

**EMERGING ISSUES IN ISLAMIC  
FINANCE LAW AND PRACTICE IN  
MALAYSIA**

*This page intentionally left blank*

# **EMERGING ISSUES IN ISLAMIC FINANCE LAW AND PRACTICE IN MALAYSIA**

EDITED BY

**UMAR A. OSENI**

*International Islamic Liquidity Management Corporation, Malaysia*

**M. KABIR HASSAN**

*University of New Orleans, USA*

**RUSNI HASSAN**

*International Islamic University Malaysia, Malaysia*



United Kingdom – North America – Japan – India – Malaysia – China

Emerald Publishing Limited  
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2019

Copyright © 2019 Emerald Publishing Limited

**Reprints and permissions service**

Contact: [permissions@emeraldinsight.com](mailto:permissions@emeraldinsight.com)

No part of this book may be reproduced, stored in a retrieval system, transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without either the prior written permission of the publisher or a licence permitting restricted copying issued in the UK by The Copyright Licensing Agency and in the USA by The Copyright Clearance Center. Any opinions expressed in the chapters are those of the authors. Whilst Emerald makes every effort to ensure the quality and accuracy of its content, Emerald makes no representation implied or otherwise, as to the chapters' suitability and application and disclaims any warranties, express or implied, to their use.

“The views expressed in this book are those of the respective authors and do not necessarily reflect the views or policies of any organization the editors and authors are currently serving or served before in whatever capacity.”

**British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

ISBN: 978-1-78973-546-8 (Print)

ISBN: 978-1-78973-545-1 (Online)

ISBN: 978-1-78973-547-5 (Epub)



ISOQAR certified  
Management System,  
awarded to Emerald  
for adherence to  
Environmental  
standard  
ISO 14001:2004.

Certificate Number 1985  
ISO 14001



INVESTOR IN PEOPLE

# Contents

List of Contributors	ix
Acknowledgements	xxiii

## Part I: Introduction

<b>Chapter 1 Introduction: Revisiting the Confines and Significance of Islamic Finance Law</b>	
<i>Umar A. Oseni, M. Kabir Hassan and Rusni Hassan</i>	3

## Part II: Wealth and Consumer Protection

<b>Chapter 2 Dealing with Unlawful Sources of Funds among Islamic Banks in Malaysia: The Practitioners' Perspectives</b>	
<i>Badruddin Hj Ibrahim, Marhanum Che Mohd Salleh, Azizah Mohd and Muhammad Laeba</i>	15
<b>Chapter 3 The Objectives of Shari'ah in Nomination for the Payment of Family Takaful Benefits</b>	
<i>Safinar Salleh, Akmal Hidayah Halim, Uzaimah Ibrahim and Mohamad Asmadi Abdullah</i>	33
<b>Chapter 4 Creating Security to Finance Waqf Property Development in Malaysia: Issues and Solutions</b>	
<i>Sharifah Zubaidah Syed Abdul Kader and Nor Asiah Mohamad</i>	53
<b>Chapter 5 Hisbah as a Consumer Protection Institution in Malaysia: A Special Reference to Islamic Consumer Credit Industry</b>	
<i>Rusni Hassan and Ibtisam @ Ilyana Ilias</i>	69

**Part III: Regulatory Compliance and Legal Documentation**

- Chapter 6 The Role of Financial Regulator in Protecting Bank Consumers from Unfair Contract Terms: The Case of Malaysian Islamic Banks**  
*Noor Mahinar Abu Bakar, Norhashimah Mohd Yasin, Siti Salwani Razali and Ng See Teong* 91
- Chapter 7 Effects of Anti-money Laundering and Anti-terrorism Financing Law on Innovation of Mobile Payment Systems in Malaysia**  
*Suhaimi Mhd Sarif, Ainul Jaria Maidin, Jamaludin Ibrahim and Abdul Rahman Ahmad Dahlan* 117
- Chapter 8 Combating Money Laundering and Terrorism Financing: Perspectives from *Maqāsid al-Sharī'ah***  
*Raja Madihah Raja Alias, Norhashimah Mohd Yasin, Badruddin Hj Ibrahim and Mohd Yazid Zul Kepli* 129
- Chapter 9 Islamic Banks and Money Laundering in Malaysia: A Legal Compliance Perspective**  
*Norhashimah Mohd Yasin, Nik Nuun Asma Nik Sulaiman and Mohd Yazid Zul Kepli* 145
- Chapter 10 Legal Issues in Sharī'ah-compliant Home Financing in Malaysia: A Case Study of a *Bai Bithaman Ājil* Contract**  
*Umar A. Oseni, Mohd Fairullazi Ayob and Khairuddin Abdul Rashid* 171
- Chapter 11 Procedural Laws Governing Event of Default in Islamic Financing in Malaysia: Issues and Challenges**  
*Syuhaeda Aeni Binti Mat Ali, Rusni Hassan and Ahmad Azam Othman* 193
- Part IV: Fintech and Blockchain Technology**
- Chapter 12 Fintech and the Transformation of the Islamic Finance Regulatory Framework in Malaysia**  
*Ho Wen Hui, Azwina Wati Abdull Manaf and Asfarina Kartika Shakri* 211
- Chapter 13 Fintech and Its Impact on Islamic Fund Management in Malaysia: A Legal Viewpoint**  
*Surianom Miskam, Abdul Monir Yaacob and Romzie Rosman* 223

<b>Chapter 14 Cryptocurrencies and Anti-money Laundering Laws: The Need for an Integrated Approach</b>	
<i>Mohd Yazid bin Zul Kepli and Sonny Zuhuda</i>	247
<b>Chapter 15 Regulating Digital Currency: Taming the Unruly</b>	
<i>Syed Fadhil Hanafi Syed A Rahman</i>	265
Index	281

*This page intentionally left blank*



## List of Contributors

**Dr Abdul Monir Yaacob** is a Professor at the School of Law and Shari'ah, Islamic University Malaysia (UIM). He holds Bachelor of Al-Aliyah from Al-Azhar University, Diploma of Law and Master of Philosophy from the University of London. He obtained his PhD from the International Islamic University Malaysia (IIUM) in 1991. Prior to joining UIM, he was a Lecturer/Professor with the National University of Malaysia and University of Malaya. Apart from his teaching experience, he also served as Director General of Institute of Islamic Understanding Malaysia, Judge of Shari'ah Court of Appeal in various states in Malaysia, Academic Advisor at the Sultan Sharif Ali Islamic University of Brunei Darussalam and Commissioner of SUHAKAM for three terms. He was a member of Shari'ah Advisory Council of Central Bank of Malaysia and Securities Commission of Malaysia. He is the author of 20 books (and editor) and more than 150 articles. Among his works are *Kehakiman Islam dan Mahkamah Syariah* (USIM, 2015) in 2015 and *Perkembangan Pentadbiran Undang-Undang Islam di Malaysia* (IUM, 2016) in 2016.

**Abdul Rahman Ahmad Dahlan** is a Senior Academic Fellow in the Department of Information Systems, Faculty of Information and Communication Technology, International Islamic University Malaysia (IIUM). He obtained his BSc (Hons.) in Computation from the University of Manchester Institute of Science and Technology, United Kingdom, and an MBA from the Business Graduate School, University Putra Malaysia in 1999. He has more than 20 years of experiences in the Information and Communication Technology (ICT) industry before entering the academia in November 2009. He has worn various ICT and business-based hats during his career, including that of the General Manager-cum-Head of ICT-based company, General Manager and Manager-cum-Head of ICT departments, Director of the National KnowledgeGRID Malaysia programme, Project Director and Project Manager of various projects, ICT Strategic Planner, System and Database Administrator, Network Administrator, Analyst Programmer, as well as Business Development and Corporate Planner. He has taught Master degree courses in Project and Change Management; Knowledge Management; System Development Methodologies; Entrepreneurship, Innovation and Emerging Technologies; and Strategic Management. For Bachelor degree, he has taught courses in MIS, Computer Networking, Technopreneurship, and Project Management in Information Technology. He has conducted several workshops on Technopreneurship and Project Management. He has written one book, contributed academic

articles in various international academic journals and presented papers at various national and international conferences including as keynote speaker. He was the Deputy Director, Office of Corporate Strategy, IIUM from July 2012 to December 2017. Currently, he is the Director, Office for Strategy and Institutional Change of IIUM.

