16.

Diagram 16
Eligible SRI Projects

NATURAL RESOURCES	RENEWABLE ENERGY AND ENERGY EFFICIENCY	COMMUNITY AND ECONOMIC DEVELOPMENT	WAQF PROPERTIES/ ASSETS
<ul style="list-style-type: none"> Sustainable land use Sustainable forestry and agriculture Biodiversity conservation Remediation and redevelopment of polluted or contaminated sites Water infrastructure, treatment and recycling Sustainable waste management projects 	<ul style="list-style-type: none"> New or existing renewable energy (solar, wind, hydro, biomass, geothermal and tidal) Efficient power generation and transmission systems Energy efficiency which results in the reduction of greenhouse gas emissions or energy consumption per unit output 	<ul style="list-style-type: none"> Public hospital/medical services Public educational services Community services Urban revitalisation Sustainable building projects Affordable housing 	<ul style="list-style-type: none"> Any projects that undertake the development of <i>waqf</i> properties/assets

Source: Presentation by Dr Aida Othman at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Besides environmental and social concerns, the SRI sukuk arguably can boost the IFSI in Malaysia and globally as funding source for sustainable and responsible investment, which could potentially strengthen the niche value proposition of ICM.

Global Sukuk Issuance

The global sukuk market has continued to witness solid growth in annual issuances tripling to US\$118.8 billion in 2014 from 2009, driven by key and emerging markets.² In 2014 alone, the UK, Hong Kong, Senegal, South Africa and Luxembourg issued their maiden sovereign sukuk – thus cementing the sukuk market’s status as a viable and competitive source of funding.

Positive cross-border trends have also emerged with increased listings in Europe and Africa, as well as increased issuance of sukuk in various currencies. The Senegal sukuk transaction is a useful lesson for a frontier market especially the OIC African member countries, as the sukuk is a novelty and a first for a country of the West African Economic and Monetary Union (WAEMU) region. (Table 3)

Table 3

Senegal’s Sukuk – Key Terms and Conditions

Key transaction terms	
Obligor	Republic of Senegal
Issues	FCTC Sukuk Etat du Senegal 6.25% 2014-2018 & FCTCs
Rating of the obligor	B+/B (S&P), B1 (Moody’s)
Profit rate	6.25% p.a.
Ranking	Ranking <i>pari passu</i> with any other sovereign debt obligations
Currency	CFA
Maturity	4 years
Distribution	Public offering
Governing law	Senegalese law
Repo-admission	The sukuk are repo-eligible at the Central Bank
Joint lead managers	ICD & Citi
Receivable manager	Islamic Bank of Senegal
Lead book runner	CSWA, Impaxis & CGF
Manager of the FCTC	BOAD Titrisation
Auditor of the FCTC	Mazars

Source: Presentation by Islamic Corporation for the Development of the Private Sector at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

² Global Sukuk Market Report 1Q 2015, MIFC Newsletter, May 2015.

The sukuk is an alternative instrument and not a new debt which was proposed outside the ongoing indebtedness programme; and it responds to several objectives, including the promotion of Islamic finance in Africa and diversification of funding sources available for the Government of Senegal by taking advantage of the liquidity available in the market.

The ICD has contributed in advising the Republic of Senegal on its first ever and largest sovereign sukuk (US\$200 million) in Sub Saharan Africa and the WAEMU region. Despite the lack of specific regulation, the issuance was oversubscribed by 140 per cent. Hence, based on the high demand from WAEMU members, the ICD was asked to capitalise on this experience to build and consolidate a branded position as the reference point for ICM development in Africa to address growing demand and to unleash the potential in the continent.

In summary, the sukuk global outlook is very positive whether in established or frontier markets. As the sukuk market continues to reach new heights over the next few years with a wider issuer base, more cross-border activity and more innovative issuances, member countries should be encouraged to explore opportunities in tapping and developing this market further.

2.4.2 Equity, Fund Management and Other Investment Products

Equity

When investors invest in corporations, they can do so according to the principle of *musharakah*, and while the history of equity markets in the Islamic world began some time ago, it is still relatively as recent as the 1990s that the permissibility of investing in stocks became definitively accepted. Shariah indices emerged quickly with Dow Jones Islamic Market Index, Kuala Lumpur Shariah Index and FTSE Global Islamic Index Series all introduced in 1999. However, in the purchase of equity, it is accepted that only the purchase of ordinary stocks are allowed while purchase of debentures and preference stocks remain restricted.

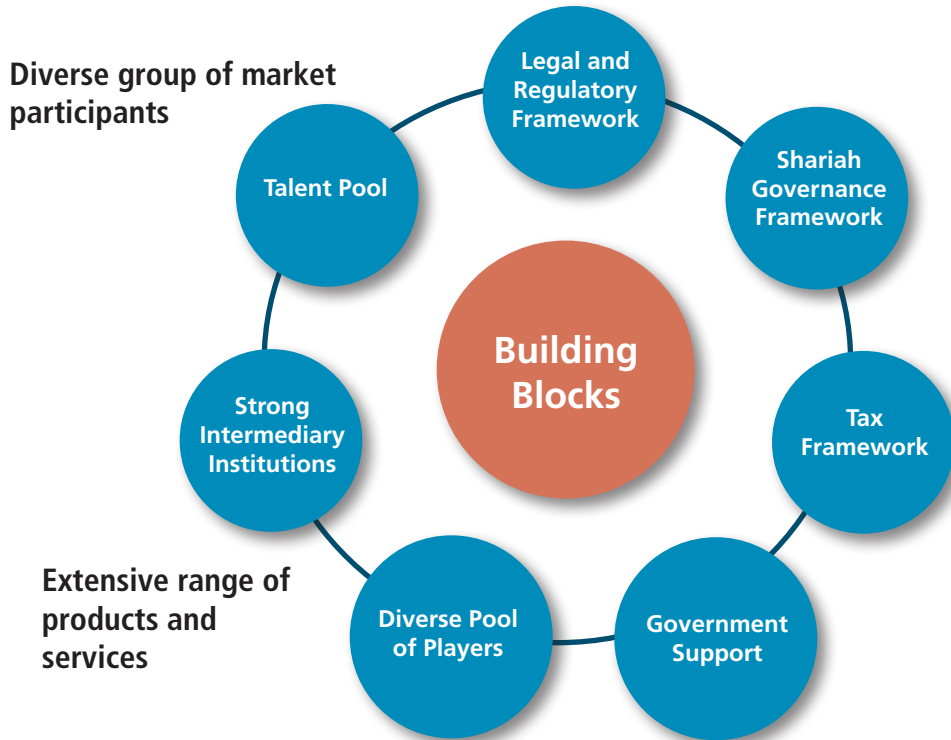
Nevertheless not all ordinary stocks are Shariah compliant in which the question of permissibility from Shariah perspective arises for companies with mixed activities. In coming up with a practical solution, screening methodologies, purification and monitoring on companies are developed. These developments aim to establish a tolerable threshold percentage for revenue earned from prohibited sources in order to widen the investment spectrum. For Malaysia, the screening methodologies involved the quantitative screening at the business activities and financial management levels; and qualitative screening of the image or reputation of the company. The SAC of the SC Malaysia monitors Shariah compliance and provides endorsement of Shariah-compliant securities on an annual basis based on audited account. In conducting the Shariah screening, the SC Malaysia (by virtue of its role as a market regulator), has regulatory power to obtain relevant financial information to ascertain compliance of income sources.

Notwithstanding this, Islamic stock screening still faces some challenges such as lack of uniformity in the rules, methodologies or *fatawa* across the globe; the different standards required for financial reporting; and lack of transparency. Some of the proposed solutions include a consideration for a global reporting standard; and a revision on the cleansing methodologies.

The building blocks for an effective Islamic equity market requires appropriate legal and regulatory frameworks, Shariah governance framework, tax framework, government support, diverse talent pool, broad range of products and services as well as strong intermediary institutions. (Diagram 17)

Diagram 17

Building Blocks for an Effective Islamic Equity Market



Source: Presentation by Dr Aida Othman at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Fund Management

Islamic portfolio screening methodologies have been well developed which contributes directly to the rapid development of the Islamic fund management industry. The global Islamic funds industry has progressed despite the challenging global macroeconomic environment, posting a compounded annual growth rate of 9.1 per cent in the value of asset under management since 2008, up to a value of US\$75.8 billion as of 2014, and is forecasted to surpass US\$100 billion by 2018.³

Equity investments and funds often take the forms of:

