

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

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The Development of Legal and Regulatory Framework for Sukuk in Bangladesh: Learning from Malaysian Experience

ABDUR RAHMAN¹, ASMA HAKIMAH ABDUL HALIM² AND RUZIAN MARKOM³

ABSTRACT

The government of Bangladesh issued the first five years of sovereign Sukuk in late 2020. The introduction of Sukuk into the capital market showed its motivation to increase the issuance more in the country. Currently, there is no structured regulatory framework for Sukuk in Bangladesh which impedes further development of the Sukuk market. Thus, Bangladesh may adopt the best practices of Sukuk regulation like Malaysia. The main objective of this study is to examine whether Bangladesh can learn from Malaysia's experience in order to establish a sound regulatory structure for Sukuk. This is qualitative research utilizing case studies and uses the exploratory approach to review and analysis the available legal documents regarding the Sukuk structure and issuance in Malaysia and Bangladesh. Even though there are various legal variances supporting the legal and regulatory framework of the two countries, the Malaysian experience can be a suitable regulatory approach to apply in the Bangladesh context with the adaptation of some rules. Relevant Bangladeshi laws such as specific acts for the Islamic capital market and proper guidelines for Sukuk should be amended to ensure smooth issuance of Sukuk in the country. Apart from that, Bangladeshi regulators have established an independent Shariah Supervisory Board at the central level and a favorable tax framework for Sukuk. The study focuses on the Malaysian legal and regulatory framework regarding Sukuk issuance and set out several regulatory requirements for the Bangladeshi capital market. It contributes significantly to the legal and regulatory conceptual framework of many common law countries whose intention is to implement Sukuk.

Keywords: *regulatory Sukuk, Bangladesh legislation, Malaysian legal system, common law country.*

I. INTRODUCTION

The widespread issuance of Sukuk by both sovereign and corporate entities has encouraged

¹ PhD student at Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

² Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

³ Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

many countries to support their legal systems with a structured legal and regulatory framework in order to implement Sukuk. In many countries, a regulatory framework has been adopted in the existing system to implement and smooth the operation of Sukuk in their financial market (Zolfaghari, 2017). However, some issues hamper the reorganization of the current financial regulations. The lack of a structured legal framework for Sukuk is the primary hindrance to the growth of Sukuk issuance in many countries (Ghezal et al., 2021). There are a number of issues facing the Sukuk market in many jurisdictions including proper Sukuk meaning, creating SPV under the existing law, and distinguishing Sukuk from conventional securities (Umar Oseni and Kabir Hassan, 2015). In fact, creating necessary laws and regulations for Sukuk issuance and structuring which certainly, will help to issue more Sukuk in the country from public and private companies (Arabi, 2019). Similarly, in the Bangladesh context, previous studies have disclosed that modifications to the existing legislation and regulations are highly recommended. Uddin, et. al., (2020) and Alam, M. K., (2021) considered the need to create a structured regulatory framework for the Islamic capital market of Bangladesh and precisely the Sukuk tool by providing regulations that ensure proper structuring of the instrument in accordance with Shariah principles and assuring investment profitability. However, they did not discuss deeply the legal and regulatory requirements needed to modify the existing legislation and regulations. The Bangladesh Securities Exchange Commission (BSEC) has recently issued new guidelines for Sukuk named the “Investment Sukuk Rule, 2019”. The step encouraged the introduction of Sukuk in the country, however, there are four regulatory requirements on the matter of Sukuk issuance have found that need to amend to ensure smooth issuance of Sukuk in Bangladesh. Therefore, the proper legal and regulatory requirements to increase the Islamic capital market products in the Bangladeshi context have not been revealed sufficiently. Besides, the legal aspect of Sukuk issuance in Bangladesh is not discussed thoroughly in the previous studies. The legal aspect of Sukuk is crucial because the Bangladeshi regulators are not specialized in Islamic products and their terms therefore, it is necessary to know about the legal and regulatory requirements for issuing Sukuk. At this juncture, to achieve the best Sukuk regulations for the Islamic capital market of Bangladesh and Sukuk issuance, the case of Malaysia is particularly interesting, where the Malaysian regulatory structure contains core legislations that govern Sukuk issuance. Moreover, Malaysia has maintained its leadership position in the global Sukuk market which issued USD 174.6 billion in 2020 (IIFM, 2020). Since the formation of the Securities Commission in 1993, the Malaysian regulators are updating their rules and regulations for Sukuk which has strengthened its legal and regulatory framework.