**Dr Ahmad Azam Othman** obtained his LLB (Hons.), LLB (Sharī'ah) (Hons.), Master of Comparative Law degrees from the International Islamic University Malaysia (IIUM) and PhD degree from the University of Wales, United Kingdom. Upon completion of his PhD, he returned to Malaysia in January 2001 and took up as an Assistant Professor in the IIUM. Presently, Dr Ahmad Azam Othman is an Associate Professor at the Department of Islamic Law of Ahmad Ibrahim Kulliyah of Laws (AIKOL), IIUM since 17 November 2015. He is one of the co-authors for the books, *Remedies for Default in Islamic Banking: Home and Car Financing* (Sweet & Maxwell/Thomson Reuter, 2018) *Islamic Banking in Malaysia: Cases and Commentaries* (Malaysian Current Law Journal (MCLJ), 2017) and *Islamic Banking and Takaful, 3rd. ed.* (Pearson Malaysia, 2016). He has written numerous articles published in both local and international journal and also presented papers at local and international conferences in the area of Islamic banking and finance, Sharī'ah Governance and Islamic personal bankruptcy. His areas of interests include Islamic banking, takaful, Islamic microfinance, Sharī'ah governance and Sharī'ah risk management. He was the Director of Harun M. Hashim Law Centre of AIKOL (IIUM) for the period 1 June 2011 to 30 June 2012 and Head of Department of Islamic Law of AIKOL for the period 1 June 2006 to 30 May 2008. He has vast experience in teaching for postgraduate as well as undergraduate courses. Besides, he is an External Examiner, Internal Examiner and Supervisor for a number of PhD theses and Master dissertations in various areas including Islamic Banking, Islamic Microfinance, Islamic Capital Market, Takaful, Sharī'ah Governance, Waqf, Taxation and Land Acquisition.

**Dr Ainul Jaria Maidin** is a Law Professor researching on various aspects relating to the sustainable development goals. Her academic qualification includes LLB (Hons.), International Islamic University Malaysia; Master in Comparative Laws, IIUM; PhD in Land Development and Environmental Planning Law, University of Wales, United Kingdom; and non-practising Advocate and Solicitor, High Court of Malaya. She is a subject matter expert in the legal aspects of land administration, sustainable land development and environmental planning law and property and banking law. She also has experience in conducting workshops for various government agencies and private sector in Malaysia and at international level. She is a member of international expert group endorsed by the Global Land Tenure Network (United Nations Shelter Branch) land administration, Islamic land administration, sustainable land development and environmental planning law and urban legislation areas. She has developed the inter-religious mediation training programme for the Unity Department Malaysia that trains six major religious leaders in Malaysia. She serves as Coordinator for the Certificate in Inter-religious Mediation Programme for the Department of Unity Malaysia,

Member of the National Consultative Council for Islamic Affairs, Malaysia, Member of Advisory Panel of Institut Tanah dan Ukur Negara, Member of Advisory Board of *Land Administration Journal*/*Journal Pentadbiran Tanah* and *Journal of Department of Director General of Land and Mines, Malaysia*.

**Dr Akmal Hidayah Halim** is an Associate Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She obtained her first degree in law (LLB) from the IIUM in 1998. In 1999, she was awarded with a Master of Comparative Law by the same university and was conferred with a Doctorate degree in 2006 in the area of estate administration in Malaysia. Dr Akmal has presented various papers both locally and abroad and has published several books and articles in her area of expertise. Her publications include two books entitled *Administration of Estates in Malaysia: Law and Procedure* and *The Law of Wills and Intestacy in Malaysia*. She is the co-author for the Malaysian volume of *International Encyclopedia on Family and Succession Law* (Kluwer Law International, Netherlands 2018). She also writes journal articles in the area of law of succession, Islamic wealth management and trust. Dr Akmal has contributed to the *White Book of the Malaysian Civil Procedure* (Thomson Reuters Sweet & Maxwell Asia 2018). She has also secured several research grants most of which have been successfully completed. Her latest grant which is funded by the Fundamental Research Grant Scheme under the Ministry of Education focusses on formulating legal framework for the administration of unclaimed estate in West Malaysia. Recently, her project on easy-to-use application software for administration of estate in West Malaysia has been awarded with Gold medal at the Fourth International Innovation, Design and Articulation 2018.

**Asfarina Kartika Shakri** is an Academic at the Faculty of Law, Multimedia University, Melaka. She was in practice for about one-and-a-half year in Banking Litigation and Conveyancing. In 2012, she joined Bank Rakyat as their Legal Advisor. After her marriage, she decided to move to Melaka where she started as an Academic in Multimedia University. She teaches Islamic Banking and Finance Law, Land Law, Family Law and Islamic Family Law.

**Dr Azizah Mohd** is Associate Professor at the Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). At present, she is teaching Islamic Family law and Usul al-Fiqh. Her niche area is Islamic Family law and protection of children's rights in Islam, especially the law on illegitimate and abandoned children. She was the Co-ordinator for IIUM Legal Clinic at AIKOL from 2013 to 2017. She obtained her PhD degree from the same University in the year 2005. Her dissertation mainly examines rules relating to Foundlings (laqit) under Islamic law and the law in Malaysia. The first book authored by her is *Protection and Adoption of Abandoned Children in Malaysia: A Comparative Overview with the Islamic Law* published in 2008. She co-authored her latest book *Islamic Family Law in Malaysia* published in 2016. She writes a number of articles on issues relating to women's rights, children's rights and child protection as well as means of protecting children through adoption, foster care and breastfeeding.

**Azwina Wati Abdull Manaf** is currently a Lecturer at Faculty of Law, Multimedia University Malaysia (MMU). She was admitted to the bar in 2005 and practised law as an Advocate and Solicitor for six years before she joined MMU in 2012. She is involved in several types of job scope in drafting corporate documentation such as facility documentations for several banks including Kuwait Finance House and assisted in conducting several joint venture and due diligence for companies. In addition, she also practised litigation law and conveyancing. She obtained her LLB from the International Islamic University Malaysia in 2004 and LLM in 2010. She is currently pursuing her PhD in Law in a local university. In MMU, she is the Chair of the University Research Centre, that is, Centre of Shari'ah Law. She published article (indexed and non-indexed) and conference proceeding. Her research interest is in Islamic finance and Shari'ah law.

**Dr Badruddin Hj Ibrahim** is an Associate Professor at Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). He obtained his LLB. (Shari'ah & Law) and LLM. (Shari'ah & Law) from the International Islamic University Islamabad in 1989 and 1993, respectively. He joined the AIKOL in 1995 as a Lecturer. In 2006, he obtained his PhD from the same university. He held various administrative posts at the Kulliyah and University such as, Academic Advisor, Head of Department of Islamic Law and Board Member of IIUM Institute of Islamic Banking and Finance. He was also the Deputy Dean, Academic Affairs, AIKOL, IIUM and the Head of International Waqf Research Institute of IIUM. He is currently the Chairman of the Shari'ah Committee for Alliance Islamic Bank. Among the subjects he taught was Islamic jurisprudence, Islamic Legal Maxim, Siyasa Shar'iyah, Islamic Law of Transaction and Human Rights in Islam. He has presented papers in various seminars and conferences both locally and abroad. Apart from that, he has published a number of articles related to wealth, hibah, Islamic Banking and waqf. He co-authored his latest book *Islamic Family Law in Malaysia* published in 2016.

**Ho Wen Hui** is currently a part-time Legal Researcher and Law student at the Faculty of Law, Multimedia University, Melaka. She has participated in a project entitled: Islamic Fintech in Malaysia: A Proposed Legal Framework. Other than Islamic Banking and Finance Law, her areas of interest and legal research also revolve around human rights law as well as consumer law because these areas are closely related to her vehement support for legal empowerment. Discovering her passion in writing and law, she is trying to encourage others, especially other law students to embark on a journey of legal research and writing. She presently holds the position of Director in the Media and Information Division of the Multimedia University Law Society. The main purposes of the Division are to equip the fundamentals of legal research and writing in students and provide a canvas for students to pen down their voices and thoughts pertaining to the legal field. In that capacity, she is in charge of heading a team running an online website, which serves as a platform for law students to showcase their legal writing and research skills.

**Dr Ibtisam @ Ilyana Ilias** is currently a Senior Lecturer at the Faculty of Law, MARA University of Technology, Malaysia. She obtained her PhD in Law from the International Islamic University Malaysia and LLM from the University of Malaya. She holds her LLB from the International Islamic University Malaysia. She teaches degree and master students including the subject of Consumer Protection Law, Sales of Goods and Hire–Purchase, Law of Contract, Malaysian Islamic Legal System and Malaysian Legal System. Her research interest focusses on the areas of consumer law particularly financial consumer protection, commercial law and Islamic banking. Prior to joining the university, she was an Assistant Manager at Bank Muamalat Malaysia Berhad where she served for six years.

