

**SHARIAH ADVISORY COUNCIL  
OF THE SECURITIES COMMISSION**



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## INTRODUCTION

The Securities Commission (Commission) is a statutory body set up under the *Securities Commission Act 1993* (SCA), reporting directly to the Minister of Finance. It is the sole regulatory body for the regulation and development of the capital market in Malaysia. It is directly responsible for the regulation and supervision of the activities of the market institutions, including the stock exchanges, clearing houses, and monitoring of licensees under the *Securities Industry Act 1983* (SIA) and *Futures Industry Act 1993* (FIA).<sup>1</sup>

The Commission, in developing the national capital market, has identified the development of the Islamic capital market as one of its main agendas.<sup>2</sup> This agenda was later incorporated into the Malaysian *Capital Market Masterplan*, launched on 22 February 2001. One of the main objectives set by this plan is to establish Malaysia as an international Islamic capital market centre.<sup>3</sup>

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1 *Securities Commission Act 1993*, section 15.

2 Refer to the Securities Commission Business Plan 1998–2000 which lists in its agenda, among others, the development of the equity market, streamlining the development of Islamic debt securities, developing Islamic investment group activities and introducing new Islamic capital market products.

3 In meeting the objective of establishing Malaysia as an international Islamic capital hub, a number of strategic initiatives were outlined as follows:

- Facilitate the development of various competitive products and services related to the Islamic capital market;
- Create an independent market to mobilise Islamic funds effectively;
- Ensure an appropriate and comprehensive accounting, tax and regulatory framework; and
- Enhance the international recognition of the Malaysian Islamic capital market.

See Securities Commission, *Capital Market Masterplan*, February 2001, pp. 57, 108–114, 173–184.

The Commission has taken the following two approaches in meeting this objective:

- (a) Supply the necessary infrastructure for research, discussions and dialogues; and
- (b) Undertake specific efforts to develop and strengthen the market.<sup>4</sup>

Using these approaches, a dual market system will be created similar to the existing banking and insurance sectors. The Commission has taken numerous steps in priming the infrastructure for the development of the Islamic capital market. These include:

- (a) Establishing the Islamic Capital Market Department (ICMD, formerly known as Islamic Capital Market Unit);
- (b) Establishing the Islamic Instrument Study Group (IISG); and
- (c) Establishing the Shariah Advisory Council (SAC).

The following is an elaboration of the above-mentioned measures.

## **ISLAMIC CAPITAL MARKET DEPARTMENT**

In its effort to develop the Islamic capital market, the Commission established a department under the Market Policy and Development Division called the Islamic Capital Market Department (ICMD). Its responsibilities include conducting research and developing Islamic capital market products in the equity, debt and derivative sectors, as well as analysing the securities of listed companies. It employs full-time officers with Shariah education background, especially in the disciplines of *fiqh muamalat* (Islamic commercial law) and modern finance. The combination of professional personnel from these two different backgrounds is essential in creating a working group capable of meeting the set objectives.<sup>5</sup> Its research findings are then presented to the SAC for approval.

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4 Nik Ramlah Nik Mahmood, "Regulatory Framework and the Role of the Securities Commission in Developing the Islamic Capital Market", National Conference on Islamic Banking and Investment, Kuala Lumpur, 19 November 1996, p. 5.

5 Khairil Anuar Abdullah, "The Issues and Prospects of Establishing a Sound Islamic Capital Market", Labuan International Summit on Islamic Financial and Investment Instruments, Financial Park Complex, Labuan, 16–18 June 1997, p. 5.

## **ISLAMIC INSTRUMENT STUDY GROUP**

The Commission established the IISG in 1994 with a membership comprising Shariah consultants and corporate figures. The group discussed and made decisions on issues related to the Islamic capital market in Malaysia. Eight meetings were held throughout 1995–1996.