As Bangladesh is considered the fourth largest Muslim country in the world, the country has presented Islamic finance and particularly the banking and takaful industry since 1983 (Alam et al., 2019). Unfortunately, the true potential of the Islamic capital market and Sukuk is substantially limited by the weak legal and regulatory environment (Nabia et al., 2016). To realize the Islamic capital market's potential in facilitating short and long-term financing mechanisms, clear legal and regulatory requirements are crucial (Nabia et al., 2016). Therefore, the purpose of this paper is to investigate the current laws and regulations of the capital market in the Bangladesh context and find out whether Bangladesh can adopt the Malaysian experience in regulating Sukuk. This research uses a documentary review to analyze the legal and regulatory documents available in Malaysia and Bangladesh. It is believed that this study will contribute and support many common law countries that want to strengthen the local Sukuk market. This paper is divided into five sections. Followed by this introduction, section two deals with a literature review and section three presents the issue and challenges of Sukuk issuance in Bangladesh. Section four deals with the Malaysian approach to Sukuk issuance and the final section is the conclusion and possible recommendations.

(A) Literature Review

1. Malaysian Legal and Regulatory Framework for Sukuk

Historical Development

At present, Malaysia has established a robust and sophisticated Islamic financial system. As an international position of Islamic finance, it has a distinctive viewpoint in implementing Islamic business models in fields such as Islamic banking, takaful or Islamic insurance, Islamic capital market, and Sukuk (Ghezal et al., 2021). Moreover, the Malaysian legal framework comprises dual jurisdictions and dual legal systems namely common law and Shariah (Asma and Markom, 2018). Its model indicates facilitating conventional and Islamic within a single regulatory institution named Securities Commission Malaysia. The regulatory infrastructure of Islamic finance in this country lies in the presence of various organizations to ensure compliance with the Shariah requirements of Sukuk (Rusni and Hussain, 2013).

As stated earlier, the legislation system of Malaysia is a mixed system between Shariah and common law. While Shariah law is applied in Shariah Court for the matter of inheritance and family disputes, common law is applied to civil issues and all commercial transactions in the civil court (Ghezal et al., 2021). In terms of finance including Islamic banking, takaful, and Islamic capital market, the federal constitution of Malaysia places all those elements under the

civil court that follows common law (Ghezal et al., 2021).

Financial Regulatory and Supervisory Institutions

Malaysia has enhanced strong regulatory institutions for the purpose of revolving this country to become an Islamic financial hub. Such institutions and supervisory authorities are established to achieve a stable Islamic financial environment and to ensure sound financial regulations which make Islamic finance more effective and more efficient. The Islamic financial industry in Malaysia is mainly regulated by three institutions which are:

1. Bank Negara Malaysia (BNM), the central bank of Malaysia, is governed and controlled all banks in the country including conventional and Islamic as well as insurance and takaful companies. BNM has its own Shariah Advisory Council (SAC) to ensure all Islamic banking and takaful activities are in line with Shariah requirements.
2. The Securities Commission Malaysia (SCM) is the core institution that mainly regulates the capital market of Malaysia. Under this institution, the independent Shariah Advisory Council (SAC) has been set up to ensure the compliance of all Islamic capital market products including Sukuk.
3. Labuan Financial Services Authority (LFSA) regulates the matters related to the offshore finance industry including Islamic banking, takaful, and Islamic capital market products besides the conventional products. Same as other regulatory institutions such as BNM and SCM, LFSA has its own Shariah Supervisory Council (SSC).

Sukuk Legislation and Regulation in Malaysia

The Malaysian Sukuk market is one of the leading Sukuk issuers and the most vibrant in the Islamic capital market (Smaoui et al., 2021). This is because of the sound and robust legal structure for Sukuk transactions both onshore and offshore (Ghezal et al., 2021). As per the regulatory structure for governing Sukuk, a core act governing all financial stock in Malaysia including Sukuk is Capital Market Service Act (CMSA), 2007. Other relevant acts such as Securities Industry (Central Depositories Act) 1991, Securities Commission Act 1993, Companies Act 1965, Offshore Companies Act 1990, and Labuan Offshore Securities Industry Act 1995, etc. (Hosen et al., 2016, Ghezal et al., 2021)

The Securities Commission of Malaysia provides rules and regulations related to both conventional bonds and the Sukuk market. Apart from that, SCM imposes its decision on the listed companies in the Malaysian stock market. On the one hand, this approach indicates that

SCM regulates both bonds and Sukuk, where SCM provides general regulatory requirements for both issuers. Governance, licensing, trust deed, rating and disclosure are among the general requirements for all securities bonds and Sukuk. On the other hand, SCM stipulates some regulatory requirements for the Islamic capital market products and Sukuk such as Shariah advisors on Sukuk issuance, document disclosure, and Shariah compliance of the Sukuk issuer (ISRA, 2017).

Therefore, the Malaysian regulatory approach for Sukuk issuance is much facilitative. This is because the Malaysian approach is centralized, which means a single authority makes a substantive determination on whether a particular financial activity or instrument is Shariah-compliant (Rusni and Hussain, 2013). For example, SCM is a central regulatory body that regulates the Sukuk market through standard guidelines which contain the fundamental elements for Sukuk structuring and issuance. The essential laws and regulations are issued by the regulatory authorities of Malaysia for Sukuk such as the Capital Market Services Act (CMSA) 2007, Guidelines on Sukuk, Trust Deed Guidelines, Prospectus Guidelines, Registration of Shariah Advisers Guidelines, and favorable tax regime (Ghezal et al., 2021).