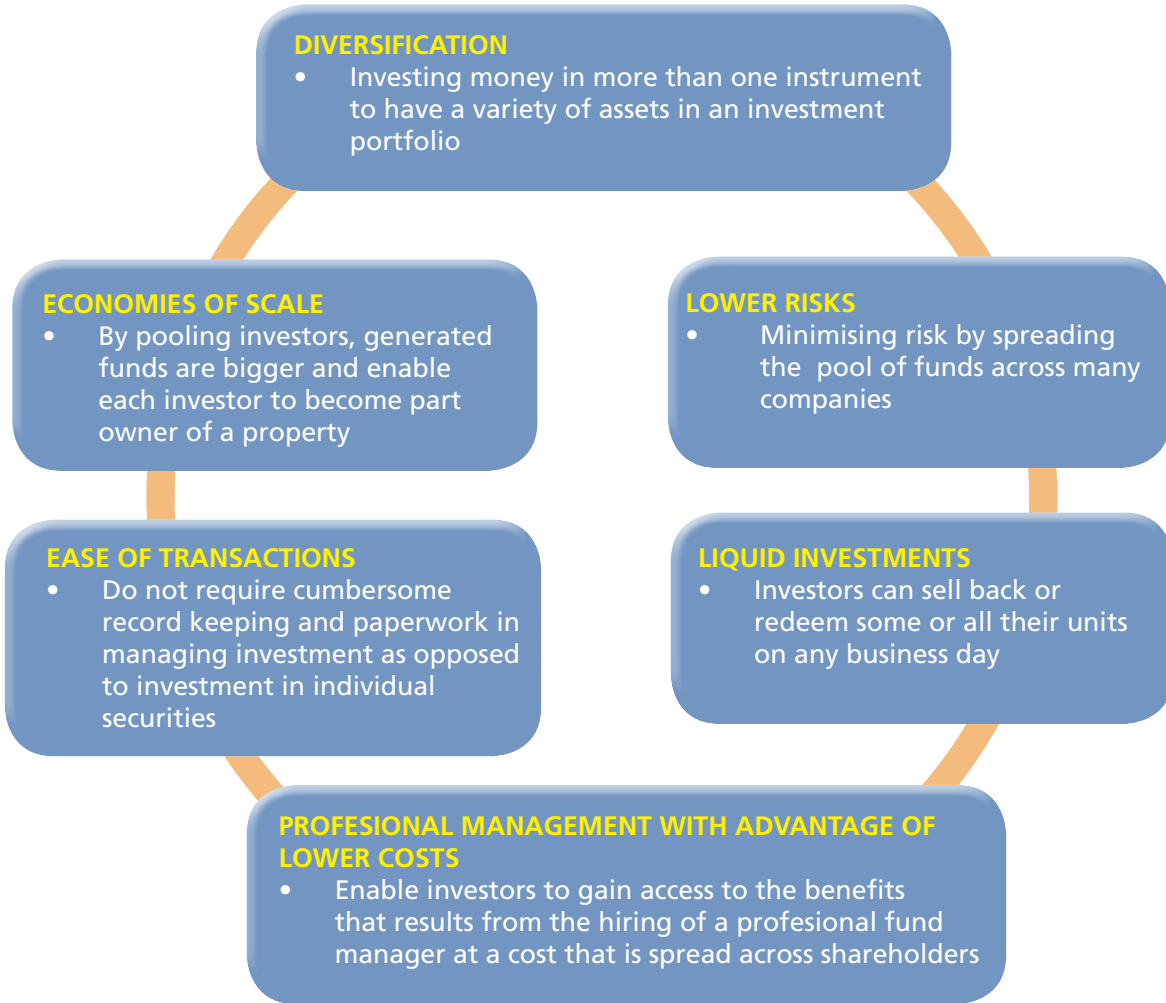
- i. Collective investment schemes (CIS) where Islamic fund managers pool funds according to the declared objectives of the fund. Such funds have many advantages, diversification of portfolio, lower risks (avoiding heavily leveraged companies), liquidity of investment, lower costs through professional management, ease of transactions and economies of scale.
- ii. Islamic real estate investment trusts (REITs) allow the participants to generate returns from real-estate tenanted by those undertaking Shariah-compliant activities.
- iii. Islamic exchange-traded funds (ETFs) are similar to conventional ETFs but require tracking against the Shariah index, managed under the Shariah principles and guidelines, and overseen by an appointed Shariah committee or adviser.

The performance of Islamic funds depends, to a large extent, on the overall conditions of the global financial market as well as idiosyncratic risks in the various markets. Moreover, the availability of major global Islamic indices providers has enabled the fund managers to track a global universe of Shariah-compliant stocks in various financial markets. Fund managers now have the option to vary their fund offerings according to geographical focus. Some advantages of fund management are provided in Diagram 18.

³ 2014 – A Landmark Year For Global Islamic Finance Industry, MIFC Newsletter, December 2014.

Diagram 18

Advantages of Fund Management



Source: Presentation by Dr Aida Othman at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

2.5 NEW GROWTH AREAS AND INNOVATION IN ICM

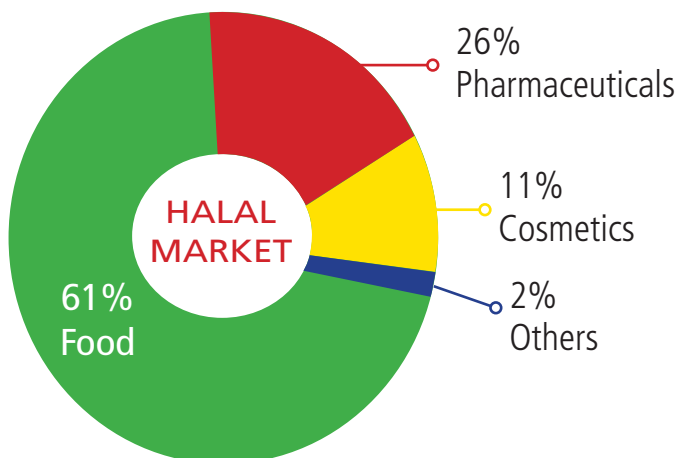
The workshops also exposed participants to several new frontier developments and innovations in ICM such as the bridging of halal industry and the IFSI, development of *waqf* assets and the offering of Islamic wealth management services. More products have also been introduced into the markets such as Islamic crowdfunding, business trusts and stapled securities.

Halal Industry

The global halal industry is one of the fastest growing consumer segments which is no longer confined to the food industry and/or Muslims. As such, consumers want to be more aware of the overall content of any product. The strongest markets for halal products are the Asia Pacific and Middle East. The potential growth sectors for halal products are in cosmetics, agriculture, pharmaceuticals, IFSI, logistics and the travel industry. With over 1.6 billion Muslims in the world, the global halal market targets a universal appeal. Halal food contributes 61 per cent market share of the halal market segment. (Diagram 19)

Diagram 19

Current segments of the Halal Market



- Largest food market size in year 2010 is Asia with US\$418.1 billion, followed by Middle East with US\$155.9 billion and Europe with US\$69.3 billion.
- The evolving lifestyle and increase in purchasing power among Muslims means that there is a widespread demand for prepared convenience foods and packaged foodstuff that still conform to Islamic dietary laws.

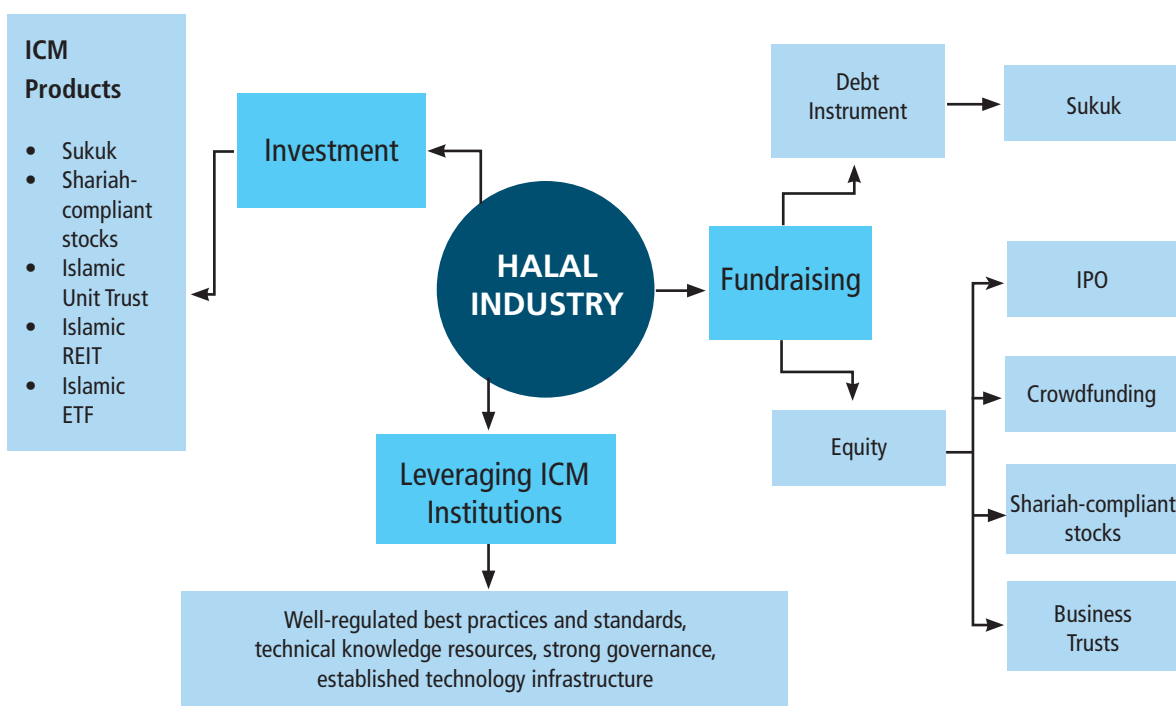
Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Malaysia has adopted 11 strategies for the development and promotion of the country as the global halal hub which revolve around awareness, competition, investments, research and development, halal-compliance, product quality, food safety, halal parks, halal certification, co-ordination among agencies, and institutional capacity of relevant organisations. Due to international recognition, innovation, halal standards, expansion of halal products and support from the government, Malaysia has become the leader of the world's halal industry. This development is further assisted by:

- i. Malaysia's economic growth, political and social stability. As such, the link between the halal industry and IFSI can also aid global growth so long as both industries consider the demand, strategy and performance, regulations, industry standards and governance; and
- ii. The bridging of the global halal industry through ICM financing and funding structures, and the leveraging of ICM institutions. (Diagram 20)