**Jamaludin Ibrahim** is a Senior Academic Fellow at the Department of Information System, Kulliyyah of ICT (KICT), International Islamic University Malaysia (IIUM). He has been with IIUM since October 2009. Before joining IIUM, he was an Adjunct Professor at KICT teaching postgraduate courses in IT Governance and Information Security Policy and Strategy. He was with the industry from 1995 to 2009 as Managing Director and CEO for a number of ICT and media companies such as Time Quantum (a subsidiary of Time Telekom), Ramgate Systems (a subsidiary of DRB-HICOM), MegaTV (a subsidiary of TV3) and Multimedia Division (a business division of MRCB). Before joining the industry, he was the founding Dean and an Associate Professor at the Faculty of Computer Science and Information System, Universiti Teknologi Malaysia (UTM). He was at UTM between 1980 and 1995. He was educated in the United States and received a BSc with double majors in Mathematics and Economics (1978) from Northern Illinois University, Dekalb, Illinois. He went on to pursue MSc in Operations Research (1980) at Renselaer Polytechnic Institute, Troy, New York. He teaches undergraduate courses in Information Security, Technopreneurship, Management Information System and Introduction to Computer. He also teaches postgraduate courses in Business Continuity Disaster Recovery; Physical Security; Cybersecurity Challenges, Policy and Strategy; Project Management; IT Professional Practices and Mobile Communication.

He is also active in consultancy, as a Business Continuity and Disaster Recovery Consultant to Oil & Gas MNCs; and as an Information Strategic Planning Consultant. His main research interests are in business model design, data analytics, cybersecurity and enterprise architecture.

**Sr Dr Khairuddin Abdul Rashid** is former Professor in Quantity Surveying and Head, Procurement and Project Delivery System Research Unit, International Islamic University Malaysia (IIUM). He worked as a Quantity Surveyor, initially in London and in Malaysia for 18 years, and taught at a University in the United Kingdom for three years prior to joining IIUM in 2000. At IIUM, he established the Department of Quantity Surveying, the Bachelor of Quantity Surveying, MBA in Construction Business and MSc Quantity Surveying programmes. His past positions include as Senior Quantity Surveyor, PWD Malaysia; Senior Manager, Construction Industry Development Board Malaysia; Head

of Projects' Audit Unit (Unit Naziran) PWD Malaysia; and at IIUM, as Head of Department, Deputy Dean of Academic Affairs and Dean of Kulliyah (Faculty) of Architecture and Environmental Design. Among others, Sr Dr Khairuddin is Co-founder and Co-editor-in-Chief of the *Journal of Quantity Surveying and Construction Business*, founder and former Editor-in-Chief of the *Journal of Architecture, Planning and Construction Management*, Co-founder and Co-chair of the Management in Construction Researchers' Association, International Multi-national Joint Venture for Construction Works, and Shari'ah Compliant in Construction Conference series. He has authored, co-authored, edited and co-edited 16 books and more than 200 technical papers and presentations on quantity surveying, procurement, *Shari'ah-compliant contract*, *zakat* and *wakaf* and Public Private Partnerships and Private Finance Initiative (PPP/PFI).

**Dr M. Kabir Hassan** is Professor of Finance in the Department of Economics and Finance in the University of New Orleans. He currently holds two endowed Chairs – Hibernia Professor of Economics and Finance and Bank One Professor in Business – in the University of New Orleans. Professor Hassan is the winner of the 2016 Islamic Development Bank (IDB) Prize in Islamic Banking and Finance. Professor Hassan received his BA in Economics and Mathematics from Gustavus Adolphus College, Minnesota, United States, MA in Economics and PhD in Finance from the University of Nebraska-Lincoln, United States, respectively. Professor Hassan is a Financial Economist with consulting, research and teaching experiences in development finance, money and capital markets, Islamic finance, corporate finance, investments, monetary economics, macroeconomics, Islamic banking and finance and international trade and finance. Professor Hassan has done consulting work for the World Bank, International Monetary Fund, African Development Bank, Transparency International-Bangladesh, Islamic Development Bank, Government of Turkey and many private organisations. Professor Hassan has 200 papers published in refereed academic journals. He is the Editor of *Journal of Islamic Economics, Banking and Finance* (ABDC and ABS), *International Journal of Islamic and Middle Eastern Finance and Management* (ABDC and ABS) and Co-editor of *Journal of Economic Cooperation and Development* (SCOPUS). Professor Hassan has also edited and published nine books. Kabir is the Co-editor (with Mervyn K. Lewis) of *Handbook of Islamic Banking, and Islamic Finance*, *The International Library of Critical Writings in Economics* (Edward Elgar, 2007), *Handbook on Islam and Economic Life* (Edward Elgar, 2014) and Co-editor (with Michael Mahlknecht) *Islamic Capital Market: Products and Strategies* (John Wiley & Sons, 2011). He is co-author of *Islamic Entrepreneurship* (Routledge UK, 2010). Dr Hassan has written the first textbook (co-authored with Dr Kayed and Dr Oseni) on Islamic finance that was published by Pearson in 2013.

**Dr Marhanum Che Mohd Salleh** obtained a PhD degree in Islamic Banking and Finance from the International Islamic University Malaysia (IIUM) in 2014, a Masters in Islamic Finance from the IIUM in 2009 and a Bachelor's degree in Shari'ah and Management (with Distinction) from the University of Malaya in 2006. She is currently an Assistant Professor at the Department of Finance,

IIUM and also a member of the Shari'ah Committee of Syarikat Takaful Malaysia Berhad. Her areas of expertise include Islamic Finance, Banking, Takaful, Shari'ah, Fiqh Mua'malat, Islamic marketing and Waqf. She has been actively engaged in various research projects including the one funded by the Malaysian Ministry of Higher Education since 2013 as well as IIUM. She has published her works in national and international journals including in the *Australian Journal of Basic and Applied Sciences*, *Journal of Islamic Finance and Business Research*, *Journal of Islamic Finance*, *Asian Academy of Management Journal* and *International Journal of at-Thaqafah*.

**Dr Mohamad Asmadi Abdullah** is currently an Associate Professor at Associate Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). He did his first degree in LLB in 1997 and LLB (Shari'ah) in 1998 at AIKOL, IIUM. He also completed his Master's degree at the same institution and was awarded with a Master of Comparative Law in 1999. He obtained his PhD in Islamic Law of inheritance at University of Durham, United Kingdom, in 2006. His areas of interest are Islamic estate planning, Islamic wealth management, Probate and Islamic law of succession, Islamic state and Islamic law of transaction. From 2011 to 2013, he served as a Shari'ah Committee member of OSK Investment Bank. Currently, he is a member of Shari'ah Committee of OCBC Al-Amin Bank Berhad.

**Ir Dr Mohd. Fairullazi Ayob** is an Assistant Professor at the Department of Quantity Surveying, Kulliyah of Architecture and Environmental Design (KAED), International Islamic University Malaysia (IIUM). He joined the academic profession in July 2013 after completed a three-year research Doctorate programme at the IIUM. His doctoral research is entitled 'Development of Life Cycle Cost Strategy and Protocol on Cost Data Input in Malaysia'. He is recognised with the award of 'Best Student for Doctor of Philosophy (Built Environment)' in 30th Convocation of International Islamic University Malaysia. Added to this, the 'Best Paper 2014' and 'Special Mention Paper 2015' award in 13th and 14th Management in Construction Researchers' Association (MiCRA) Annual Conference and General Meeting, Silver Medal in International Research Invention and Innovation Exhibition 2014 (IRIIE, 2014) and Silver Medal in Invention and Innovation Awards 2019 of Malaysia Technology Expo (MTE, 2019). He is a registered Professional Engineer (P.Eng.) with Board of Engineers Malaysia and had undergone several years' practical experience in the construction projects as an Engineer (civil) with a construction company before pursuing three-year study in PhD and then started his career in academic, research and consultancy professions. Besides, he was awarded with 'University Outstanding Promising Researcher 2016' by the Office of the Deputy Rector (Research and Innovation), IIUM. He has held several administrative and academic positions including Information and Communication Technology Coordinator, Member of 20 Years KAED Anniversary Celebration, Member of Management Committee Meeting, Coordinator and Organising Committee and Scientific Review Committee of the MiCRA Annual Conference and General Meeting.

**Dr Mohd Yazid Zul Kepli** is a Law Lecturer and Consultant at the International Islamic University Malaysia (IIUM). Prior to this, he was an Advocate and Solicitor in Messrs Yazid. Dr Mohd Yazid completed his doctorate in international trade law from the University of Hong Kong. Prior to this, he graduated with law degree from the IIUM in 2005. He completed his Master degree and Sharī'ah diploma from the same university. He is currently active in conducting training and consultancy related to international trade law subjects including International Trade Law, Cryptocurrency and Fintech, Carriage of Goods by Sea, Shipping Law and Maritime Law. He is also involved in teaching anti-money laundering and counter financing of terrorism (AML/CFT) law especially to bankers and financial institutions. In addition, he is also involved in consultations for governments and companies in the area of security and counter-terrorism. His main publications include *Anti-Money Laundering and Counter Financing of Terrorism Law in Malaysia* (LexisNexis, 2018), an authoritative textbook on AML/CFT published by LexisNexis, and *Introduction to Islamic Finance* by the CLJ Publication (2015).

