



# OVERVIEW OF MODERN FINANCIAL MANAGEMENT

11<sup>TH</sup> JANUARY 2007

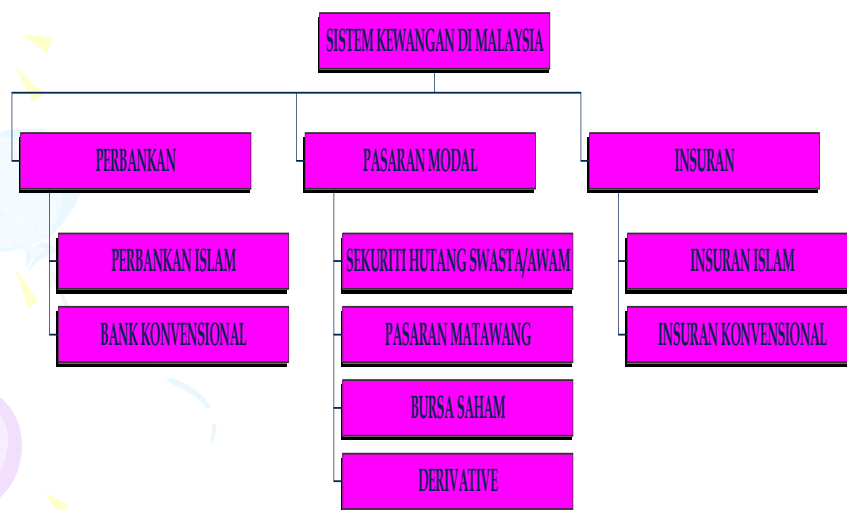
## CONTENTS

- **Introduction**
- **Conclusion**

# INTRODUCTION

- Malaysia has a very unique legislative framework consisting of mixed jurisdictions and mixed legal systems namely the common law and shariah.
- The growth and development of Islamic banking industry are supported through goods governance and its comprehensive legal frameworks. As Malaysia is one of the common law countries, it is very essential to have standard law of practice, which harmonizes both *shariah* and civil law. The integration of these two traditions is really necessary in the context of Islamic banking in Malaysia.

## SISTEM KEWANGAN DI MALAYSIA





## Reasons

- to develop harmony between *shariah* and common law .
- The disputes will be heard in the Civil court due to Schedule Nine, List 2 of the Federal Constitution.
- A number of the existing laws which are necessary for the Islamic banking are in line with *shariah* principles.



## Process

- Dual Banking system and Moderate approach
- Federal List
- Introducing the Islamic Banking Act 1983 and Section 124 Banking and Financial Institutions Act 1989;
- Amendment and Review of Several Relevant Legislations;
- Coordination amongst the Authorities; and
- BNM's Directives

## Dual Banking system & Moderate approach

- Malaysia decided to introduce dual banking system whereby the existing conventional banking is practiced side by side with the Islamic banking system.
- The development of Islamic banking industry in Malaysia involved several phases whereby Phase 1 started in 1983 until 1993 and Second Phases began in 1994. Malaysia is now in the midst of liberalizing its policy on the implementation of Islamic banking so

## Federal List

- **Islamic banking was put under Federal List since it refers to commercial dealings although it actually falls under the purview of Islamic law.**
- **Thus, it is the parliament to pass any law governing the Islamic financial institutions.**



## **IBA and BAFIA**

- **The characteristics of IBA creates flexibility to Islamic financial institutions to operate their business.**
- **BAFIA was then introduced which allowed the conventional banks to carry on Islamic banking business.**
- IBA and BAFIA require Islamic banks to comply with the laws as well as



## **Several Relevant Legislations**

- Examples:-
- the Central Banks Act 1958 (CBA)- Shariah Committee's Governance.
- Hire Purchase Act 1948- Muamalat Hire Purchase Bill.
- the Stamp Act 1948. (Amendment)



## Co-Ordination With Judicial Body

- “There are no more than several dozen scholars with the right combination of knowledge of Islamic law, modern finance and technical English to serve on the *Shariah* committees of institutions based around the Gulf and beyond”.
- BNM with a cooperation of judicial body has agreed to set up a special High Court in the Commercial Division known as the Muamalah bench.
- According to Practice Direction No.1/2003, paragraph 2, all cases under the code 22A filed in the High Court of Malaya will be registered and heard in the High Court Commercial Division 4 and this special high Court will only hear cases on Islamic banking.



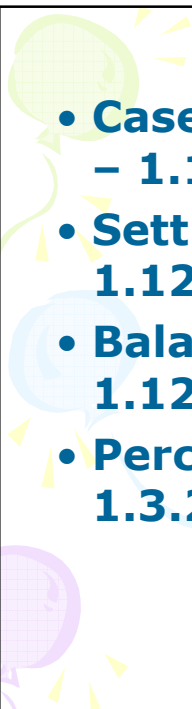
## BNM's Directives

- BNM has issued Guidelines on the governance of Syariah Committee for The Islamic Financial Institutions (BNM/GPS 1) to regulate the governance of the *Shariah* Committee of Islamic financial institution.
- a court may refer to the national *shariah* advisory council of BNM on any dispute involves *shariah* issues.



## The Impact of Harmonisation

- From 1983 until 2004 the Islamic Banking assets in Malaysia amounted to RM89 billion, accounting for 9.9 per cent of total banking. Latest report: rm113.5 billion (11%). In 2010- Target 20%.
- The implementation of muamalat bench shows a positive result on the increasing numbers of settled cases. From the statistic, it shows that more than 75% out of 656 cases has been settled by the court from year 2003 to 2005.

- 
- **Cases Registered from 1.3.2003 – 1.12.2005=656**
  - **Settled Cases from 1.3.2003- 1.12.2005=497**
  - **Balance of Cases up to 1.12.2005=388**
  - **Percentage of Settled Cases from 1.3.2003 – 1.12.2005=75.7%**



## CONCLUSION

- the main purpose of harmonization is to develop harmony between *shariah* and common law particularly in the implementation of Islamic banking in Malaysia.
- It is interesting to note that harmonization is not always a necessary. The process of harmonization is only applicable and feasible to certain reasonable differentials in selected area of *shariah* and common law.



## Thank You



**Zulkifli Bin Hasan**  
**Faculty Syariah and Law**  
**Islamic University College of**  
**Malaysia**

**E-mail: [zul361977@yahoo.com](mailto:zul361977@yahoo.com)**

**Tel. No: 06-7988 483**

**H/Phone No: 019-6698514**