Separate Act for Islamic Capital Market

Malaysian regulatory structure contains core legislations that govern Sukuk issuance known as Capital Market Services Act 2007 (CMSA) (amendment 2012) (Ghezal et al., 2021). CMSA was introduced in 2007 to strengthen the Malaysian regulatory framework and it is a sole Act governing the entire stock market including conventional bonds. CMSA comprises specific provisions dedicated to the Islamic capital market. The Securities and Exchange Commission is a responsible authority charged with the administration of the CMSA. Under this Act, comprehensive guidelines are known as “Sukuk guidelines of (2011)” has formulated (Umar Oseni and Kabir Hassan, 2015). Apart from that, a separate Shariah Advisory Committee was created and made to exist as part of the Exchange Commission to ensure compliance of all Sukuk dealings with Shariah principles. Another remarkable characteristic is that Malaysia has made a unique robust framework for dispute resolution within the global landscape of Sukuk investment (Asma et al., 2019).

Rules and Guidelines for Sukuk

In Malaysia, the arrangement of Sukuk is basically subjected to the Sukuk Guidelines. Section 377 of CMSA indicates that SC is the main regulatory authority for the Islamic capital market products which has issued specific guidelines for Sukuk. In addition to that, subsection 316 (3) of CMSA stipulates the key contents of the Sukuk guidelines (Capital market and Service Act,

2007). The Sukuk guidelines cover the terms and conditions, and the underlying contract for Sukuk issuance such as sale and lease which are required to get approval from SCM (ISRA, 2015). There are also issued launched Guidelines on unlisted capital market products under the Lodge and Launch Framework, known as LOLA by the SCM in 2015. The main objective of this guideline is to support process efficiency, shorten the time, and provide certainty of Sukuk and other capital market products (Dewar & Hussain, 2019).

Guideline on Trust Deed

Apart from the Sukuk guidelines, section 258 of CMSA, the SCM issues specific guidelines for trust deeds that specify essential requirements for the arrangement of the trust deed in Sukuk issuance. Appoint a trustee in Sukuk issuance, establishing a trust company, and complying with the provision of a Trust Deed are among the primary requirements for every Sukuk issuer. A trust company is a legal entity that acts as an agent or trustee to protect the issuer's rights and investor's benefit. Therefore, a trustee is a key player in the arrangement of the Sukuk issuance (Hassan et al., 2012).

Prospectus guidelines

Another guideline for Sukuk issuance is the Prospectus Guidelines. It is an instrumental tool to disclose more information and regulations about the proposed issuance of Sukuk. Securities Commission of Malaysia issued a special Prospectus Guidelines in 2012 under the CMSA. The main objective of this guideline is to specify the required information to be included in the prospectus of Sukuk (Prospectus Guidelines, 2012).

Guidelines for Shariah Governance

Section 377 of the Capital Market and Services Act 2007 permitted the Malaysian Security Commission to make guidelines for the conduct of Sukuk transactions. As a result, comprehensive Sukuk guidelines were issued by the SCM which consist of the rights and duties of all parties involved in Sukuk issuance. Although, there is Shariah Advisory Council established under the Bank Negara Malaysia, the central bank, the Capital Market Act has created another full-fledged Shariah Advisory Council, with authority to regulate the Islamic capital market products. Section 316 (B) provides the function of the SAC such as.

1. To ascertain the application of Shariah principles on any matter pertaining to Islamic capital market business or transaction and issue a ruling upon a reference made to it in accordance with this Division.

1. 2. To advise the Commission on any Shariah issue relating to Islamic capital market business or transaction.
2. To provide advice to any person on any Shariah issue relating to Islamic capital market business or transaction; and
3. Other functions as may be prescribed by the Minister.

In relation to the structure of the Shariah advisor for the Islamic financial industry in Malaysia, it is observed that the Islamic financial sector that operates in Malaysia is regulated by different authoritative bodies involving the BNM, SC, LFSM, and Bursa Malaysia. In this regard, each authoritative body has its own Shariah advisors and has restricted jurisdiction to the industry in which they represent only. Ideally, this is a good thing to enable the Shariah advisors to concentrate and be specialists in the sector respectively (Rusni and Hussain, 2013).

Favorable Tax Framework

Malaysian tax systems, where several tax incentives have been introduced to promote the issuance of Sukuk in Malaysia (ISRA, 2015). The majority of tax incentives are passed in the Malaysian annual budget Malaysian Stamp Act 1949 and Malaysian income tax act 1967. These tax incentives are applicable in Sukuk issuance for the originator, issuer, and SPV. Besides, Sukuk is also exempt from income tax and several other exemptions to ensure that Sukuk transactions are not adversely taxed as compared with conventional bonds transactions. Further, Malaysia is the first country to allow tax neutrality to Islamic finance instruments and transactions. The main aim of tax neutrality is to reduce the cost of transferring assets in Islamic finance. Section 2(8) of the income tax act 1967 basically allows the underlying sale of assets or leases to be ignored for tax purposes. As a result, Islamic financing instruments enable to continue without any tax issue relating to asset transfer or lease, and no additional tax on the underlying transaction would arise.