**Dr Muhammad Laeba** is an Associate Professor at the Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM). He obtained his Bachelor's and Master's degrees in Fiqh and Usul al-Fiqh in the Kulliyah of Islamic Revealed Knowledge & Heritage, IIUM in 2001 and 2003, respectively. He completed his PhD in Fiqh from the same Kulliyah and University in 2007. From 2010, he has served as a committee member of Kulliyah Postgraduate Committee and since 2009, he has been a committee member of Islamic Enrichment Unit. He also sat in various committees at Kulliyah level. In 2011, he was appointed as an Editor of *Al-Nur Journal of the Graduate School*, Fattani University. He specialises in Islamic law, Islamic finance, humanities, religious studies and Islamic studies. He has actively presented papers in various local and International conferences and has published a number of writings in this area in local and international journals.

**Dato' Ng See Teong** is a PhD student at the Institute of Islamic Banking and Finance, the International Islamic University Malaysia (IIUM). He graduated with LLB. (Hons.) from the University of Wolverhampton, United Kingdom, and Certificate of Legal Practice. He also holds an LLM in Islamic Banking and Finance from IIUM and also a postgraduate Diploma in Syariah Law and Legal Practice from IIUM. Dato' Ng See Teong is also an Associate Fellow of the Malaysian Institute of Management and an ordinary member of the Malaysian Institute of Human Resource Management. He is an Advocate and Solicitor of the High Court of Malaya and currently a partner of Ibrahim Kamaruddin & Associates, Jerantut, Pahang.

**Nik Nuun Asma Nik Sulaiman** is a Senior Consultant for graduate training at Asian Banking School. Prior to that, she worked as a Compliance Officer at Maybank Berhad for more than 20 years. She completed her Master degree with distinction in the Institute of Islamic Banking and Finance, International Islamic University Malaysia for dissertation entitled 'The Extent of Islamic Banks' Adherence to AML/CFT Compliance Programme in Malaysia' in 2011.



**Noor Mahinar Abu Bakar** is a PhD student in Law at Ahmad Ibrahim Kulliyah of Law of International Islamic University Malaysia (IIUM). Her doctoral research investigates the unfair contract terms in Islamic banking consumer contracts. She is also concerned about Islamic ethics in Islamic banking practices. She graduated with LLB (Hons.) from Staffordshire University, United Kingdom. She holds an LLM in Islamic Banking and Finance from IIUM and Chartered Islamic Professional from the International Centre for Education in Islamic Finance, Malaysia. She has worked at various investment banks such as Botly Securities, TA Securities, Osk Securities, and RHB Investment Bank since 1992 until 2016 and hence has a wide exposure to Malaysian capital market. Currently, she is a Tutor at Open University Malaysia for Islamic Finance, International Finance, Islamic Financial Management, Industrial & Employment Law, Company Law, and Introduction to Law. She is a Chartered professional of Islamic Finance of the professional body of Chartered Institute of Islamic Finance Professional that serve the Islamic finance industry and its stakeholder. Her research interest includes Islamic banking and finance, Islamic wealth management, Islamic economics, comparative banking ethics (Islamic and conventional banking), consumer law and Malaysian capital market. Thus, far she has written a number of papers and presented at several international conferences and published papers in international journals. Some of the papers presented have been awarded as Best Paper Award and nominated as Best Presenter in one conference.

**Dr Norhashimah Mohd Yasin** is a Professor at Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM), Malaysia. She obtained her LLB (Hons.) in 1987, Master of Comparative Laws in 1989 from the same university. She received her LLM and PhD in Law in 1990 and 1994, respectively, from the University of Warwick, United Kingdom, in the area of Comparative Banking Law. Prof. Norhashimah regularly conducts lectures and presents papers at conferences, both locally and internationally, in the areas of comparative banking laws, Islamic insurance (Takaful), money laundering and terrorism financing. She has been a regular Trainer for Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Investigation Programme (CFIP) organised by Bank Negara Malaysia (BNM). She has also conducted a series of AML/CFT trainings in commercial banks such as Maybank which is known as Certified Compliance Officers Programme as well as Development Financial Institutions Act (DFIA) 2002. She has published articles in both local and international journals. She is the author of three celebrated books namely *Legal Aspects of Money Laundering from the Common Law Perspective* (LexisNexis, 2007) and *Islamisation/Malaynisation: The Role of Islamic Law in the Economic Development of Malaysia* (A. S. Noordeen, 1996) as well as *Anti-Money Laundering and Counter Financing of Terrorism in Malaysia* (LexisNexis, 2018). She is also a contributing Editor to Annotated Statute on Anti-Money Laundering and Anti-Terrorism Financing Act 2001 and Takaful Act 1984. Prof. Norhashimah is a qualified Advocate and Solicitor of the High Court of Malaya and a member of Shari'ah Committee for both SME Bank and UOB (Malaysia), respectively.

**To' Puan Dr Nor Asiah Mohamad** received her first degree in (LLB Hons.) (1988), double-degree in LLB in Sharī'ah (1989) and Master of Comparative Laws (LLM in 1992) as well as PhD in Law (2003) from Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She serves as an Associate Professor of Law at the Civil Law Department, AIKOL, IIUM (1989–2019) and her area of specialisation are land law, strata titles law, Islamic endowment or waqf and housing. She has deep and limitless interest in the area of harmonisation of laws. She belonged to the first batch of LLB. in Sharī'ah class in 1989. She has contributed immensely in student development and has held various academic-administrative positions such as Principal, Director for Student Development, Head of Civil Law Department and her current post is Deputy Dean of Postgraduate Studies. She has taken lead in various research and consultancy work including Water Commission Project, Strata Titles Problems and Management, Residential Tenancies, Waqf as well as Housing. She also serves in Harmonisation of Laws Committee at the National Level. She authored book on waqf, land law as well as equity and equitable remedies.

**Raja Madihah Raja Alias** graduated for her LLB (Hons.) and LLM in Islamic Banking and Finance from Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). As a means of further enhancing her knowledge and research, she is currently pursuing a PhD in Law researching in the area of anti-money laundering and anti-terrorism financing on the money services business sector in Malaysia. Prior to her doctorate study, she gained vast experience throughout her legal practice as a practising lawyer or an Advocate and Solicitor in various areas of laws which include, but not limited, to civil litigation, drafting and rendering legal opinions and had attended conveyancing and corporate matters. She also had appeared and conducted hearings, appeals and trials proceedings before the Court of Law in Malaysia during her tenure of practice in the legal profession. In addition, thereto, in keeping abreast with the law and current developments, she is also active in presenting and/or participating in various local and international conferences in several countries for instance in Thailand, Philippines, Singapore, Indonesia and Brunei.

**Dr Romzie Rosman** is an Associate Professor at the International Islamic University Malaysia (IIUM), specialising in Islamic banking and finance. He graduated with a BA (Hons.) in Accounting and Finance from Lancaster University, United Kingdom, in 2000. He was awarded with a Master of Business Administration (Islamic banking and finance) in 2005 and a PhD. (Islamic banking and finance) in 2012 from the IIUM. He has published his research in several referred journals, such as *Journal of Economic Cooperation and Development*, *Pacific-Basin Finance Journal* and *Journal of Islamic Accounting and Business Research*. His research interests include accounting and Islamic finance.

**Dr Rusni Hassan** is a Professor at the IIUM Institute of Islamic Banking and Finance, International Islamic University Malaysia. She graduated with LLB (Hons.), LLB (Sharī'ah) (First Class), Master of Comparative Laws and PhD

in Law. She teaches courses on the Legal Aspects and Contemporary Issues in Islamic finance for postgraduate students. She is an active Researcher, Consultant and Academic Expert in teaching IF courses, supervising master and PhD students as well as involve in IF curriculum development and accreditation. She has published five books; many chapters in book and more than 80 articles in local and international journals. She received a number of awards at the university level including Promising Researcher Award (2012) and IIUM Top 10 Contributor for publication in IF (2017). She is the Shari'ah Committee (SC) member for a number of Islamic banks and Takaful company in Malaysia. She is also the SC member for Association of Islamic Banking Institutions Malaysia and the member of SAC of Central Bank Malaysia. Internationally, she is the SC member for HDFC Maldives and also Advisor to Women on Boards Maldives. She is a registered Shari'ah Advisor in the Securities Commission Malaysia. She is the Secretary and Assistant Secretary for the Association of Shari'ah Advisors in Islamic Finance Malaysia and the International Council of Islamic Finance Educators, respectively. She is an expert Trainer in seminars, workshops, conferences and trainings on various IF issues. Her works and contribution to IF has been recognised internationally when she was listed among the Top 10 Women in IF (2013); Most Talented Woman Professional in Islamic Banking (2014); Women of Distinction in IF and Law (2016); the 50 Influential Women (2017) in Business and Finance; Distinguished Woman in Management (2018) and the Top 50 Most Influential Women in Islamic Finance (2018).