Diagram 20

Bridging ICM with Halal Industry – Comprehensive Shariah-compliant Ecosystem



Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

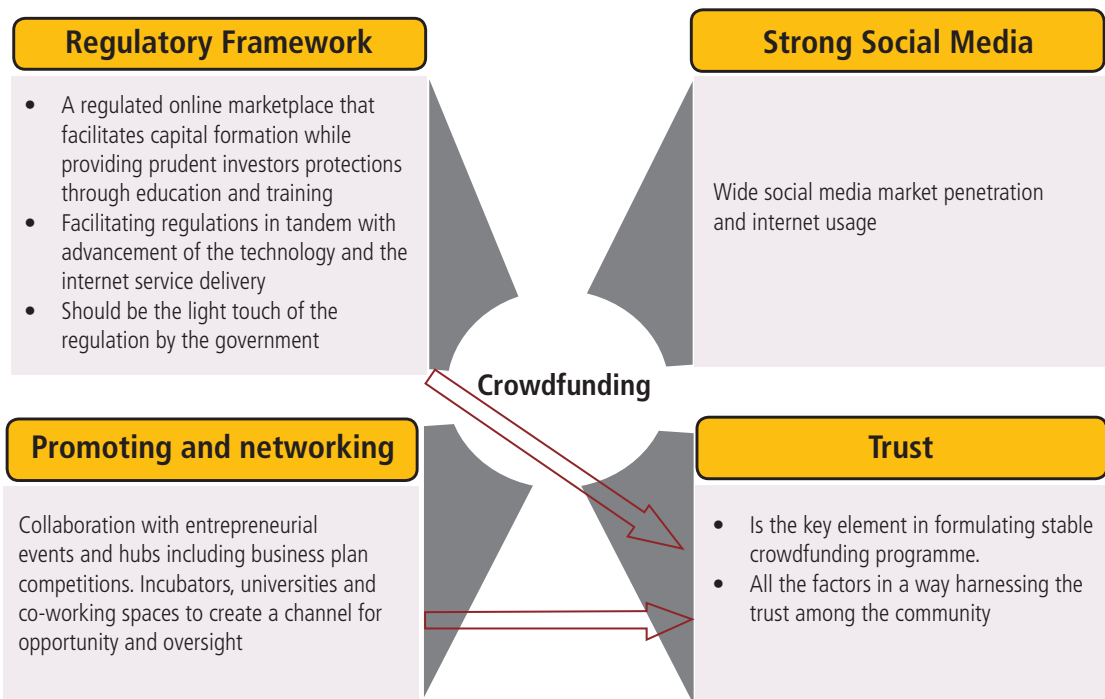
Crowdfunding

Post 2008, crowdfunding has started providing an alternative internet-enabled way to raise money in the form of donations or investments from multiple individuals, focusing on transparency, mutual involvement and trust. As access to mainstream financial services is quite a challenge, equity crowdfunding as a funding mechanism can strongly assist micro, small and medium enterprises.

Determinants of the success of crowdfunding include a regulatory framework, strong social media, promotion, networking and trust (Diagram 21). Additionally, Shariah screening must be met to ensure Shariah-compliant crowdfunding. Specifically in Malaysia, guidelines on the regulation of equity crowdfunding platforms were released in February 2015.

Diagram 21

Key Success Factors for Crowdfunding



Source: Presentation by Dr Aida Othman at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Business Trusts

Business Trusts (BT) incorporates elements of a trust and a company. Related parties in a BT framework are the trustee-manager (TM), director or major shareholder of TM, major unit holder, and person(s) connected with aforementioned parties. (Diagram 22)

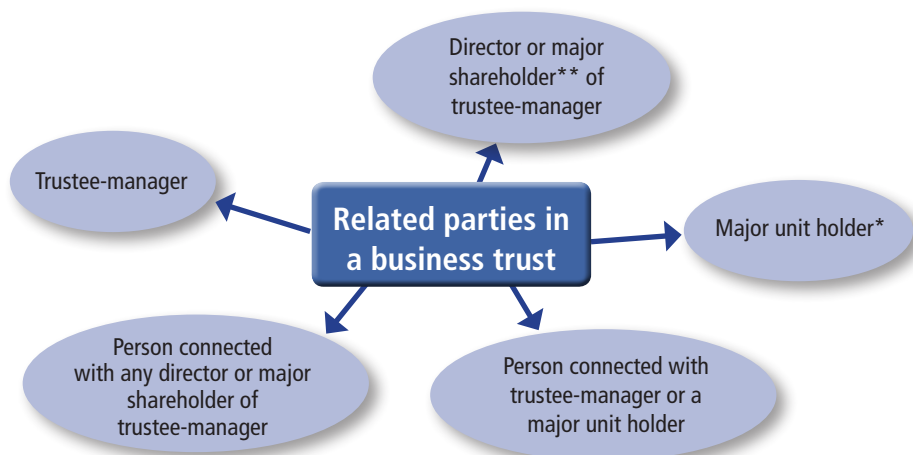
Unlike a typical unit trust scheme, the activity of a BT is to manage and operate a business, similar to how a company manages and operates its business. In Malaysia, the types of BT include–

- i. a Registered BT – established in Malaysia which complies with the requirements stipulated by the SC Malaysia; and
- ii. a Recognised BT – established outside Malaysia which complies with both the requirements of its home jurisdiction and the SC Malaysia.

The person managing and operating a BT is a corporation called the TM. It manages the business of the BT and acts as the trustee who holds the assets of the BT on trust for the unit holders (or investors in the BT). Typically, when a BT is structured, a provision is included in its deed for payment of regular distributions, although a quantum is usually not specified, from the residual cash flows of the BT (if any). This provision cannot be changed without amending the deed, and to do so, unit holders with no less than 75% of the voting rights in the BT must be present to vote and agree to such an amendment.

Diagram 22

Related Parties in a BT Framework



* A person who has interests in one or more units in a business trust and the unit, or the aggregate of those units.

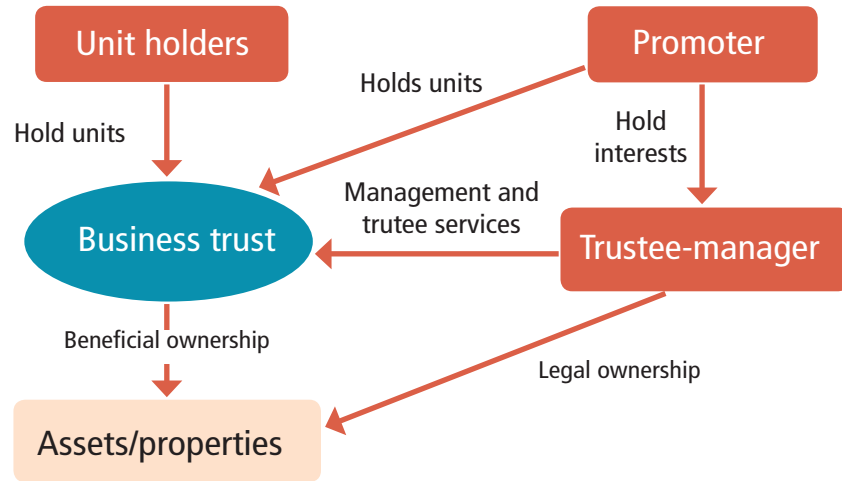
** A person who has interests in one or more voting shares in the trustee-manager and the nominal amount of that share, or the aggregate of the nominal amounts of those shares.

Source: Presentation by Dr Aida Othman at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Typically, the advantages of a BT are related to distribution of returns, retaining control of the assets, no restriction on the type of assets held and gearing. Nevertheless, issues of governance and risk levels may be raised. The BT structure can nonetheless be a suitable alternative listing vehicle. (Diagram 23)

Diagram 23

Structure of BT



Source: Presentation by Dr Aida Othman at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Stapled Securities

Stapled securities are investments with two parts that cannot be separated from each other, which usually comprise a share in one company and a trust related to that company. Stapled securities are created when two or more securities are contractually bound together so that they cannot be bought or sold separately.

An example of the Islamic stapled securities was KLCCP Stapled Group. These stapled securities were endorsed as Shariah compliant by the SAC of the SC Malaysia and was listed on Bursa Malaysia in May 2013. In the KLCCP Stapled Group case, it involved stapling units in a newly established Islamic REIT with shares in KLCC Property Holdings Bhd. An investor holding the stapled securities will effectively hold both shares in the company and units in the REIT, and will reap the combined economic interest and benefits from both the company and the REIT. In this stapling exercise, an independent trustee is appointed to act on behalf of unit holders and to hold custody of the REIT or trust assets. A REIT manager is also established to manage the REIT’s investment and financing strategies, asset acquisition and disposition policies as well as the overall management of the assets.

Waqf

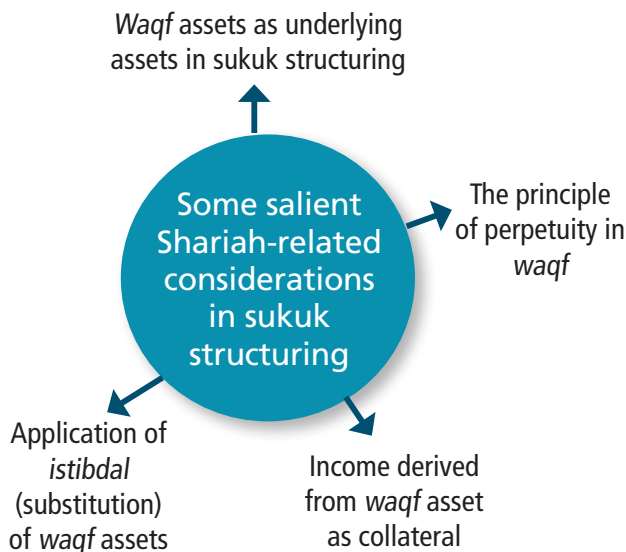
Waqf has become an integral part of Islamic countries' social and economic system. Islamic finance is one of the avenues for *waqf* institutions to outsource its activities and raise funds, i.e through sukuk structuring. Sukuk are widely used to finance specific economic activities according to Shariah principles and can be structured to meet the medium to long-term financing requirements.

Waqf development involving the issuance of sukuk is not entirely new to the market. There have been successful sukuk issuances for the development of *waqf* assets in several jurisdictions e.g sukuk *musharakah* for the development of an old mosque in Bencoolen Street, Singapore and sukuk *al-intifa`* for the development of Zamzam Tower in Saudi Arabia.