2. The current Legislations and Regulations of the Islamic Capital Market in Bangladesh

Based on the current position of legal systems, Bangladesh is a common law country having its legal system developed by the British rulers during their colonial rule over British India (Akhtar Hossain, 2012). The primary legal system of Bangladesh is based on English common law, and the Constitution is the key source of law in the country (Md. Ershadul, 2018). Although the legal system of Bangladesh is based on a common law system, however, unlike other common law jurisdictions, Bangladesh Supreme Court has the power to not only interpret laws made by the Parliament but also to declare them null and void and to enforce fundamental

rights of the citizens (Sial, O., 2015).

Regarding the Islamic law in Bangladesh, Islam has found in the country before its independence in 1971, but where Islamic law has no role in the legal system (Ahamed, 2021). However, as a religion and a stable value system in Bangladesh, Islam has always retained a guiding force. Islamic traditions, customs, institutions, and beliefs are part of their everyday life and are often the only familiar forms of their social being and consciousness.

Constitutionally, therefore, Bangladesh is a "Muslim nation" by article (2A), which clearly states that "Islam is the state religion of the Republic as stated, *“The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions”* (Sial, O., 2015). However, the Constitution has no Shariah or Islamic law, and the only certain provisions are codified into legislation which is the Muslim Family Law Ordinance. Therefore, the Muslim majority and people's belief in Islam motivated the growth of the Islamic financial sector in Bangladesh.

Financial legislation framework in Bangladesh

Without a separate legislative framework, Islamic financial institutions are regulated within conventional banking and finance regulations (Alam et al., 2019). There are several applicable regulatory acts that govern the financial institutions and banks including Islamic in Bangladesh which are the Bangladesh Bank Order 1972, the Income Tax Ordinance 1984, the Bank Companies Act 1991, and the Securities and Exchange Commission Act 1993. However, there is no separate act for the operation of Islamic banks and financial institutions. Therefore, all Islamic banks and financial institutions in Bangladesh are required to follow the acts that govern conventional banks and financial institutions. When Islamic banking was introduced in the country, no new act was approved but some clauses were incorporated into the Bank Companies Act and some amendments were made to the Income Tax Ordinance (Ahmad and Hassan, 2007). As per the banking industry, Banking Companies Act, 1991 amended in 2003 governs the banking sector including Islamic banking in the country. For the Non-Bank Financial Institution is governed by the Financial Institutions Act, 1993. The Bangladesh Bank Order 1972 with all amendments up to 2003 defines the main functions of Bangladesh Bank which includes regulation and supervision of banking companies and financial institutions. The following table 1 shows the key Acts and Ordinances that are related to Islamic financial development in Bangladesh.

Table. 1 Key Acts and Ordinance of Islamic Finance in Bangladesh

<i>No</i>	<i>Name of the Act</i>	<i>Sector</i>
1	Banking Companies Act, 1991 amended in 2003	Banking including Islamic
2	Financial Institutions Act, 1993	Non-Bank Financial Institution
3	Bangladesh Bank Order 1972 amendments up to 2003	Banks and Financial Institutions
4	Securities and Exchange Commission Act 1993	Capital Market
5	Insurance Development and Regulatory Authority (IDRA)	Insurance and Takaful
6	Income Tax Ordinance 1984	Islamic Banking

Source: Various Sources

The above approach which is the government's underlying premise is that Islamic financial institutions should be regulated the same as the conventional financial sector. This approach constrains Islamic finance's full development. As the top responsible authority for regulating the financial system in Bangladesh, the central bank (Bangladesh Bank) monitors, regulates, and supervises both Islamic and conventional banks.

For instance, Bangladesh Bank has issued specific Islamic banking guidelines to support the sector with licensing, reporting, and product guidance. However, Bangladesh Bank basically provides equal treatment to both Islamic and conventional banks. Beyond banking sectors, the Bangladesh Securities Exchange Commission (BSEC) regulates Islamic capital markets, and the Insurance Development and Regulatory Authority (IDRA) oversees the takaful sector. Islamic bank depositors are also protected by Bangladesh Bank's deposit insurance protection system (Uddin and Mohiuddin, 2020). The current regulatory bodies for Islamic finance in Bangladesh are in table 2.

Table 2: Current regulatory bodies in Bangladesh for Islamic Finance

<i>No</i>	<i>Institutional Bodies</i>	<i>Responsible</i>
1	Ministry of Finance (MoF)	The MoF governs BB and the finance and capital market of Bangladesh.

2	Bangladesh Bank (BB)	
3	Bangladesh Securities and Exchange Commission (BSEC)	BSEC regulates the capital markets
4	Insurance Development and Regulatory Authority (IDRA)	IDRA regulates the insurance and takaful sector
5	Micro-credit Regulatory Authority (MRA)	MRA regulates microfinance institutions including Islamic
6	Islamic Banks Consultative Forum (IBCF)	IBCF supervises and supports the Islamic financial Institutions.
7	Central Shariah Board for Islamic Banks of Bangladesh (CSBIB)	CSBIB supervises and supports the Islamic financial Institutions.