**Dr Safinar Salleh** is an Assistant Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She obtained her Bachelor in Shari'ah (Hons.) from Al-Azhar University Cairo in 1999. She pursued her Masters in Shari'ah and became a tutor in the Department of Fiqh and Usul, Academy of Islamic Studies, University of Malaya, where she started developing her expertise in the area of Islamic law of Contracts and completed a dissertation on Islamic pawn broking. Upon completion of her Master in 2005, she took up a Lecturer position at AIKOL, IIUM. In July 2013, she obtained her PhD from Glasgow Caledonian University and her research was on Takaful (Islamic insurance). Currently, Dr Safinar is a Shari'ah Committee member for a number of financial institutions in Malaysia including MUFG Bank (Malaysia) Berhad, Swiss Reinsurance Company Ltd. (Swiss Re Retakaful) and Export–Import Bank of Malaysia Berhad (EXIM Bank). She is a Shari'ah Committee member of MUA Life Ltd. in Mauritius.

**Dr Sharifah Zubaidah Syed Abdul Kader** is Associate Professor at the Civil Law Department of Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She has been serving IIUM for 26 years as a Law Lecturer, teaching subjects like Land Law and Equity. She is a contributing author of several books, including, *Principles of Malaysian Land Law* (LexisNexis, 2008) and *A Student Guide to Equity and Equitable Principles* (LexisNexis, 2016). Dr Sharifah Zubaidah has held posts such as the Chief Editor of the *IIUM Law Journal*, Deputy Dean (Academic Affairs) of AIKOL and Director of the

International Centre for Waqf Research. Her main areas of interest are land law as well as waqf governance and management. She is also a non-practising Advocate and Solicitor of the High Court of Malaya, previously practicing in Nik Saghir, Yaacob & Ismail, Kuala Lumpur.

**Dr. Siti Salwani Razali** is a Lecturer/Associate Professor at the Department of Business Administration of the Kuliyyah of Economics and Management Studies of the International Islamic University Malaysia (IIUM) since 2001. She obtained her Bachelor of Laws and Master of Comparative Laws both from IIUM. She was conferred with PhD in Business Law from University Putra Malaysia and her thesis specialised in Islamic Law of Contract. She has vast experience in Sharī'ah, Takaful and Islamic finance and has a close relationship with the industry, hence she was appointed as an expert in these areas. Currently, she is the Sharī'ah Panel for Silver-Birds Group of Company, Board Member for the Institute of Islamic Banking and Finance IIUM and Associate Advisor for AFTAAS Sharī'ah Advisory Sdn. Bhd and Sharī'ah consultant for KAH advisory and legal firm. She is also the Consultant and Trainer for JAWHAR under Prime Minister's Department Office and has helped in developing the contract for Umrah at the national level. She has written several books, journals and presented in several international conferences and published papers in international journals. Some of the papers presented have been awarded the Best Paper Award. She has authored several academic books including *Islamic Law of Contract* (Cengage Learning, 2010), *Malaysian Business Law* (Pearson Custom Pub., 2011) and *Commercial Law* (Prentice Hall, 2008). Finally, she teaches Commercial Law, Company Law, Introduction to Islamic Commercial Law, and Malaysian Business Law at IIUM.

**Dr. Sonny Zuhuda** is an Associate Professor and Cyber Law Course Coordinator at the Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, the International Islamic University Malaysia. His main interest is the intersection of law and technology, especially concerning information law, Internet governance, information security and data protection law. Sonny completed his PhD in Information Security Law from IIUM in 2010. Sonny is a recipient of Web-science Doctoral summer fellowship from the Oxford Internet Institute, the University of Oxford, United Kingdom, and a two-time Fellow of the US-based Internet Corporation for Assigned Names and Numbers. He is also a member of the global researchers' Cyber Stewards Network hosted by the Citizen Lab, University of Toronto, Canada. He recently was a Visiting Researcher at the University of Toronto, Canada (2018) and the University of Leiden, the Netherlands (2019). Sonny's recent research works include critical information infrastructure protection, data theft, digital surveillance and privacy, Internet of things legal framework, as well as the open data policy in Malaysia. His consulting works include the formulation of Malaysian National Cyber Security Policy which became the policy basis for the development of cyber security laws and governance in the country. In the past few years, Sonny advised the Office of Personal Data Protection Commissioner of Malaysia on various aspects of data protection law, from training to the codes of practice, and from the issues of trans-border data flow to data breach notifications.

**Dr. Suhaimi Mhd Sarif** is Associate Professor at the Department of Business Administration, Faculty of Economics and Management Sciences, International Islamic University Malaysia (IIUM). He has been with IIUM since February 2000. Prior to that, he was with a local constructions firm for two years and with an international plantation company for a few years. He received his academic and industrial training in Malaysia and doctoral training in commerce from Murdoch University, Perth, Western Australia, Australia. At IIUM, he used to hold a few administrative positions, namely Fellow of Student Hostel (2001–2002), Principal of Student Hostel (2002–2003), Head of Department (2012–2016), Deputy Director of Corporate Strategy (2017) and Director of Alumni Division (2018). He is also a member of Malaysian Institute of Management, Malaysia Nature Society, World Academy of Islamic Management and International Council for Islamic Finance Educators. He used to be working group committee of Quality Management Systems from Islamic Perspectives MS 1900:2014, *Halalan-Toyyiban* Assurance Pipeline – Part 1: Management system requirements for transportation of goods and/or cargo chain services MS 2400-1:2010, *Halalan-Toyyiban* Assurance Pipeline – Part 2: Management system requirements for warehousing and related activities MS 2400-2:2010 and *Halalan-Toyyiban* Assurance Pipeline – Part 3: Management system requirements for retailing MS 2400-3:2010 at SIRIM. Currently, he is a committee member in IIUM flagship project of sustainable development goals in the construction of a local mosque. His research interests include social entrepreneurship, business ethics, knowledge transfer, strategic management, *Tawhidic* paradigm in management and innovation management.

**Surianom Miskam** is a Lecturer at the Faculty of Syariah and Law, Kolej Universiti Islam Antarabangsa Selangor (KUIS). She holds LLB (Hons.) from the International Islamic University Malaysia and LLM from the National University of Malaysia. Prior to joining KUIS in 2007, she was a Magistrate at Mahkamah Majistret Sungai Petani, Kedah and Mahkamah Majistret Gurun, Kedah. Her research interests include Islamic finance, company law and banking law. She is the co-author of *Commercial Law in Malaysia: Theories and Principles* (2009) and *Halal Legal Spectrum: Quick Reference across the Region* (2017).

**Syed Fadhil Hanafi Syed A Rahman** is currently serving as a Senior Legal Counsel at Legal Department, Bank Negara Malaysia (Central Bank of Malaysia) with the responsibility to advise the Central Bank primarily on laws concerning foreign exchange, money services business, anti-money laundering and terrorism financing and sukuk. He has experience in advising the Central Bank in several high profile cases including the probe into Malaysia Development Berhad and the Royal Commission of Inquiry on Bank Negara Malaysia's Forex Losses in the 1990s. He is also a non-practising Syarie Lawyer of Federal Territories Malaysia. He holds Master of Comparative Law, First-class Honours Bachelor Degree in Shari'ah Law and First-class Honours Bachelor Degree in Law from the International Islamic University Malaysia.

**Syuhaida Aeni Binti Mat Ali** is a Senior Lecturer at the Faculty of Law, Universiti Teknologi Mara (UiTM), Shah Alam since 2007. She teaches Islamic Banking and Securities, Banking Law and Practices, Remedies: Bankruptcy and Winding Up, Personal and Corporate Insolvency. She supervises both postgraduate as well as undergraduate students. She obtained her PhD from the International Islamic University Malaysia (IIUM) in 2017. Her PhD is on Islamic Banking entitled 'A Study on Laws applicable to Musharakah Mutanaqisah Home Financing in Malaysia'. She also obtained her Master of Comparative Laws, LLB (Hons.) and Diploma of Syariah Law and Legal Practice from the IIUM. She has presented papers in conferences and seminars in the field of Islamic finance and authored several articles at various journals. Prior to joining UiTM, She was an Advocate and Solicitor of High Court of Malaya. She had practiced with the legal firm of Azhar & Wong and has vast experience in handling civil banking litigation cases. She was also a Syariah practitioner.

**Dr Umar A. Oseni** is the Acting Chief Executive Officer and Executive Director (Legal & Compliance) of the International Islamic Liquidity Management Corporation, a supranational financial institution headquartered in Kuala Lumpur. Prior to this, he was an Associate Professor of Law and Regulation of Islamic Finance at the International Islamic University Malaysia. Umar was also a Visiting Fellow at the Islamic Legal Studies Program of the Harvard Law School, Harvard University from 2011 to 2012. Apart from being a Harvard-certified negotiator and dispute resolution expert, Umar has consulted for numerous bodies in the areas of law and regulation of Islamic finance, Islamic finance research and publication and alternative dispute resolution in Islamic law. He has also published numerous articles in refereed journals and books in conflict management and avoidance; alternative dispute resolution; arbitration, comparative law; Islamic finance and international commercial arbitration. He is a member of the following professional organisations: Mediators Beyond Borders; Young International Arbitration Group, London Court of International Arbitration; Nigerian Bar Association; Association of Professional Negotiators and Mediators; and Mediation & Conflict Management Group. He is also an Associate Member of the International Centre for Dispute Resolution.