These issuances demonstrate how sukuk, being a Shariah-compliant capital market instrument, can be innovatively structured to support financing for the development and redevelopment of *waqf* assets into viable income-generating properties. Nevertheless, it is important to note that the use of *waqf* assets as underlying assets in the structuring of sukuk may be subjected to *fatawa* issued by the relevant religious authorities regarding the permissibility of certain sukuk structures. (Diagram 24)

Diagram 24

Development of Waqf Assets



A few success stories

- Sukuk *musharakah* for the development of an old mosque in Bencoolen Street, Singapore
- Sukuk *al-intifa`* for the development of Zamzam Tower, Saudi Arabia

Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Islamic Wealth Management

Islamic wealth management (IWM) builds wealth in line with Shariah principles. IWM products include retirement income, wealth and lifestyle protection, inheritance and estate planning, as well as investment and wealth accumulation. (Diagram 25)

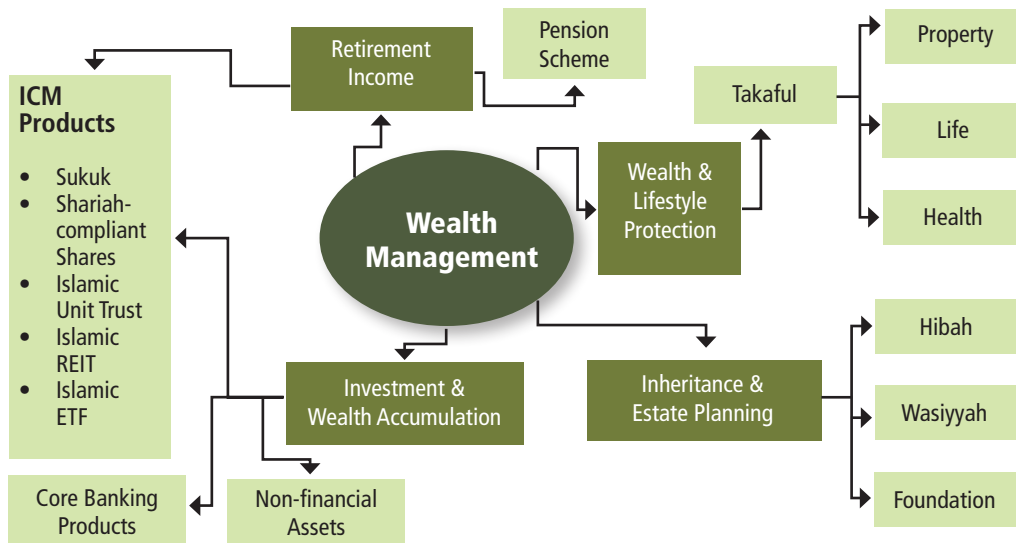
In the Islamic context, the concept of wealth management covers all customer segments. It offers a myriad of solutions that can range from conservative investments to more aggressive plans for capital growth. Such solutions focus not only on the accumulation and preservation of wealth, but also its redistribution, with tax-favoured treatments for long-term investments and platforms for inter-generational wealth transfer.

What sets IWM apart are the underlying principles that it embodies. It must not only invest in Shariah-compliant products and businesses but also embody the concept of fairness and proportionate returns. There is significant scope for the IWM industry to channel the assets under its management to fulfil a broader socio-economic purpose, for example job creation.

Challenges that IWM encounter, among others, are limited assets and lack of diversity, limited product development in Islamic estate planning, development of human capital and comprehensive legal framework.

Diagram 25

Comprehensive Islamic Wealth Management Products



Source: Presentation by Prof Dr Ashraf Md Hashim at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

2.6 TALENT DEVELOPMENT

Sessions on talent development are incorporated into the workshops to enable participants to highlight their perspectives on the importance and approach in developing the right talents for their respective ICM.

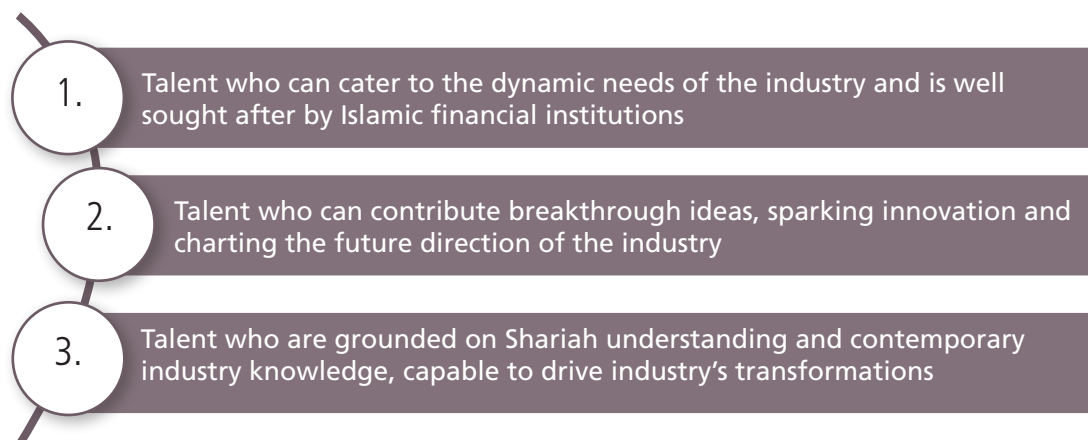
Talent development is an integral component that supports the national agenda and caters to the increasing opportunity brought up by the growth in the IFSI generally, and the ICM in particular. Developing the right size of talent pool with appropriate qualifications and competence will also allow the ICM to be continuously sustainable.

For the ICM to be sustainable, talent requirements need to be continuously met and enhanced with the right skills. Member countries can play a role in developing and producing competent professional talents for ICM as the demand for them is high, both locally and internationally. Ideally, the ICM wishes to have talents who are well grounded on Shariah understanding and contemporary industry knowledge, as they are more likely to be capable of driving the industry's growth. Sustainable development and expansion of the global IFSI and ICM requires the availability of skilful, educated and talented workforce that has undertaken requisite training (Diagram 26).

Through various multilateral international organisations, RSAs can also seek technical assistance in the forms of funding grants and expertise in order to build their institutional capacity to develop strategies and policies for their IFSI generally and the ICM particularly.

Diagram 26

Key Talents Features



Source: Presentation by the Securities Industry Development Corporation at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

While the IFSI contributed tremendously to talent development for the past few decades, new talents are still needed to replenish the talent stocks and further contribute in developing breakthrough ideas and innovation for the ICM.

Findings in a survey by Deloitte in 2010 highlighted that respondents felt that more than 60 per cent of Islamic finance professionals and practitioners require further training and skills development; while only 18.5 per cent of the respondents believe that IFIs in GCC are properly staffed with those that can cope with future challenges in the industry. In addition to this severe insufficiency in the talent pool, there were also pressing needs to balance the demand and supply of talents in ensuring that the right skills and competencies are being developed accordingly.

The identified critical components in talent development strategies that factors greatly in ICM talent development are adequate funding; incentives for talent development; a close collaboration between the industry and the academia; talent development strategies that aligns with the industry needs; and practically a multi-tiered programme that can create a stage-by-stage gradual development of a talent. (Diagram 27)

Diagram 27

Key Success Factors for ICM Talent Development Programme



Source: Presentation by Securities Industry Development Corporation at the Islamic Capital Market Capacity Building Programme, 31 May–4 June 2015

Issues and challenges in talent development include:

- (a) **Insufficient talent pool to choose from.** It is estimated that one million professionals would be required for the IFSI by 2020 – however, less than 500 institutions around the world offer the relevant courses. About 82 per cent of the Deloitte survey respondents claim to have experienced talent shortage in ICM.
- (b) **Demand and supply mismatch.** Educational providers need to intensify their curricula with skill-based competency.
- (c) **Talent migration (brain drain and career mobility).** Brain drain is external emigration while career mobility involves internal movement. To prevent brain drain from OIC member countries, they should develop national strategies and policies; promote research and development culture; and launch special schemes to attract the migrated talent (e.g by TalentCorp Malaysia).
- (d) **Getting the right skills and competencies.** Surveys have suggested differing views relating to existence of satisfactory skills set and competencies. As a result, the skills needed in IFSI and ICM have focused on knowledge, critical thinking, values of ethics and integrity, and the ability to identify and alert the risk of Shariah non-compliance. In Malaysia, the Finance Accreditation Agency's Learning Standards was established to ensure consistency of learning content.

In Malaysia, besides SIDC, there are also institutions such as the Islamic Banking and Finance Institute of Malaysia, International Centre for Leadership in Finance, International Centre for Education in Islamic Finance and ISRA which have undertaken initiatives to support the development of a highly-skilled Islamic finance human capital workforce.

CHAPTER 03

ISSUES AND RECOMMENDATIONS

During the interactive sessions, participants shared and highlighted a diverse range of issues and challenges faced in their respective jurisdictions. In this chapter, some of the points discussed at the workshops have been summarised in different segments for proper record and future references.

3.1 ISSUES RAISED

a. Legal and Regulatory Framework

There were issues raised with regard to conflicting laws and regulations. For example, this may be the case for jurisdictions which may be governed by different authorities (as is the case for Gaza and the West Bank in Palestine) or faced with international economic sanctions and embargo (this may be the case for countries such as Sudan and Iran).

When the legal, regulatory, supervisory and tax framework for ICM are not clear and concise, there is a possibility that governments and their agencies may not provide the necessary support to facilitate ICM products and services. This may push the cost of transactions and cost of doing business to be more expensive and discriminatory to ICM. For example, without appropriate delegation of authority from the legislative body to the RSAs as the executive body, there may be unclear legal and regulatory positions as to whether RSAs can issue administrative guidelines and/or procedures for ICM.