Source: Various Sources

All Islamic financial institutions in Bangladesh must depend on their own Shariah Supervisory committee for the purpose of supervising and supporting the functions of Islamic financial activities in the country (Alam et al., 2021). For that reason, the next section is briefly describing and identifying the capital market regulations in Bangladesh.

Capital market regulation

As far as concerned, the Islamic capital market in Bangladesh in terms of acts and regulations, there is no separate Act for the Islamic Capital market in the country. The Securities and Exchange Commission is the main regulatory body in Bangladesh that exercises powers under the Securities and Exchange Commission Act 1993. It regulates Islamic and conventional financial institutions engaged in capital market activities. Bangladesh Bank exercises powers under the Financial Institutions Act 1993 and regulates institutions engaged in financing activities. However, recently in 2020, Bangladesh Securities and Exchange Commission (BSEC) issued new guidelines for Sukuk named the “Investment Sukuk Rule”.

Taxation and Stamp Law

The first provision for Islamic finance has included in its Income Tax Ordinance in 1984, Ordinance no. 36 of 1984. This provision enables the amount of profit shared by investment clients and profit paid in *Mudharabah* deposits in Islamic banks to be considered as “expenditure” (Ahmad and Hassan, 2007).

Section 29 of the above Ordinance was amended up to 2002, which is placed under the subtitle; “Deduction from income from business or profession” (*the amount of any interest paid or any profit shared with a bank run on Islamic principles in respect of capital borrowed for the purpose of the business or profession. Provided that if any part of such capital relates to replenishing the cash or any other asset transferred to a newly set up industrial undertaking whose income is exempted from payment of tax, the amount shall be proportionate part of the interest so paid or the profit so shared having regard to the proportion of such capital so used*) (Ahmad and Hassan, 2007).

Currently, the individual taxpayer is entitled to income tax exemption for those who invested in government securities such as treasury bonds. Similarly, Sukuk is also Islamic security of the government, like treasury bonds. Part B, paragraph 10 (2) under the Income Tax Ordinance, 1984, provides the tax rebate facility on investment in government securities (Laws of Bangladesh, The Income-Tax Ordinance, 1984). However, there was no provision that included facilitating the investment of individual taxpayers in Sukuk for income tax rebates (Uddin, 2021).

Besides, in 2021, the National Board of Revenue (NBR), under the Value Added Tax (VAT) section, waived taxes on the sale and purchase of assets between the originator and special purpose vehicle (SPV) of Sukuk. Tax waives are also applicable for the rent of assets or leasing of assets between the originator and SPV of Sukuk (Doulot, 2021).

Central Shariah Supervisory Board

The overall practice of Shariah governance in Bangladesh, such as the Shariah governance system in Bangladesh is mainly voluntary rather than regulatory and there is an absence of a full-fledged Shariah governance framework (Alam et al., 2021). The main factor behind the lack of Shariah governance framework is that the country does not have separate acts and laws and regulatory bodies for controlling, guiding, and supervising Islamic financial institutions (Doulot, 2021). Subsequently, every Islamic financial institution in Bangladesh has to establish its own Shariah governance to run its business activities. In the banking Company Act, of 1991; the Bangladesh government has made some amendments for Islamic banks and the central bank did not set up any separate department for controlling, guiding, and supervising the Islamic banks. Bangladesh bank “central Bank” has introduced a Shariah governance guideline for Islamic banks including the roles and responsibilities of SSB, Shariah compliance responsibility, and quality and appointment criteria of *Muraqibs*. In contrast, the board of directors of Islamic banks and subsidiaries, conventional commercial banks having Islamic

branches or windows should form with directors having the required knowledge and expertise in Shariah jurisprudence (Alam, 2021).

(B) Methodology

This study utilized the exploratory analysis to examine the legal and regulatory framework for Sukuk in two countries Malaysia and Bangladesh. The case studies are conducted to the existing laws and rules of Sukuk in both countries. The main approaches used include comparative, analytical, and critical systems. The method is based on the objectives of the paper: to analyze the current laws and regulations of the Islamic capital market in the Bangladesh context and find out whether Bangladesh can adopt the Malaysian experience in regulating Sukuk. The data collected from the library consists of primary and secondary sources such as statutes, books, articles, and internet sources.

II. FINDINGS AND DISCUSSION

(A) The issue and challenges of Sukuk issuance in Bangladesh

In order to establish a sound Sukuk legal and regulatory framework in Bangladesh, the relevant authorities of Bangladesh should make a necessary amendment on the matter of Sukuk issuance to ensure smooth issuance of Sukuk in the country. The fundamental changes were found in four areas of the regulatory framework for Sukuk which are essential for the Islamic capital market of Bangladesh. The following sections examine all four core areas of the regulatory framework for Sukuk.