**Dr Uzaimah Ibrahim** is currently an Assistant Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She did her LLB, LLB (Sharī'ah) and Master of Comparative Laws in AIKOL, IIUM. She obtained PhD from the University of Wales, United Kingdom. Dr Uzaimah qualified as a Syariah lawyer in 1995. In 2005, she served as Deputy Director of IIUM Islamic Banking and Finance Institute, an international centre for Islamic financial education and research. She has conducted various research on Islamic commerce law, Islamic law, banking law, derivative, Islamic securitisation, takaful and corporate social responsibility. She has also made numerous presentations in seminars and workshops and contributed a chapter in *Halsbury's Laws of Malaysia* published by the Malayan Law Journal. Dr Uzaimah has been a member of the Sharī'ah Supervisory Council of Bank Islam Malaysia Berhad since 2009. She has also served as a Sharī'ah Committee member at Hong Leong MISG Takaful Berhad since 2006. Prior to that, she was also a Sharī'ah Advisor at Hong Leong Islamic Bank Berhad.

# Acknowledgements

Editing a book on emerging legal issues in one of the most advanced Islamic financial services industries in the world - Malaysia - may seem to be challenging, but all efforts put into it are rewarding. There is always the need to clarify complex legal and Shari'ah issues in Islamic financial transactions. In doing so, numerous people would have contributed to the success of such endeavour. While efforts have been made to identify the key people, who contributed significantly to this book, others who are too numerous to mention are also appreciated.

We would like to thank the organisers of the Seventh International Conference on Law and Society held in Sabah, Malaysia, from 11 to 13 April 2018, particularly Ahmad Ibrahim Kulliyah (Faculty) of Laws, International Islamic University Malaysia. We also thank Professor Ida Madieha Abdul Ghani Azmi who came up with the idea of publishing a select number of papers on emerging legal issues in Islamic finance law in Malaysia.

One of the contributors, Associate Professor Nor Asiah Mohamad, coordinated all communications with authors from the beginning until the final submission of the manuscript. Her patience, perseverance and professionalism in the entire iterative peer review process contributed to the success of this book.

Thanks to everyone on the Emerald publishing team, particularly the commissioning editor and the production editor. We hope the efforts in clarifying knotty Shari'ah and legal issues would spur future research in this field and further guide Islamic finance professionals in handling relevant matters.

Finally, the book focusses on emerging legal, Shari'ah and regulatory issues in the Islamic finance industry in Malaysia. Even though the book focusses on the Malaysian legal framework, the issues raised and discussed cut across borders, and as such, could be transposed to other Islamic finance jurisdictions.

Umar A. Oseni, M. Kabir Hassan and Rusni Hassan

7 March 2019

*This page intentionally left blank*



Part I

## **Introduction**

*This page intentionally left blank*

## Chapter 1

# Introduction: Revisiting the Confines and Significance of Islamic Finance Law

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

### Introduction

Islamic finance law is becoming increasingly important in any discourse involving the Islamic financial services industry. This important aspect of Islamic finance comprises both the legal and Sharī'ah aspects from the pre-contract stage up to the post-execution phase and even post-contract termination phase. Such an all-embracing understanding of Islamic finance law is significant in appreciating the dynamics of such aspect of law in the modern Islamic financial services industry. While considering the confines and significance of Islamic finance law, this book focuses on emerging issues in legal and Sharī'ah aspects in Malaysia.

In recent years, Malaysia has assumed the position of the world's most comprehensive and sophisticated Islamic finance marketplace (Abdul Manaf et al., 2014). The country's Islamic finance leadership at the international level is largely characterised by the thriving and integrated market components, comprising of competitive financial institutions offering Sharī'ah-compliant banking, takaful, Islamic capital market and Islamic money market products and services (Oseni & Ahmad, 2016). In 2017, Malaysia (9.1%) was ranked fourth among twelve jurisdictions that collectively account for 92% of the global Islamic banking assets, behind Iran (34.4%), Saudi Arabia (20.4%) and the United Arab Emirates (9.3%) (IFSB, 2018). Comprising a significant share of 24.9% of the domestic total banking assets as at the second quarter of 2017 and contributing more than 70% of average increase in bank financing, the Malaysian Islamic banks are set to become the growth drivers for the country's banking industry. Bank Negara Malaysia (BNM) has determined that the sustained domestic demand for Sharī'ah-compliant protection contributed to the remarkable growth of the Malaysian takaful industry in 2017 (BNM, 2017). The combined net contributions of family and general takaful business increased by 9.5% (2016: 10.6%) up to RM8.3 billion, while the net contributions rose up to 15.2% (2016: 14.6%) in 2017. Malaysia also continued to be the key leader for both *sukuk* outstanding

and issuance with a market share of 51% and 36.2%, respectively, as at end-2017, owing to the issuance of innovative *sukuk* such as the world's first green *sukuk* of Tadau Energy of Malaysia.

Another strong value proposition of the Malaysian Islamic finance marketplace lies in the orderly and sound implementation of dedicated Islamic finance law, as well as a robust regulatory and Shari'ah governance framework. This is highly important to create an enabling environment in which financial institutions and other stakeholders of the Malaysian Islamic financial industry will benefit from high regulatory responsiveness to the changing market behaviour, macroeconomic events and the global market trends (Engku Ali, 2008).

With today's rapid product innovation through Fintech and blockchain technology and the greater demand for an increasingly stringent banking regulation and supervision to address valid concerns about consumer protection and cybersecurity, this book aims to provide a critical insight on the need to revisit the value relevance of the current Islamic finance laws and regulations in Malaysia. A thorough relook into the confines and significance of the existing Shari'ah and legal frameworks for Islamic finance operations in the age of disruption and the dawn of the Fourth Industrial Revolution is highly necessary for several reasons such as to: (1) provide the industry with clarity with regard to the adherence to Shari'ah principles on several areas including risk management, corporate governance, transparency and customer protection; (2) ensure the certainty and enforceability of Shari'ah-based contracts; (3) promote consistency and conformity with the international Shari'ah-compliant best practices; (4) provide a level-playing field with conventional finance through cost effectiveness; and (5) instil investor confidence on the robust and vibrant Islamic capital markets in Malaysia.

## Wealth and Consumer Protection

In this book, Chapters 2–5 provide discussions on contemporary legal issues relating to Islamic wealth distribution and consumer protection in Malaysia. In Chapter 2, Hj Ibrahim et al. present the views of the Islamic finance stakeholders with regard to the practice of Islamic banks in Malaysia in handling unlawful sources of funds, particularly related to the acceptance of funds for deposit and investment and extension of credits to customers who earn from illegitimate activities. These views were gathered through a series of structured survey of mostly officers of Shari'ah departments and members of Shari'ah committee of Islamic banks. Hj Ibrahim et al. reveal that while majority of the respondents agree that the bank has a right to scrutinise the legitimacy of the sources of funds received from customers; however, in practice, less than half of the respondents report that their banks require disclosure about sources of funds from customers for opening saving and investment accounts and payment of financing. This does not come as a surprise, since Islamic banks, as per the resolution by Shari'ah Advisory Council (SAC) of the BNM in its 58th meeting held on 27 April 2006, are allowed to accept any application for the placement of deposit without conducting any

investigation on the Shari'ah-compliance status of the funds, albeit they are not refrained from performing such screening on the received funds.

Hj Ibrahim et al. also show that although the respondents seem not to place any important concern on the need to investigate the legitimacy of the sources of funds, they tend to not proceed with the transaction in the event that they receive information that the funds are derived from non-compliant sources. As for the purification of tainted investment and deposit returns, majority of the respondents opine that only the profits generated from solely unlawful funds should be channelled to charity, and not for the case of the mixture of lawful and unlawful funds. However, in practice, only the latter holds true as less than half of the respondents report that their banks practise such an activity. In respect of financing, there is a congruence between the stakeholders' views and the real practice of banks, whereby no financing should be extended to unlawful or mixed projects, and the payment received from financing activities can be entirely recognised as banks' profits regardless of the legitimacy of its sources.