It was also proposed that RSAs should consider signing agreements and/or memorandum of understanding (MoU) with their counterparts who have better expertise and experience in ICM so that more effective and efficient knowledge and experience sharing can be carried out.

b. Shariah Compliance and Governance

Although Shariah governance is an important aspect of ICM and there was also consensus among the workshops' participants that it cannot be ignored, the lack of Shariah expertise in the market can still be resolved through outsourcing arrangements and therefore, making Shariah governance not being seen as an imminent concern compared with other issues and challenges.

The workshop participants are also aware of the different regulatory and supervisory approaches that can be adapted to suit their jurisdiction's requirements in relation to Shariah governance – for example, whether to have a centralised Shariah body or otherwise. The flexibility of Shariah governance models reflect the ability of RSAs to appreciate and apply no 'one-size-fits-all' approach. This should be useful for RSAs in adopting the best approach.

c. ICM Products and Services

The workshops' participants highlighted that there could be genuine concerns among market participants and intermediaries in their jurisdictions as to the true economic value proposition of ICM products and services, when for example:

- i. There is no obvious pricing advantage for ICM products and services compared to the conventional capital market products and services;
- ii. The lack of awareness of the value proposition of ICM products and services may then lead the market to have mistrust and/or lack of confidence in them. This sometimes is contributed by cultural, social and/or historical factors where the public often finds it difficult to put their trust on any product which is new and untested;
- iii. There could be concerns on the allocation of resources (whether in the form of talents or finance/assets) needed to properly develop and execute ICM products and services – which raise the issue of uncompetitive costs;
- iv. The low number of players and/or intermediaries with adequate knowledge and skills in Islamic finance and ICM often would mean that the market for ICM is more likely too small, inefficient (and therefore uncompetitive) compared to the conventional capital market products and services. The ICM products and services may have more complex structures compared to conventional capital market products and services (this is especially observable, for example, when we compare sukuk with conventional bonds);
- v. There could be stronger resistance against ICM products and services, as the investing public consider that the conventional capital market products and services are already sufficient and adequate in addressing their needs and requirements; and
- vi. As part of sukuk investors' protection mechanism, there should be cost-effective, transparent and credible dispute resolution forums for investors to lodge their complaints and seek appropriate remedies. Besides relying on the existing judicial system of the member countries, each RSA may wish to consider establishing ADR platforms that can help reduce dispute resolution costs and minimise backlogs of cases in courts. For example, Malaysia and Saudi Arabia have such tribunals.

The workshops' participants agreed that there are numerous ways to pacify 'resistance' to the development and offering of ICM products and services, for example:

- i. by having a stable and efficient distribution platform as well as mechanism for product pricing;
- ii. neutralisation of tax (in particular double taxation) effects through remission and incentives;
- iii. better clarity in the legal and regulatory framework through clear and concise guidelines; and
- iv. stronger marketing campaign and investor education programmes.

d. Talent Development

There was generally a consensus among the participants that awareness levels among the general public, market intermediaries, as well as regulators around the world on ICM is still inadequate. This leads to the issues and challenges of ensuring adequate resources and capacities in terms of human capital or talents at every level of the stakeholders, as it is impossible to develop a robust, sustainable and efficient ICM without adequate human capital.

The stakeholders that need to be supportive of ICM include the arrangers, lawyers, and rating agencies – most often these groups are familiar with conventional products and services.

3.2 OTHER SIGNIFICANT ISSUES FOR CONSIDERATION

a. Public Awareness

There was a wide consensus among the participants that public awareness on ICM can facilitate the development of the ICM whereby:

- i. Training of human capital can help the development of the right and required expertise;
- ii. Once there is an increase of public awareness of ICM products and services, it creates more demand for such products and services. The increased demand can then help expand the market size of ICM products and services; and
- iii. There is a need for more references and reading materials in languages other than English and Arabic on Islamic finance, generally and ICM, in particular. Observations were that there is a sizeable number of OIC (and therefore COMCEC) member countries which are primarily French-speaking and a number of Central Asia countries with sizeable Muslim population such as Azerbaijan, Kazakhstan, Kyrgyz, Tajikistan, Turkmenistan, Uzbekistan, (and even Russia itself), where there are Russian-speaking stakeholders. Hence, there is a need for reading materials on Islamic finance to be published in French and Russian to help expedite the awareness creation in these regions.

Furthermore, the lack of government facilities and incentives to promote ICM and IFSI generally often would affect the general public's awareness and acceptance of ICM products and services including its value proposition. Hence, initiatives to enhance the awareness at the government levels (such as these workshops by COMCEC) are important in boosting the awareness level.

Government support can also take the forms of:

- i. Active engagement and consultation with stakeholders;
- ii. Proper study and research before any ICM product is approved and/or issued;
- iii. Establishment of a dedicated unit/department to deal with strategic development of ICM; and
- iv. Government aligning the development of ICM with its own economic profiling.

b. Development of Market

Rethinking the Strategy in Issuing and Offering Sukuk

During the early days of ICM in the 1990s and early 2000s, it was felt that, in order to develop the sukuk market domestically, firstly there must be critical mass of potential sukuk investors, particularly institutions such as Islamic banks, Islamic insurance

(takaful) operators and Islamic fund managers. However, this conventional wisdom appears to have been clearly debunked by the sovereign sukuk offered by the UK, Hong Kong, Luxembourg, Senegal and South Africa throughout 2014, as these countries do not have the critical mass of Islamic banks, takaful operators, and Islamic fund managers in each of their local markets.

Their sukuk has been successfully issued and oversubscribed based on the credit ratings and support from conventional institutions and investors, including retail investors. For example, the Senegal sukuk was only 36.63 per cent subscribed by IFIs; while it also attracted 431 individuals subscribing to 2.63 per cent of the sukuk. These experiences prove that the sukuk has been able to penetrate new markets and do not need to depend on its traditional investors such as IFIs only.

Furthermore, the perception that a country or a corporation can only issue sukuk if there has been a comprehensive revamp of the local law and regulations is proven as not exactly correct. One can always consider issuing from a foreign jurisdiction which already has proper laws and regulations to allow issuance of sukuk – this was the case when, for example, the Development Bank of Kazakhstan, issued sukuk in Malaysia without having to wait for the law in Kazakhstan to be revamped to allow it to issue sukuk. Similar strategies were adopted by the KfW (which is a development bank from Germany) whereby it issued sukuk in Malaysia despite Germany not having any laws and regulation relating to sukuk.

Sensitivity over Religious Tones and Terminologies

In certain countries, the law and regulations relating to IFSI and ICM may not necessarily make explicit reference to 'Islam', 'Shariah', or any other words and terminologies with religious tones and flavour. For example, in Nigeria, the Islamic banking activities are referred as 'non-interest banking activities' while in the UK, the rules applicable to Islamic investments and Islamic financing are captured under rules applicable to 'alternative investments' or 'alternative financing'. The RSAs in these jurisdictions demonstrated that they pay due respect to the sensitivities of other religious communities and avoid the perception that Islamic financial products and services are 'discriminatory' in the sense that they are consumable by and for the benefits of Muslims only.

c. ICM Masterplan or Roadmap

Use of External Consultants

There was a question whether it is advisable to engage external consultants; or should all inputs for the development of a national ICM masterplan or roadmap be developed in-house by an RSA.

When the SC Malaysia was developing the *Capital Market Masterplan* (2001–2010), the primary focus was to stock take as many inputs as possible from the market and address the various building blocks which can help complement the capital market ecosystem for Malaysia whether in terms of products, intermediaries, legal and regulatory infrastructure, etc. At this stage, it was felt that assistance from external consultants was beneficial to gauge independent and expeditious inputs. Even though the external consultant provided significant inputs, the SC Malaysia was still the one which developed and implemented the direction of the masterplan.

Subsequently for the *Capital Market Masterplan 2* (2011–2020), the focus shifted towards internationalisation, having noted that the Malaysian capital market including ICM had reached a certain maturity level. At this stage, although the SC Malaysia consulted the industry stakeholders, the implementation and execution were developed from within, tapping on own experience and technical know-how.

The Faster Learning Curves and Availability of References

During the formulation of Malaysia's *Capital Market Masterplan* (2001–2010), there was no available reference or benchmark documents by other jurisdictions for the development of ICM. Today, a number of other jurisdictions including Indonesia, Kazakhstan, Kenya, Nigeria and Pakistan have also developed their national masterplans/roadmaps – hence the learning curves and availability of references for such documents are more easily accessible now compared to 10 to 15 years ago.

d. Innovation in Underlying Assets for Sukuk

Various innovations have taken place in the structuring of sukuk, in particular, the range of underlying assets which are recognised by Shariah scholars as 'Shariah compliant' to be used for sukuk transactions. For example, innovative Shariah solutions can be seen when time-sharing concept is recognised as worthy Shariah-compliant asset to underlie the sukuk transaction to finance the development of Zamzam Tower in Saudi Arabia.

3.3 RECOMMENDATIONS

The workshops highlighted the importance of strategic planning and policy implementation, with a clear and precise message that no 'one-size-fits-all' and strategies can (and should) always be set out and reviewed from time to time based on priorities, feasibility and market dynamics.