Separate Act for Islamic Capital Market

The Islamic capital market needs a specific law to avoid financial difficulties in the market. It is an essential effort to be implemented. Without separate law, the ICM must comply with the regulatory provisions meant for the conventional system which has an entirely different underlying objective and approach. It also creates a lack of confidence in the market by the investors (Shah, 2016). Because of the complex nature of the structured regulatory framework for Islamic finance, the need to provide a specific law or act for the Islamic capital market in Bangladesh.

To achieve the separate Act for the Islamic capital market of Bangladesh, the case of Malaysia is particularly interesting, where the Malaysian regulatory structure contains core legislations that govern Sukuk issuance known as Capital Market Services Act 2007 (CMSA) (amendment 2012) (Ghezal et al., 2021). CMSA was introduced in 2007 to strengthen the Malaysian regulatory framework and it is a sole Act governing the entire stock market including

conventional bonds. CMSA comprises specific provisions dedicated to the Islamic capital market. The Securities and Exchange Commission is a responsible authority charged with the administration of the CMSA. Under this Act, comprehensive guidelines are known as “Sukuk guidelines of (2011)” has formulated (Umar Oseni and Kabir Hassan, 2015). Apart from that, a separate Shariah Advisory Committee was created and made to exist as part of the Exchange Commission to ensure compliance of all Sukuk dealings with Shariah principles. Another remarkable characteristic is that Malaysia has made a unique robust framework for dispute resolution within the global landscape of Sukuk investment (Hakimah et al., 2019). As a result, it is found that the Malaysian regulatory framework for Sukuk is the best practice in terms of Sukuk issuance, creating SPV, structuring, and management of periodical payments to Sukuk holders, etc. Therefore, the responsible institutions of Bangladesh such as the Bangladesh Securities Exchange Commission (BSEC) should observe the Malaysian practice in making separate legislation for Sukuk to apply to the Bangladeshi capital market. Bangladeshi regulators can take the necessary amendment to the Securities and Exchange Commission Act 1993 to provide separate legislation for the Islamic capital market to strengthen the Bangladeshi regulatory framework of Sukuk.

Rules and Guidelines for Sukuk

Due to the widespread issuance of Sukuk by both sovereign and corporate entities with different Sukuk structures, the proper guidelines of Sukuk are essential. Guidelines on Sukuk provide the main terms and conditions related to the issuance and structuring of Sukuk which need approval from the responsible authorities. The lack of separate rules and guidelines for Sukuk has affected the Sukuk market growth, increases the uncertainty in the Sukuk market, and increases Sukuk issuance costs (Soleimani and Shadab, 2020). There are essential guidelines necessary for Sukuk issuance. For that reason, the Securities Commission of Malaysia has issued several guidelines which are related to the issuance of Sukuk mainly Guidelines on the Offering of asset-Backed Securities, Guidelines on Private Debt Securities, and Guidelines on Sukuk, Guideline on Sukuk and Private Debt Securities to retail investors, Guidelines on trust deeds, Prospectus guidelines, Registration of shariah adviser guidelines among the others (Ghezal et al., 2021).

As per the trust deed guideline in creating the Special Purpose Vehicle (SPV) which consider one of the fundamental mechanisms of Sukuk. It is a legal entity created by a firm by transferring assets to the SPV, to carry out some specific rules and activities, or a series of such transactions and the SPV can make no substantive decisions. However, SPV has no purpose other than the transactions for which it was created; the rule governing it is set down in advance

and specific activities (Soleimani and Shadab, 2020). Therefore, SPV is the key player in the arrangement of the Sukuk issuance. In any Sukuk issuance, the role of SPV like as bellow:

1. Sukuk holders subscribe by paying an issue price to a special purpose vehicle (SPV) company.
2. In return, the SPV issues certificates indicating the percentage they own in the SPV.
3. The SPV uses the funds raised and purchases the asset from the obligor (seller).
4. In return, legal ownership is passed to the SPV.
5. The SPV then, acting as a lessor, leases the asset back to the obligor under an Ijarah(lease) agreement.
6. The obligor or lessee pays rentals to the SPV, as the SPV is the owner and lessor of the asset.
7. The SPV then makes periodic distributions (rental and capital) to the Sukuk holders (Zolfaghari, 2017).

Another guideline for Sukuk issuance is the Prospectus Guidelines. It is an instrumental tool to disclose more information and regulations about the proposed issuance of Sukuk. Securities Commission of Malaysia issued a special Prospectus Guidelines in 2012 under the CMSA. The main objective of this guideline is to specify the required information to be included in the prospectus of Sukuk (Prospectus Guidelines, 2012).

Therefore, Bangladeshi regulators can adopt the Malaysian approach in creating necessary guidelines for Sukuk which certainly, will help to issue more Sukuk in the country from public and private companies. The Malaysian approach is chosen because its regulations for Islamic capital market products are more developed and updated than other countries.