In Chapter 3, Salleh et al. discuss the issue of nomination for the payment of family takaful benefits. Salleh et al. argue that the current application of conditional *hibah* (gift) as per Islamic Financial Services Act (IFSA) 2013, which allows family takaful participants to freely nominate anyone to be the beneficiaries of the takaful benefits upon their demise based on their discretion, may not reflect the very objectives of Shari'ah. In a case where the nominated beneficiary is not a dependent of the deceased participant, the application of conditional *hibah* in family takaful is viewed by many as denying the right of the deceased's legal heirs to receive takaful moneys. This leeway to decide on the takaful beneficiaries is also seen to violate the fundamental purpose of participation in family takaful – to provide financial assistance that serves as a mean of maintenance to the dependents of the takaful participant after his or her passing. Salleh et al. further expostulate that the application of conditional *hibah* can be contentious as it is only accepted by a small number of Muslim scholars due to its inconsistency with other primary Islamic rulings on *wasiyyah* (bequest), Islamic inheritance, *hibah* and many more. To align the current practice of family takaful with the objectives of Shari'ah, their study, therefore, proposes that the takaful operators in Malaysia should segregate the takaful benefits payable upon the demise of the participant into two accounts. First, the amount payable from the Participant's Account (PA) should be declared as the deceased participants' estate and hence must be distributed in accordance to Islamic inheritance laws (*fara'id*). Second, the sum covered payable from the Participant's Special Account (PSA) is to be paid to the nominated takaful beneficiaries whose criteria will be determined by the SAC and is not subject to *fara'id*. In the event that the PA and the PSA cannot be segregated, the entire payable amount of takaful benefits should be treated as the deceased participant's estate and must be distributed according to *fara'id*.

In Chapter 4, Syed Abdul Kader and Mohamad emphasise on the urgent need to have diverse options for creating security over *waqf* assets in order to facilitate financing of *waqf* property development in Malaysia. From a Shari'ah point of view, Syed Abdul Kader and Mohamad find that it is not permissible to create a charge on *waqf* lands, as practised conventionally under the National Land Code

1965 that would otherwise render the land liable as a security and hence entitle the chargee to seek statutory remedies including sale of the land if the chargor defaults in his payment obligation. This is due to several Sharī'ah restrictions to preserve the nature and characteristics of *waqf* assets which ownership is fully vested in Allah the Almighty – among others, include irrevocability, inalienability and perpetuity. The absence of alternative feasible ways for creating security over *waqf* lands, as a result, has caused financial institutions to have less appetite to finance any *waqf* property development project. The study of Syed Abdul Kader and Mohamad then suggests for the creation of a charge on a lease of *waqf* assets, which is allowed by majority of Muslim jurists to be transferred, sold and pledged. Nevertheless, this proposed alternative approach is not entirely free from legal impediments and hence creates reservations for financiers to opt for this type of security transaction to finance the purchase of a lease on *waqf* lands. These impediments include the ones related to the number of chargor in the charge on a lease is limited to only one, the right of the lessor to forfeit the lease upon the breach of any provisions of the lease or where the lessee becomes a bankrupt or in the case of a company going into liquidation and many more. Syed Abdul Kader and Mohamad also look into the possibility of resorting to a hybrid form of a traditional security transaction in Malaysia called 'Jual-Janji', which is similar to the concept of *bay' al-wafa'* in Islamic commercial jurisprudence for the purpose of financing the development of *waqf* land without compromising its perpetual requirements.

In Chapter 5, Hassan and Ilias explore the roles of *hisbah* (ombuds) institutions for promoting customer protection in Malaysia, particularly in the Sharī'ah-compliant consumer credit industry. Hassan and Ilias begin by arguing that the existing regulators and supervisors, responsible for overseeing consumer credit industry in Malaysia including BNM and Malaysia Co-operative Societies Commission may demonstrate a certain degree of departure from the ideal structure of *hisbah* and hence are subject to several criticisms. The most salient one being the wide spectrum of supervisory responsibilities of these regulators that is not limited to customer protection, covering both Sharī'ah and non-Sharī'ah-compliant institutions. Hassan and Ilias further assert that these multiple functions may consequently lead to the rights of the Islamic products consumers being overlooked in many instances. Given the intricacy of today's financial market structures and products, they urge the need to establish a single regulatory body, which is mandated to ensure the provision of comprehensive protection to all credit consumers in the light of traditional *hisbah* structure. They believe that this revitalisation of *hisbah* institutions in the modern Islamic financial environment is essential to enhance the institutional framework of Islamic consumer credit industry in Malaysia. In doing so, they have prescribed a number of qualitative characteristics that a *muhtasib* must possess to be deemed fit for delivering his or her duties. An effective *muhtasib* must not only be religiously excellent, but also must have adequate expertise and knowledge of contemporaneous financial matters in order to exercise *ijtihad* (independent legal reasoning) on any market query. In the current market setting, a *muhtasib* may be associated with two pertinent roles, namely: (1) the officers who are responsible for ensuring the enforcement

of the country's consumer credit regulations and (2) the ombudsman to adjudicate consumer credit disputes. To conclude, Hassan and Ilias emphasise that the transformation of *hisbah* to a new paradigm is very much in line with the intrinsic purpose of Shari'ah in commanding good and forbidding evil.

## **Regulatory Compliance and Legal Documentation**

Regulatory compliance and issues relating to legal documentation remain a major challenge in the Malaysia's Islamic financial services industry. Chapters 6–11 present studies examining unfair contractual terms in Islamic finance, the impact of anti-money laundering/combating the financing of terrorism (AML/CFT) regulation, default in Islamic financing facility and consumer protection in the context of Islamic banking institutions in Malaysia. In Chapter 6, Noor Mahinar Abu Bakar et al. examine the roles of BNM to protect Islamic banking consumers from unfair contract terms using content analysis of BNM's Financial Stability and Payment Systems Report 2012–2016 and the IFSA 2013. Abu Bakar et al. propound that despite a considerable number of standards and guidelines issued by BNM to enhance fairness, transparency and governance, Islamic banks' customers are far from an exception to the risks of being adversely affected by unfair dealings due to complex product design and multifarious products' terms and conditions. Nevertheless, the study finds that BNM remains committed to exercising pragmatic and inclusive regulatory mechanisms for consumer empowerment in the current banking system. For example, BNM, for the first time, had required two financial service providers to revise their contractual terms, which were identified to be unfair or detrimental to customers' interests in 2015. The study also outlined several other 'market conduct and consumer empowerment' initiatives taken by BNM. These, among others, include reviewing more than 900 banks' advertisements so far to identify and prevent misleading and false information being disseminated and the establishment of 'One-Stop-Contact Centre' known as BNMLINK and BNMTELINK as avenues for consumers to submit their feedbacks and complaints against financial services providers (e.g. disputes over interest rate calculations, fees charged and outstanding balances as well as poor customer services). Moving forward, Abu Bakar et al. proposed that Islamic banks to undertake the value-based intermediation (VBI) strategy developed by BNM for generating sustainable profits while not discounting the need to provide fair and just treatments to their customers. Stronger consumer protection is anticipated to be practised by Islamic banks under the customer-focussed VBI strategy given its underlying principles of good self-governance, transparency and ethical conducts.

In Chapter 7, Mhd Sarif et al. highlight the quandary faced by financial institutions in embracing the new age of digital-economy – while the anti-money laundering regulations are placed to protect the public interest and bring stability to markets, it is argued that such laws also hinder financial innovation. In the context of mobile payment system, Mhd Sarif et al. assert that efforts promoting financial innovation, which is part and parcel of digital economy, is pivotal in instigating an effective transmission of market information, and thus ensuring smooth

electronic financial transactions to take place. In face-to-face interviews with the selected technopreneurs, who heavily rely on mobile payment systems in closing their daily transactions, majority of the informants agree that the introduction of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUA) (Act 613) may hamper the dynamic features of modern days' financial transactions. It creates some sort of 'disturbances' to banks' internal control system (e.g. people, process, information technology system, etc.) and the worst case to the entire global financial ecosystem upon transactions that have been sanctioned by the Act. Nevertheless, it is inarguably important for the regulators to enforce the AML/CFT regulations for safeguarding the country's economy from being misused for illegal endeavours. Building on this, the study of Mhd Sarif et al. conclude that while the imposition of the laws on AML/CFT is necessary, some forms of flexibility must be given by the market regulators to facilitate innovation in the mobile payment system sector.

Efforts towards combating money laundering and terrorism financing were examined from the Shari'ah perspectives in Chapter 8. In the chapter, Raja Alias et al. provide a unique Shari'ah analysis of how Islamic legal principles prohibit money laundering and terrorism financing through the preservation of property and people's wealth. Since the early days of Islam, core principles relating to the preservation of property and the prohibition of unauthorised usurpation of other's wealth are well entrenched in the primary and secondary sources of the Shari'ah. As such, Muslim countries may take the lead in the fight against money laundering and terrorism financing for a better world.