Arising from deliberations at the workshops, it is proposed that the following recommendations be considered by COMCEC and/or relevant RSAs in member countries for their short to medium and long-term follow up:

a. Short to medium-term priorities (within the next 1 – 3 years)

- i. Replicate the workshops in COMCEC member countries whereby the facilitators of similar credentials and qualifications may be appointed as Experts. The programme content could be replicated and if necessary, adapted for similar capacity building for RSAs. Member countries could also seek support and facilitation from COMCEC;
- ii. Expand the workshops to include more advanced levels i.e Level 3 and Level 4 to support and facilitate capacity building of RSAs at more complex and sophisticated discussions. For example, Level 3 would cater for product development skills while Level 4 would focus on developing advanced legal and Shariah expertise.
- iii. Intensify opportunities for training and industry exposures through placement, secondment and/or exchange programme among RSAs, using the example of the IOSCO international secondment register (which is used for its International Secondment Program). Similarly, the COMCEC could establish a COMCEC Secondment Register to facilitate the enlisting of such exchanges, disseminating information on such opportunities and expanding its accessibility;
- iv. Commission papers and organise public lecture programmes by reputable thought leaders in the global ICM, focusing on the latest developments in ICM that requires RSAs attention. The programme could be held in conjunction with COMCEC Annual Meetings or as a stand-alone event that is part of the COMCEC's calendar. The paper can then form a component of and be disseminated through an online database resource/platform;
- v. Prepare a handbook or manual on the thought-process and success-factors in developing effective national masterplan or roadmap for ICM as well as sound Shariah governance framework. These areas of expertise have actually been cultivated and harnessed in some RSAs but not documented, publicised and shared for the benefit of a wider audience; and
- vi. Develop a virtual library (using the IOSCO Capacity Building Online Toolkit as a template) whereby the relevant handbook or manual can then be made available and accessible to member countries. This virtual library would accumulate resources on key regulatory issues and ICM development, including bibliographies, academic papers and case studies.

b. Long-term priorities (more than 3 years)

- i. Complement the capacity building initiatives by developing a Train-the-Trainer programme including the manual to intensify the facilitation and accessibility to capacity building in every RSA. The Train-the-Trainer materials can also be made a component of and be disseminated through the online database resource / platform;
- ii. Organise a series of workshops with programmes focusing on initiatives to develop and promote securities investment among the OIC member countries. The programme will focus on increasing technical skills and capacities, among others, exploring the feasibility to mutually recognise and acknowledge the various Shariah screening processes in different jurisdictions as well as minimising the legal and regulatory barriers to facilitate the trading among the stock exchanges in the member countries;
- iii. Consolidate the technical know-how in ICM that have been developed through COMCEC's initiatives to establish a prestigious advanced ICM training programme e.g COMCEC ICM Summer School, which can be a two to four-week programme similar to business summer school. The host of the Summer School can be rotated among the member countries if agreed upon. The programme can also be held by linking with internationally reputable academic or research institutions;
- iv. Empower the investment community in the OIC member countries through initiatives to develop templates for information on ICM products and instruments that can be easily used by investors and then made available through the online database/platform;
- v. Establish a prestigious COMCEC fellowship programme specifically to promote awareness and scholarship in the area of ICM capacity building among member countries. The fellowship programme can, for example, replicates the concept of royal and/or presidential patrons, as the figure appointed as fellow should be able to help promote the higher level of awareness that COMCEC aspires; and
- vi. Develop national masterplan or roadmap for ICM to be aligned with the national economic agenda (as established by countries such as Indonesia, Kazakhstan, Kenya, Malaysia and Nigeria). Member countries can seek support and facilitation from COMCEC and their peer RSAs (which have developed such expertise and experience). Assistance may take in the form of funding, technical assistance and expertise.

The above recommendations require further deliberation and assessment by COMCEC and RSAs before their implementation.

CHAPTER 04

CONCLUSION

The workshops illustrate that ICM is an alternative platform to facilitate the growth of capital flow, given its positive development globally. Despite its own challenges, ICM has shown itself to be resilient even when further pressured by volatile global economy. This has been supported immensely by the development of various supporting infrastructures such as standard setting bodies, and facilities that promote cross-border market integration and backed by continuous co-operations and government commitment.

The workshops' participants being experienced regulators, can appreciate what appears to be straightforward on paper can be a difficult process that takes many years to implement in the real world. Building stakeholders' consensus, harnessing human capital and cultivating trust in market institutions is a challenging process, which needs to be tailored to the requirements of every country.

The participants are now more aware that the existence of ICM is based on the demand of the public towards Islamic investment options but not necessarily arising from religious consideration. Products are derived from the Islamic teaching that has distinct operational characteristics constituting procedures, moral and ethics requirements. The industry should meet the requirements of Shariah compliance and operational efficiency at the same time. Islamic financial experts should be able to locate the exact areas where the convergence could take place and those where they could not, so that the development of the industry would not only offer value proposition to the society but is also sustainable. The choice of ideal regulatory model and how it can be achieved would be crucial when setting direction of the development process.

Participants are reminded that an effective legal framework is important in the establishment of sustainable and progressive ICM as well as requires strong political will with clear policy directions and adequate infrastructure.

Whenever there appears to be a conflict between Shariah principles and current legal framework, it is possibly best that both Shariah interpretations and the legal framework be re-visited. The development of appropriate legal framework for ICM should also address challenges such as trust laws, insolvency and bankruptcy.

Based on the feedback forms returned, participants expressed their wish for the following:

- (a) Discussion on regulatory instruments need to more technical at the macro level (monetary policy and instruments, safety nets and risk management);
- (b) Review on the models of national masterplan for ICM as a reference for new entrants in ICM;
- (c) Technical discussion on the globalisation process such as consolidated supervision, cross-border capital flow, and information sharing among regulators for a more comprehensive global supervision in ICM development; and
- (d) Discussion on the standards for an efficient legal system accommodating the ICM.

The ICM should move towards a regional (and later, global) integration among the operating countries with Islamic financial system as well as with the broader conventional system. In this regard, co-ordination and co-operation between RSAs become imminent in the areas of prudential regulatory instruments, sound risk management, supporting infrastructures (whether the tax regime, legal and accounting standard), comprehensive database, appropriate macroeconomic and monetary policy, as well as the relevant regulatory safety net.

WORKSHOPS PROGRAMME

ISLAMIC CAPITAL MARKET WORKSHOP

LEVEL 1 (31 MAY–2 JUNE 2015)

Day 1 – Sunday, 31 May 2015	
9.00 am – 9.10 am	Welcome remarks
9.10 am – 10.30 am	<p>Session 1: Introduction to ICM</p> <p>This session discusses an overview of ICM including its definition, functions and objectives, and deliberates on the development of ICM in specific jurisdictions. Topics to be covered include:</p> <ul style="list-style-type: none"> • Components and key features • Value proposition • Infrastructure institutions supporting ICM development • Global landscape and growth drivers
10.30 am – 11.00 am	Coffee break and ice breaking
11.00 am – 12.30 pm	<p>Session 2: Prerequisites for ICM Development</p> <p>This session examines prerequisites for the proper functioning of ICM. It also looks at the enabling environment and structural arrangements required to facilitate effective ICM development. Among topics to be discussed:</p> <ul style="list-style-type: none"> • Building blocks for ICM development • Identifying gaps and/or impediments to market and product development • The different approaches adopted in various jurisdictions to facilitate ICM development • Case studies
12.30 pm – 2.00 pm	Lunch
2.00 pm – 3.30 pm	<p>Session 3: Shariah Principles</p> <p>This session discusses principles of Shariah which form the basis of ICM operations. The session also describes salient Shariah issues in ICM. Topics to be covered include:</p> <ul style="list-style-type: none"> • General Shariah principles • Shariah contracts • Shariah issues
3.30 pm – 4.00 pm	Coffee break

4.00 pm – 5.30 pm	<p>Session 4: Shariah governance framework in ICM</p> <p>This session discusses on key aspects of the Shariah governance framework. Topics to be covered will include:</p> <ul style="list-style-type: none"> • Shariah governance structures • International Shariah standard setting institutions • Resolving disputes on Shariah practices • Case studies
5.30 pm – 5.45 pm	Day debrief
Day 2 – Monday, 1 June 2015	
9.00 am – 10.30 am	<p>Session 5: Legal and Regulatory Framework</p> <p>This session develops an understanding on legal and regulatory framework to support the development of ICM. It also discusses the different approaches in regulating ICM. Topics to be covered include:</p> <ul style="list-style-type: none"> • Modelling the legal framework • Benchmarking against global regulatory standards • Regulatory framework in selected jurisdictions • Dispute resolution mechanism • Issues, challenges and opportunities
10.30 am – 11.00 am	Coffee break
11.00am – 12.30pm	<p>Session 6: ICM Products and Services – Sukuk</p> <p>This session provides fundamental understanding on sukuk as well as an overview on the growth and development of the global sukuk market. The session also examines various sukuk structures using relevant case studies that highlight their practical aspects. Topics to be covered include:</p> <ul style="list-style-type: none"> • Introduction to sukuk and its classification • Growth and development of the global sukuk market • Sukuk structures and their practical aspects • Issues, challenges and opportunities
12.30pm – 2.00 pm	Lunch
2.00pm – 3.30pm	<p>Session 7: ICM Products and Services – Equity, Fund Management and Other Investment Products</p> <p>This session discusses features of Shariah-compliant stocks and various screening methodologies. The session also provides key aspects of Islamic fund management. Topics to be covered include:</p> <ul style="list-style-type: none"> • Introduction to Islamic equity market • Shariah screening process: methods and criteria applied • Development of the Islamic fund management industry • Other investment products • Issues, challenges and opportunities

3.30pm – 4.00pm	Coffee break
4.00pm – 5.30pm	<p>Session 8: Interactive Participants' session</p> <p>This session is an interactive platform which aims to gauge level of awareness and market readiness of ICM in the jurisdictions of the workshop participants.</p> <p><u>Note to participants:</u> Participants will be divided into groups and each group will be invited to discuss issues, challenges and opportunities in developing ICMs.</p> <p>Among areas to be covered are:</p> <ul style="list-style-type: none"> • Organisational set-up • Development of ICM ecosystem • Dealing with legal, regulatory and talent requirements • Cross-border issues and opportunities
5.30pm – 5.45pm	Day debrief
Day 3 – Tuesday, 2 June 2015	
9.00am – 10.30am	<p>Session 9: Talent Development for ICM</p> <p>This session presents practical ideas for ICM talent development. The role of human capital is pivotal to ICM development and this presentation aims to raise awareness of its importance and suggest how talent development programmes can be developed and implemented successfully. Among areas to be covered are:</p> <ul style="list-style-type: none"> • Building a sustainable ICM talent pool • Creating structured programmes that match ICM career development • Competencies of ICM professionals • Promoting ICM training as an investment <p>This session will be delivered by invited speakers on capacity building and talent development</p>
10.30am – 11.00am	Coffee break
11.00am – 12.30pm	<p>Session 10: Workshop Summary and Recommendations</p> <p>This session summarises the salient points during the workshop and discusses several recommendations for the development of ICM, which include:</p> <ul style="list-style-type: none"> • Key takeaways from the workshop • Participants' feedback on the workshop and recommendations for ICM development in their countries
12.30pm – 2.00pm	Lunch
End of Workshop – Level 1	