Guidelines for Sound Shariah Governance

Shariah governance is an important system of Islamic finance which plays a significant role in creating enabling environment for the Islamic capital market and Sukuk. It is important to have an independent Shariah supervisory board at the central authority for monitoring, protecting the rights of shareholders and assures that all activities are in line with Shariah (Alam et al., 2021). Therefore, this study emphasizes the importance of Shariah governance by having an independent Shariah Supervisory Board (SSB) with experienced and knowledge in Islamic Jurisprudence at the central level such as BB and BSEC. The SSB is solving the disputes among Islamic finance, providing unique Shariah resolutions, and taking action against Shariah violations.

Several countries around the world have set up a Shariah Board within their central level to standardize their Islamic financial market in general and particularly in their Sukuk market (Zulkifli, 2010). Malaysian experiences are worthy to mention in this aspect, Bank Negara Malaysia, the country's central bank, established the Shariah Advisory council to govern the overall functions of Islamic financial business. Prominent Shariah scholars, market players, and jurists are a member of SAC. The key role of SAC is to monitor and advise the BNM and the SC on the matter related to Islamic finance and Islamic capital market products (Zolfaghari, 2010).

Apart from that, BNM established the Law Harmonization Committee (LHC) in 2010, supported by different institutions such as the Securities Commission Malaysia (SC), the Attorney General's Chambers (AGC), and the International Shariah Research Academy for Islamic Finance (ISRA) to address and provide solutions to the legal and structural impediments to make Malaysia a jurisdiction that recognizes and accommodates the tenets of both Shariah and common law within the Islamic finance architecture (Nik et l., 2015).

Other countries have also made similar efforts to establish a separate Shariah Supervisory board to standardize the Islamic capital market with different names within their state bank such as Shariah Board, Shariah Committee, and Shariah Supervisory Committee. For instance, the UAE established Higher Shariah Authority (HSA), Pakistan Shariah Board (SB), Bahrain National Shariah Board (NSB), Indonesia Majelis Ulama Indonesia (MUI), or known as Dewan Syariah National (DSN), etc. see table 3.

Table 3: Shariah Governance Framework for Islamic Finance in Different Jurisdictions

<i>Country</i>	<i>Shariah Authority</i>		<i>Governance System</i>	<i>Final Authority</i>
	Central Bank	IFI		
<i>Malaysia</i>	SAC	SC	Two-tire	SAC
<i>Indonesia</i>	MUI	SSB	Two-tire	MUI
<i>Pakistan</i>	SB	SA	Two-tire	SB
<i>Kuwait</i>	N/A	SSB	One-tire	FB
<i>UAE</i>	HAS	SSA	Two -tire	HAS
<i>Dubai</i>	N/A	SB	One-tire	SB

<i>Bahrain</i>	NSB	SSC	Two-tire	NSB
<i>Qatar</i>	N/A	SSB	One-tire	SSC
<i>UK</i>	N/A	SSC	One-tire	SB

SAC: Shariah Advisory Council

SB: Shariah Board

SSB: Shariah Supervisory Board
Committee

SSC: Shariah Supervisory
MUI: Majelis Ulama Indonesia

NSB: National Shariah Board

HSA: Higher Shariah Authority

SSA: Shariah Supervisory Authority

SC: Shariah Committee

SA: Shariah Advisor

FB: Fatwa Board of the Ministry of Awqaf and Islamic Affairs

There is no universal standard for Shariah governance in ICM. For example, OECD, IOSCO, and BCBS, these international setting bodies did not address the specific Shariah governance principles for the Islamic finance industry. Therefore, diverse approaches are adopted in different jurisdictions. At present, two international institutions are leading the Shariah governance model. These are AAOIFI based in Bahrain and IFSB based in Malaysia (NuHtay and Salman, 2013).

As per the AAOIFI governance standards, seven governance standards have been issued which provide the fundamental principles for the Shariah governance framework. They are the governance standard on appointment, Composition, and Report, Shariah Review, Internal Shariah Review, Audit and Governance Committee, and Independence of SSB (Ahmed and Khatun, 2013). On the other hand, IFSB focused on four elements and principles concerning the competence, independence, confidentiality, and consistency of the Shariah governance process (NuHtay and Salman, 2013). Considering the Shariah governance framework from various countries' experiences, the government of Bangladesh needs to collaborate to identify possible ways to establish an individual Shariah supervisory board at the central bank of Bangladesh and the Bangladesh Securities Exchange Commission (BSEC) to improve the role of monitoring and ensuring a comprehensive governance system for Islamic capital market products.