While Chapter 8 focusses on the Shari'ah aspects, Chapter 9 explores the phenomenon of money laundering within the context of legal compliance in Islamic banks in Malaysia. Mohd Yasin et al. analyse the oversight functions at the Malaysian Islamic banks in compliance to the AMLATFPUA 2001. Based on the interview sessions with compliance personnel at eight Islamic banks, Mohd Yasin et al., in general, find that the Islamic banks' oversight functions have significantly improved since the release of BNM's report on the AML/CFT thematic review of banking and insurance sector in 2013. In details, majority of the respondents were able to demonstrate a comprehensive understanding about the requirements stipulated in P28 of the BNM's AML/CFT Guidelines as well as the nature and severity of AML/CFT risks that their banks are exposed to. In respect of the effectiveness of the banks' AML/CFT internal audit function, the respondents have commented that although AML/CFT audit visitation is currently in place, its intensity and robustness may vary from one bank to another and the auditors' knowledge on the AML/CFT Guidelines has been lacking in the past. As for human capital, employee screening practices by Islamic banks seems to be distinctive from one another and more thorough screening requirements are expected in the future. Moreover, different banks may have different approaches in the provision of AML/CFT training to their staff. Some banks are far left behind (e.g. Head of Compliance does not hold AML/CFT professional qualifications) due to lack of qualified trainers in the respective areas and inadequate access to e-learning AML/CFT modules. Also, although not mandatory, majority of Islamic banks would encourage their employees to enrol in



professional AML/CFT courses. Lastly, being asked about their opinions on the AML/CFT Guidelines, at least half of the respondents have agreed that some areas of the existing Guidelines are too generic, and hence are subject to different interpretations and the possibility of being manipulated by bank managers. For example, Paragraph 28.7.4 of the Guidelines states that the scope of independent audit shall include among others, adequacy and effectiveness of the AML/CFT Compliance Programme. However, as the control function on AML/CFT exercised by banks' Compliance Officers are normally on a best effort basis and there is no clear definition as to what it takes to be 'adequate and effective', an auditor may not be able to issue his professional opinions.

Furthermore, Chapter 10 examines legal issues in Shari'ah-compliant home financing in Malaysia and provides an anonymised case study based on a true-life experience with an Islamic bank in Malaysia. In the chapter, Oseni et al. give a practical analysis of the dynamics of a typical deferred payment contract otherwise called *bai bithamn ajil* in Malaysia. This seemingly controversial Islamic finance product has been one of the most litigated products in the Malaysian courts. Recommendations are provided to enhance Islamic finance documentation involving home financing based on the experiences of the case study provided. In order to complement the case study, Chapter 11 by Mat Ali et al. examine procedural laws governing event of default in Islamic financing in Malaysia. It adopts a doctrinal legal approach in analysing the relevant laws and identifying the numerous loopholes that require the attention of policy makers with a view to introducing amendments to the laws.

## **Fintech and Blockchain Technology**

Meanwhile, the scholarly discussions provided in the last four chapters of this book revolve around the advancement of Fintech solutions, digital currency and blockchain technology from the legal and regulatory perspectives. In Chapter 12, in relation to the ongoing debate on the need to regulate activities in the Fintech industry, Hui et al. seek to ascertain whether Shari'ah and the current Islamic banking regulations can accommodate Fintech innovations. Prior to answering the main research inquiry, Hui et al. underscored several important implications on the Islamic banking industry in Malaysia, subsequent to the embrace of Fintech innovations. These implications, among others, include the possibility of profit margin cuts and reduced deposits due to growing customers and investors' preference for internet-based financial platforms. Though Islamic banks may enjoy higher competitive advantage through the formation of innovative financial platforms (e.g. the launch of Investment Account Platform or IAP in Malaysia in early 2016) as a result of collaboration with Fintech companies, customers are expected to benefit from wider product offerings and alternative investment avenues that suit their financial needs exclusively. As to whether Shari'ah would accommodate Fintech innovations, Hui et al. opine that Fintech is likely to assist unbanked entrepreneurs through pooling of investment funds in the spirit of collective cooperation, just and equitable distribution of wealth and protecting public interest (*maslahah*). Scrutinising the IFSA 2013 and the BNM's Financial

Technology Regulatory Sandbox Framework, Hui et al. contend that although the existing regulatory frameworks cover wide aspects of Islamic banking practices, including Shari'ah-compliant payment systems, the fact that digital banking or Fintech solutions are considerably distinctive from the traditional ways that banks operate may trigger the need for the relevant regulatory frameworks to be revised. Moving a step further, the study of Hui et al. suggest that a dedicated legislation that governs Shari'ah-compliant Fintech solutions and a Shari'ah Supervisory Committee at Fintech company level (i.e. adopting a two-tier Shari'ah governance approach similar to Islamic financial institutions) need to be established to oversee the adherence of Fintech innovations to Shari'ah principles.

In Chapter 13, Miskam et al. describe the evolution of Fintech in the Malaysian Islamic fund management industry from a legal perspective. In doing so, a number of relevant laws and regulations – including the requirements and guidelines made under the Capital Markets and Services Act 2007 and the AMLATFPUA 2001 related to compliance function for fund management companies, Islamic fund management and management of cyber risk, prevention of money laundering activities for capital market intermediaries, respectively, the Digital Signature Act 1997, Personal Data Protection Act 2010 and Computer Crimes Act 1997 – have been thoroughly reviewed to determine the importance of the legal and regulatory aspects of Fintech to the development of the Islamic fund management industry in Malaysia. Further, Miskam et al. discuss several legal issues and challenges that arise from the adoption of Fintech innovations by Islamic fund managers. These include, among others, the ambiguity as to which market regulations Fintech companies should abide by, legal costs and consequences from breaches of customers and investors' privacy and personal data, the algorithmic malfunction of robo-advisers and failure to detect Shari'ah non-compliant Fintech activities, which could potentially lead to loss of investor confidence on the security and legitimacy of the entire financial system. To minimise these legal risks, Miskam et al. then suggest market regulators to design an effective regulatory infrastructure and prescribe minimum standards for promoting inclusive finance through Fintech solutions that would provide regulatory clarity and thus to ensure market stability. Islamic fund managers, on the other hand, should concurrently dive in deeper into the Fintech ecosystem by utilising their access to client investment profile and information to increase their market shares without compromising the existing legal requirements.

In Chapter 14, Zul Kepli and Zulhuda explain how countries asymmetrically decide on their approaches in regulating cryptocurrency-related activities. For example, the US market regulators have decided to allow Bitcoin futures to trade on major exchanges and the Government of Japan recently passed a new law recognising Bitcoin as a legal form of currency, while in South Korea, financial institutions are totally banned from dealing with virtual currency. Zul Kepli and Zulhuda are of the view that given the possibility of great cross-border extortions posed by cryptocurrency by means of money laundering and terrorism, it is important to have comprehensive international laws and regulations for controlling and managing cryptocurrency-related activities. Apart from that, an integrated action needs to be taken at international level to revise the existing legal

framework for anti-money laundering, taking into account new forms of threats resulting from engaging in cryptocurrency trading including tax evasion, consumer rights violation, copyright issues, fraud, black market and many more.

In the last chapter, Syed A. Rahman first discusses the view of several contemporary Shari'ah scholars on the permissibility of dealing with cryptocurrency. Syed A. Rahman expressed his concern over the tendency of some scholars to regard cryptocurrency as currency simpliciter in deducing their rulings (i.e. *hukm*). He has argued that cryptocurrency cannot be compared apples-to-apples with fiat currency. This is because fiat currency is backed by sovereign and completely relies on public confidence as a medium of exchange (although some may disregard its intrinsic utility). This is however not the case for cryptocurrency. Also, he has discerned that potential harms associated with cryptocurrency including excessive speculation that leads to high market volatility, diminution of one's wealth that contradicts with *maqasid al-Shari'ah* or objectives of Islamic law, lack of transparency of its operation and susceptibility to being misused for crimes should be taken into careful deliberation by Muslim scholars in determining the Shari'ah rulings for cryptocurrency. In addition, this chapter also reviews a number of digital currency regulations of selected jurisdictions, including Japan, the United States, South Korea, the Philippines and Malaysia. In general, some central banks and regulatory and supervisory authorities, being the 'gatekeepers', have implemented certain degree of regulation that requires persons with whom fiat currency may be converted into digital currency or vice versa to comply with. On the other hand, others have issued a warning about the risks associated with the holding and transacting using digital currency.

## References

- Abdul Manaf, U., Markom, R., Mohd Ali, H., Merican, R. M. A. R., Hassim, J. Z., & Mohamad, N. (2014). The development of Islamic finance alternative dispute resolution framework in Malaysia. *International Business Management*, 8(1), 1–6.
- BNM. (2017). *The financial stability and payment systems report 2017*. Bank Negara Malaysia. Retrieved from [http://www.bnm.gov.my/index.php?ch=en\\_publication&pg=en\\_fspr&ac=23&en](http://www.bnm.gov.my/index.php?ch=en_publication&pg=en_fspr&ac=23&en). Accessed on Dec. 18, 2018.
- Engku Ali, E. R. A. (2008). Constraints and opportunities in harmonisation of civil law and Shariah in the Islamic financial services industry. *The Malayan Law Journal*, 4, iii.
- IFSB. (2018). Islamic financial services industry stability report 2018. *Islamic Financial Services Board (IFSB)*. Retrieved from [www.ifsib.org](http://www.ifsib.org). Accessed on December 18, 2018.
- Oseni, U. A., & Ahmad, A. U. F. (2016). Towards a global hub: The legal framework for dispute resolution in Malaysia's Islamic finance industry. *International Journal of Law and Management*, 58(1), 48–72.