ISLAMIC CAPITAL MARKET WORKSHOP

LEVEL 2, DAY 1 (2–4 JUNE 2015)

Day 1 – Tuesday, 2 June 2015	
9.00 am – 9.15 am	Welcome remarks
9.15 am – 10.30 am	<p>Session 1: ICM – Growth, Development and Outlook</p> <p>This session focuses on recent developments in Islamic finance globally. It also looks into issues and challenges which cut across the ICM sector in various jurisdictions including outlook for the industry. Topics to be covered include:</p> <ul style="list-style-type: none"> • Recent global development • Enablers and barriers to ICM development • Regional collaboration for cross-border transactions • Outlook for the ICM
10.30 am – 11.00 am	Coffee break and ice breaking
11.00 am – 12.30 pm	<p>Session 2: Shariah Governance Framework in ICM</p> <p>This session discusses key aspects of the underlying principles needed in formulating a strong Shariah governance framework and how it fits into the overall institutional governance. Topics to be covered include:</p> <ul style="list-style-type: none"> • Guiding principles and standards on Shariah governance • Harmonisation, standardisation & mutual recognition of Shariah standards for cross-border activities • Enforceability issues in Shariah governance
12.30 pm – 2.00 pm	Lunch
2.00 pm – 3.30 pm	<p>Session 3: Strategies & policies of ICM development</p> <p>This session presents more details on strategies and policies requirements for ICM development particularly on the enabling environment and structural arrangements for the effective facilitation of Islamic finance market development; not just domestically but also for the cross-border needs. Current gaps/ impediments to market and product development and needs for harmonisation or recognition of ICM practices will be identified. Topics to be covered will include:</p> <ul style="list-style-type: none"> • The need for strategic planning & performance measurement framework • Identify the effective regulatory framework for ICM • Development and strengthening of ecosystem and market linkages • Role of government in developing ICM • Issues and challenges in ICM development
3.30 pm – 4.00 pm	Coffee break

4.00pm – 5.30pm	<p>Session 4: Strategies & policies in developing the sukuk market</p> <p>This session explores the potential of sukuk market and discusses common issues faced by relevant stakeholders in different countries using various case studies. It will also presents specific issues and challenges faced by the sukuk market. Topics to be covered include:</p> <ul style="list-style-type: none"> • Development of an ecosystem for sukuk market including market infrastructure i.e commodity trading platform • Shariah and practical issues arising from different sukuk structures; • Innovation in sukuk e.g perpetual, hybrid, SRI • Issues and challenges
5.30 pm – 5.45 pm	Day debrief
Day 2 – Wednesday, 3 June 2015	
9.00am – 10.30am	<p>Session 5: Strategies & policies in developing the Islamic equity market and Islamic fund/asset management industry</p> <p>This session presents more details on strategies and policies requirements on the Islamic equity market and Islamic fund/asset management industry. Topics to be covered will include:</p> <ul style="list-style-type: none"> • Development of ecosystem for Islamic equity market and Islamic fund/asset management including market infrastructure • Issues in the Shariah screening methodologies • Development of the Islamic fund management industry
10.30 am – 11.00 am	Coffee break
11.00 am – 12.30 pm	<p>Session 6: Strategies & policies – new growth areas and innovation in ICM</p> <p>This session reviews recent development of ICM products and services and relates the significance of new growth areas with the development of ICM. Topics to be covered:</p> <ul style="list-style-type: none"> • Innovation in products and services e.g Islamic crowdfunding, business trust; etc. • Islamic wealth management • Bridging halal industry and Islamic finance • Development of <i>waqf</i> assets
12.30 pm – 2.00 pm	Lunch

2.00 pm – 3.30 pm	<p>Session 7: Interactive Participants' Session</p> <p>This session is an interactive platform where participants are divided into groups and each group is expected to discuss issues, challenges and opportunities in the development of ICM. Among areas to be covered are:</p> <ul style="list-style-type: none"> • Organisational set-up • Development of ICM ecosystem • Dealing with legal, regulatory and talent requirements • Cross-border issues and opportunities
3.30 pm – 4.00 pm	Coffee break
4.00 pm – 5.30 pm	<p>Session 8: Panel Session – Strategies & Recommendations on Legal and Regulatory Framework, Products & Services, and Shariah</p> <p>This session is by a panel of experts who will discuss issues pertaining to the legal and regulatory framework, products and services, and Shariah from strategy perspective for policy recommendations. This interactive session also explores enabling ideas to facilitate and steer the growth of ICM. Topics to be covered include:</p> <ul style="list-style-type: none"> • Issues, challenges and opportunities • Capacity building and talent development • Outlook for ICM
5.30pm – 5.45pm	Day debrief
Day 3 – Thursday, 4 June 2015	
9.00 am – 10.30 am	<p>Session 9: Panel Session – Infrastructure and Talent Development</p> <p>This session presents and discusses talent development strategies for the ICM. This discussion highlights the need for securing the right talent and provides insights into talent development initiatives and explores its challenges for the continued development of the ICM. Among areas to be covered are:</p> <ul style="list-style-type: none"> • Building a sustainable ICM talent pool • Brain-drain and career mobility challenges • Skill complexities and innovative mind-sets needed for ICM enhancement • Building consolidated and streamlined strategic initiatives <p>This session is covered by a panel of experts who will look at issues pertaining to infrastructure and talent development.</p>
10.30 am – 11.00 am	Coffee break

11.00 am – 12.30 pm	<p>Session 10: Workshop Summary and Recommendations</p> <p>This session summarises the salient points during the workshop and discusses recommendations for development of ICM, which include among others:</p> <ul style="list-style-type: none"> • Key takeaways from the workshops • Participants’ feedback on the workshops and recommendations for ICM development in their countries
12.30 pm – 2.00 pm	Lunch
<i>End of Workshop – Level 2</i>	

LIST OF PARTICIPANTS

ISLAMIC CAPITAL MARKET WORKSHOP

LEVEL 1 (31 MAY – 2 JUNE 2015)

No.	Name	Organisation
1.	Dr Nagwa SheikhEldin Mohamed	Central Bank of Sudan
2.	Metin Karakaya	Development Bank of Turkey
3.	Yücel Özbilgin	Development Bank of Turkey
4.	Farid Mohamed Masmoudi	Islamic Corporation for the Development of the Private Sector (ICD)
5.	Mehmet Fehmi Eken	Islamic Research and Training Institute (IRTI)
6.	Esraa Abdullah Damaty	Jordan Securities Commission
7.	Minafou Fanta Coulibaly-Kone	Ministry to the Prime Minister in Charge of Economy and Finances, Cote D'Ivoire
8.	Soungalo Jules Prosper Coulibaly	Ministry to the Prime Minister in Charge of Economy and Finances, Cote D'Ivoire
9.	Oumar Diallo	Money and Credit Direction/Ministry of Economy, Finances and Plan, Senegal
10.	Baktygul Beishenalieva	National Bank of the Kyrgyz Republic
11.	Raushan Seitkasymova	National Bank of the Kyrgyz Republic
12.	Amjad S Qabaha	Palestine Capital Market Authority
13.	Soud Bani O`deh	Palestine Capital Market Authority
14.	Ali Abdulla Al Abdouli	Securities & Commodities Authority, UAE
15.	Dr Behnam Chavoshi	Securities & Exchange Organization of Iran
16.	Zeinab Falah Tafti	Securities & Exchange Organization of Iran
17.	Eren Sümer	Standing Committee for Economic and Commercial Cooperation of the Organization of Islamic Cooperation (COMCEC)
18.	Nurlan Fatullayev	State Committee for Securities of Azerbaijan
19.	Yusif Mammadov	State Committee for Securities of Azerbaijan
20.	Nour Smoudi	Union of Arab Securities Authorities

LIST OF PARTICIPANTS

ISLAMIC CAPITAL MARKET WORKSHOP

LEVEL 2 (2–4 JUNE 2015)

No.	Name	Organisation
1.	Noor Aznah Haji Nayan	Autoriti Monetari Brunei Darussalam
2.	Maz Khairunnisa Mohidin	Autoriti Monetari Brunei Darussalam
3.	Ahmed Sulaiman Al Sibani	Capital Market Authority of Oman
4.	Majed Al Kiyumi	Capital Market Authority of Oman
5.	Aminath Mohamed Didi	Capital Market Development Authority, Maldives
6.	Muznee Mohamed	Capital Market Development Authority, Maldives
7.	Waleed Alowaiyesh	Capital Markets Authority, Kuwait
8.	Tülin Demir Akgöz	Capital Markets Board of Turkey
9.	Erkan Özgüç	Capital Markets Board of Turkey
10.	Dr Nagwa SheikhEldin Mohamed	Central Bank of Sudan
11.	Metin Karakaya	Development Bank of Turkey
12.	Yücel Özbilgin	Development Bank of Turkey
13.	Sara Essa	Dubai Financial Services Authority
14.	Aamna Al Ahmad	Dubai Financial Services Authority
15.	Zakiyoulahi Sow	Islamic Corporation for the Development of the Private Sector (ICD)
16.	Turkhan Ali Abdul Manap	Islamic Research and Training Institute (IRTI)
17.	Saleh Afet Alraqad	Jordan Securities Commission
18.	Thierno Ousmane Diallo	Ministry of Finance, Senegal
19.	Timur Omarov	National Bank of Kazakhstan
20.	Alexandr Kamchatny	National Bank of Kazakhstan
21.	Meysam Hamed	Securities & Exchange Organization of Iran
22.	Majid Pireh	Securities & Exchange Organization of Iran
23.	Tariq Naseem	Securities and Exchange Commission of Pakistan
24.	Zureena Mohamed	Securities Commission Malaysia
25.	Mohd Hariz Daud	Securities Commission Malaysia
26.	Eren Sümer	Standing Committee for Economic and Commercial Cooperation of the Organization of Islamic Cooperation (COMCEC)
27.	Ouiadh Ben Ltaief	Union of Arab Securities Authorities

EXPERTS' PROFILES



PROF DR ASHRAF MD HASHIM

(ashraf@isra.my)

Prof Dr Ashraf Md Hashim is a Chief Executive Officer of ISRA Consultancy. He is also a senior researcher at ISRA and a professor at International Centre for Education in Islamic Finance.