The following is a list of the IISG members (from 1994 to 15 May 1996):

- (a) Dato' Sheikh Azmi Ahmad;
- (b) Dato' Mohd Khudzairi Dainuri;
- (c) Associate Prof Md Hashim Yahaya (now Datuk);
- (d) Dato' Dr Abdul Halim Ismail;
- (e) Nor Mohamed Yakcop (now Tan Sri and Second Finance Minister);
- (f) Dr Abdullah Ibrahim;
- (g) Ustaz Hassan Ahmad (now Dato'); and
- (h) Ustaz Md Nurdin Ngadimon.

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The ICMD carries out research activities and functions as the secretariat to the IISG. The latter succeeded in exploring the foundation for developing an Islamic capital market in Malaysia. Thus, the Commission viewed that it was important for the IISG to expand its role, and consequently, it was upgraded to a more formal body called the SAC on 16 May 1996. Its establishment was endorsed by the Minister of Finance and it was given the mandate to ensure that the implementation of the Islamic capital market complied with Shariah principles. Its scope of jurisdiction is to advise the Commission on all matters related to the comprehensive development of the Islamic capital market and to function as a reference centre for all Islamic capital market issues.<sup>6</sup>

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6 Nik Ramlah Nik Mahmood, "Regulatory Framework and the Role of the Securities Commission in Developing the Islamic Capital Market", National Conference on Islamic Banking and Investment, Kuala Lumpur, 19 November 1996, p. 5.

In introducing the Islamic capital market instruments, the SAC adopted two approaches. The first approach was to study the validity of conventional instruments used by the local capital market from the Shariah perspective. The study focused on the structure, mechanism and use of the instruments to ascertain whether they were against Shariah principles. The second approach entailed formulating and developing new financial instruments based on Shariah principles.

The SAC is also responsible for issuing a list of Shariah-compliant securities (formerly known as list of Shariah-approved securities). Up to 28 October 2005, 857 securities were classified as Shariah-compliant securities by the SAC. This represented 85% of securities listed on Bursa Malaysia. The list is constantly updated and the Commission announces the updated list twice a year. It is essential for helping Muslim investors identify Shariah-compliant securities and at the same time, increase their confidence when making investments.

The list of Shariah-compliant securities was used as the basis for developing the Shariah Index launched by Bursa Malaysia on 17 April 1999. With the launch, investors will be able to monitor the performance of their investments more efficiently and effectively. Although the SCA does not expressly state the formation of the SAC, section 16 of the SCA stipulates that the Commission has full jurisdiction in carrying out its duties based on securities laws. Moreover, section 18 of SCA specifies that the Commission is empowered to form a committee to help it carry out its duties based on the Act, and the Commission is also permitted to appoint anyone it deems fit to be a member of such a committee.<sup>7</sup>

Members of the SAC are appointed by the Commission once every two years. The table on page 6 lists past and present members of the SAC.

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<sup>7</sup> *Securities Commission Act 1993.*

**Members of the Securities Commission Shariah Advisory Council**

| Name/ Designation                          | 1996–1998 | 1998–2000 | 2000–2002 | 2002–2004 | 2004–2006 |
|--|-----------|-----------|-----------|-----------|-----------|
| 1. Dato’ Sheikh Azmi Ahmad                 | √         | √         |           |           |           |
| 2. Dato’ Dr Abdul Halim Ismail             | √         | √         | √         | √         | √         |
| 3. Dato’ Dr Othman Ishak                   | √         | √         |           |           |           |
| 4. Dato’ Dr Haron Din                      | √         | √         |           |           |           |
| 5. Datuk Md Hashim Yahaya                  | √         | √         | √         | √         | √         |
| 6. Dato’ Hassan Ahmad                      | √         | √         | √         | √         | √         |
| 7. Dato’ Sheikh Ghazali Abdul Rahman       |           | √         | √         | √         | √         |
| 8. Dato’ Dr Abdul Monir Yaacob             |           | √         | √         | √         | √         |
| 9. Tan Sri Nor Mohamed Yakcop              | √         |           |           |           |           |
| 10. Dr Mohd Daud Bakar                     | √         | √         | √         | √         | √         |
| 11. Associate Prof Dr Abdul Halim Muhammad |           |           | √         | √         | √         |
| 12. Dr Mohd Ali Baharum                    |           |           | √         | √         | √         |