Favorable Tax Framework

In terms of favorable tax for Sukuk, requires dedicated rules and regulations. This is because Sukuk is similar to bonds that need to be exempted from tax. In this respect, globally, most of the tax mechanisms are structured to handle conventional bonds, but there are no standard tax rules and regulations exist for Sukuk (Uddin, 2021). There are several reasons why the appropriate tax rules and regulations are necessary for the use of Sukuk. Sukuk involves multiple transfers due to the nature of how they are backed by real assets rather than working based on interest (Doulot, 2021). The present tax rules are not suitable to handle the tax for every transfer and consequently, it creates an unjustifiable situation for those involved in the Sukuk transaction. The main reason for this is that the underlying Sukuk assets often require transferring the ownership of the asset repeatedly from one party to another (Uddin, 2021, Doulot, 2021). In many countries around the world, ownership of assets requires additional tax duties and often contains other legal transactions that need additional costs. For instance, in the Sukuk structure, when the Sukuk asset is transferred to the SPV from the originator and moved back, in this situation, there will be the transfer of beneficial ownership and legal ownership of the underlying asset (Zolfaghari, 2017). In Common law systems, the law recognizes that only beneficial ownership is transferred to the Sukuk holder when the asset moves and legal ownership is retained by the originator. Therefore, the asset is not double taxed with one legal owner. Most Civil law regimes, however, do not have a separate ownership concept (Zolfaghari, 2017).

Without specific tax provisions for the Sukuk structure, the features of Sukuk puts them at a severe disadvantage if the appropriate legal frameworks do not exist. For instance, in the case of the Sukuk al-Ijarah structure, the initial transfer of asset ownership can cause capital gains, holding tax, sales tax, and stamp duty. In the said transaction, in each transfer of ownership that will happen at least twice, and therefore, the tax would be required twice, unlike conventional bonds which would only be taxed according to their capital gains. It is difficult for the country when create the necessary legal framework for Sukuk with different treatment between profit and interest. In many cases, interest payments are tax-deductible. However, profit is taxable and Sukuk is based on a profit-loss mechanism. Some western countries particularly the UK, Luxembourg, France, and Ireland issued tax neutrality laws that ensured that Sukuk transactions would be tax neutral with conventional bonds (Zolfaghari, 2017).

Bangladesh might take a lesson from Malaysian tax systems, where several tax incentives have been introduced to promote the issuance of Sukuk in Malaysia (Muhammad et al., 2015). The majority of tax incentives are passed in the Malaysian annual budget Malaysian Stamp Act 1949 and Malaysian income tax act 1967. These tax incentives are applicable in Sukuk issuance

for the originator, issuer, and SPV. Besides, Sukuk is also exempt from income tax and several other exemptions. Due to the clear objectives in the legal, regulatory, and supervisory approach of Islamic finance, Malaysia become a regional hub for Islamic finance and the Sukuk market. Therefore, Bangladeshi regulators should examine the Malaysian tax system in creating a favorable tax framework to apply to the Bangladeshi regulatory system and particularly for Sukuk issuance.

III. CONCLUSION AND RECOMMENDATION

The paper has reviewed and disclosed the current Bangladeshi capital market laws and regulations to facilitate Sukuk issuance in the country. This paper found that some of the existing laws and regulations of Sukuk must be amended which may be an obstacle to developing the further Sukuk market in Bangladesh. These issues are related to the absence of the Islamic capital market act and law and the comprehensive Sukuk guidelines in the capital market regulations. Also, there are weak in the Sukuk arrangement such as creating SPV and transferring the ownership. In addition to that, having an independent Shariah Supervisory Board (SSB) with experienced and knowledge in Islamic jurisprudence at the central level such as BB and BSEC, and dedicated rules and regulations for Sukuk's tax are among the other challenges to overcome.

To overcome those challenges, this paper explored the Malaysian experience in regulating Sukuk as a benchmark to implement in the Bangladeshi capital market. This is because Malaysian experience is considered a leading country in terms of the volume of Sukuk issued in the world and its comprehensive legal and regulatory framework. Bangladesh is an emerging country and a new developing Sukuk market should learn from advanced regulatory system's countries like Malaysia, which remains the pioneering country in Sukuk regulation. To develop the Bangladeshi legal and regulatory framework for Sukuk, the relevant regulators should amend the existing laws which are underpinning the legal provisions related to the Sukuk issuance. The paper has revealed that Bangladesh Securities Exchange Commission (BSEC) should provide separate legislation for the Islamic capital market to strengthen the Bangladeshi regulatory framework of Sukuk. The regulator also should improve the current Sukuk guidelines and rules, particularly on trust deed guidelines, prospectus guidelines, and Shariah advisor guidelines. Without proper guidelines for Sukuk, it will affect the Sukuk market growth, increase uncertainty in the Sukuk market, and increase Sukuk issuance costs.

For Bangladeshi capital market authority, there is an urgent need to establish an independent Shariah Supervisory Board (SSB) at the central level for monitoring, protecting the rights of

shareholders, and assuring that all activities are in line with Shariah. The role of the SSB is to address and provide solutions to the legal and structural impediments in Sukuk issuance via adapting the tenets of both Shariah and common law within the Islamic finance architecture. Finally, to flourish the Sukuk market in Bangladesh, the capital market regulator should need to modify the tax and stamp duty that deals with Sukuk transactions. By doing all these amendments, the Sukuk market of Bangladesh will certainly encourage to increase in Sukuk issuance in the country.

IV. REFERENCES

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