Previously, he was an academic staff at the International Islamic University Malaysia. There he held several administrative positions such as the Director of International Students Office, Deputy Dean of Admissions and Records and Deputy Dean of Students Affairs. He held the position of Deputy Rector (Academic Affairs) for two years at the Al-Madinah International University.

He has to his credit, two books and a number of articles published in local and international journals. In 2006, he was awarded with the Chevening Fellowship at the Oxford Centre for Islamic Studies, United Kingdom.

Prof Dr Ashraf is a member of the Shariah Advisory Council of Bank Negara Malaysia and the SC Malaysia. He is also the Chairman of Shariah Committee of Bursa Malaysia. In addition, he also serves as a member of the National Fatwa Council of Malaysia, and as a registered Shariah adviser with SC Malaysia. He has advised a few REIT companies, particularly in Singapore.

He is also a member of the Shariah Committee for Association of Islamic Banking Association Malaysia. He is actively involved in many consultation works related to Islamic finance in Malaysia and abroad.

Previously, he was a member of Shariah Committee for Al-Rajhi Banking & Investment Corporation, Malaysia (2007–2011), Alliance Bank Group (2005–2007), Takaful Malaysia (2005–2008), ASEAN Retakaful International Limited (2005–2008), ACR Retakaful in Malaysia and Bahrain (2008–2011) and Amana Takaful Sri Lanka (2006–2007).

Prof Dr Ashraf obtained his PhD (Islamic Law) from University of Birmingham, United Kingdom; his Masters in Fiqh and Usul Fiqh from University of Jordan; and his BA in Shariah from Islamic University in Medina, Saudi Arabia. He also holds a Postgraduate Diploma in Shari'ah Law and Practice from International Islamic University Malaysia.

Prof Dr Ashraf is proficient in English, Arabic and Malay.



DR AIDA OTHMAN

(aida.othman@zicolaw.com)

Dr Aida Othman is a Director of ZICO Shariah Advisory Services Sdn Bhd, and a Partner at ZICO, Kuala Lumpur. Dr Aida specialises in Islamic banking and finance, ICM instruments and takaful products and operations. She also advises on Shariah compliance and governance, including the legal and regulatory framework for Islamic finance. In particular, she has advised on the structure and documentation for Islamic financing; the legal and regulatory framework for Islamic financial services; structuring and Shariah compliance issues for sukuk issuance, private equity funds and unit trust funds; Shariah review and Shariah audit of IFI; takaful products and operations; and Islamic wealth management and planning. She is also a member of the Shariah Advisory Board of Syarikat Takaful Malaysia Bhd (established in 1983 and the first takaful operation in Malaysia).

Dr Aida has published articles/reports in the Malayan Law Journal, Arab Law Quarterly and MIF Monthly. She co-authored a chapter entitled 'The Effectiveness of the Legal Framework for the Islamic Financial Services' in the book 'Islamic Finance – Global Legal Issues and Challenges' published by the IFSB in 2008, and 'An Introduction to Islamic & Conventional Corporate Finance' published by Sweet & Maxwell, 2012. She was also the technical consultant for 'Islamic Finance for Dummies' published in 2012 by Wiley USA.

Dr Aida obtained her Bachelor of Laws and Bachelor of Islamic Law (Shariah) from the International Islamic University, Malaysia. She completed her Masters of Law from Cambridge University, UK and Doctor of Philosophy in Comparative Law & Middle Eastern Studies, Harvard University, US.



MADZLAN MOHAMAD HUSSAIN

(madzlan.hussain@zicolaw.com)

Madzlan Mohamad Hussain is a Partner and Head of Islamic Financial Services Practice at ZICO. He is recognised as a leading Islamic finance lawyer in various publications including Legal 500, IFLR 1000, Chambers & Partners, Islamic Finance News' Legal Supplements and Euromoney's Expert Guides. Madzlan is also accredited by various multilateral international organisations as expert consultant to advise on the development of Islamic banking laws under their technical assistance grant programmes. Among others, he has been consultant for such projects in Afghanistan, Kazakhstan and Tajikistan.

He advises on matters relating to Islamic financial services, as well as prudential and regulatory framework. In addition, he also advises clients on corporate exercises and compliance with securities regulation. His principal engagements include advising financial institutions in Malaysia on the legal and regulatory compliances for their Islamic finance operations; standardisation of Islamic finance documentation; structuring and designing Shariah-compliant financial products; Islamic corporate financing facilities; and issuance of Islamic securities.

Madzlan is also well-acquainted with the IFSB guiding principles and current developments in relation to the global IFSI, by virtue of his previous service with the IFSB.

He holds a Bachelor of Laws (Honours) from International Islamic University Malaysia. He obtained his Master of Science in Islamic Economics, Banking and Finance, Loughborough University, UK.

GLOSSARY

TERMS

DEFINITION

Fatawa (sing. fatwa)	A juristic opinion or pronouncement of facts given by the Shariah board, a <i>mufti</i> , or a <i>faqīh</i> on any matter pertinent to Shariah issues, based on the appropriate methodology.
Fiqh	Knowledge of the legal rulings pertaining to conduct, which has been acquired from specific evidence in the Shariah.
Gharar	Literally, deception, danger, risk and uncertainty. It is used to denote any element of absolute or excessive uncertainty in any business or about the subject of a contract or its price, or mere speculative risk. It has the potential to lead to undue loss to one party of a contract and unjustify enrichment of another, which is prohibited.
Ijarah	A contract whereby a lessor (owner) leases out an asset to a lessee at an agreed lease rental for a pre-determined lease period. The ownership of the leased asset shall always remain with the lessor.
Maqasid al-Shariah	The goals and objectives of Islamic law.
Musharakah	A partnership arrangement between two parties or more to finance a business venture whereby all parties contribute capital either in the form of cash or in kind. Any profit derived from the venture is distributed based on a pre-agreed profit sharing ratio and a loss is shared on the basis of capital contribution.
Riba	Usury (interest). It literally means an excess or increase, in a loan transaction or in exchange of a commodity, accrued to the owner (lender) without giving an equivalent counter value or recompensation in return to the other party. It covers interest both on commercial and consumer loans, and is prohibited according to the Shariah.
Shariah	Islamic law, originating from the <i>Quran</i> (the holy book of Islam), and its practices and explanations rendered by the prophet Muhammad (peace be upon him) and <i>ijtihad</i> (personal effort by qualified Shariah scholars to determine the true ruling of the divine law on matters whose revelations are not explicit).
Shariah scholars/advisers	Persons qualified and competent with knowledge and skills in Shariah and fiqh to sit in a specific body set up or engaged by the IFI to supervise its Shariah compliance and governance system.

Sukuk (sing. sakk)	A document or certificate of equal value, which evidence undivided ownership or investment in the assets in accordance with Shariah principles and concepts.
Takaful	A form of Islamic insurance based on the principle of <i>ta'awun</i> or mutual assistance. It provides mutual protection of assets and property and offers joint risk sharing in the event of loss incurred by one of its members. Takaful is similar to mutual insurance in that members are the insurers as well as the insured.
Waqf	An endowment of charitable trust in the meaning of holding certain property and preserving it for the confined benefit for a certain charitable objective and prohibiting any use or disposition of it outside that specific objective.



SECURITIES COMMISSION MALAYSIA

The Securities Commission Malaysia (SC Malaysia) was established on 1 March 1993 under the *Securities Commission Act 1993*, and functions as a statutory body with investigative and enforcement powers. As a regulator which supervises and monitors capital market activities including Islamic capital market, the key responsibility of the SC Malaysia is to protect investors, as well as to play a role in encouraging and promoting the development of the securities and derivatives markets in Malaysia.

For more information, visit www.sc.com.my



STANDING COMMITTEE FOR ECONOMIC AND COMMERCIAL COOPERATION OF THE ORGANIZATION OF ISLAMIC COOPERATION

The Standing Committee for Economic and Commercial Cooperation of the Organization of Islamic Cooperation (COMCEC) was established at the Third Islamic Summit Conference held in Mecca/Taif in 1981. COMCEC became operational at the Fourth Islamic Summit in 1984, with the election of the President of the Republic of Turkey to its chairmanship.

The mandate of COMCEC is to draw up programmes for joint action, coordinate and follow-up the activities pertaining to economic cooperation within the framework of the Organisation of Islamic Cooperation.

For more information, visit www.comcec.org

This report has been prepared by the Securities Commission Malaysia.
For further information, contact:



Suruhanjaya Sekuriti
Securities Commission
Malaysia

Syed Azhan Syed Mohd Bakhor
Islamic Capital Market Business Group
Securities Commission Malaysia

Tel: +603 2091 0673
Email: azhan@seccom.com.my



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