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Shariah Advisory Council in Malaysia and Higher Shariah Advisory Council in Syria: A Comparative Study

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Abstract

The present research investigates the differences between Shariah advisory council in Syria and Sharia advisory council in Malaysia and find out the method of governing these councils

***Methodology/approach**: Using structured comparative study between laws relating to Shariah advisory council in two countries*

***Findings**: this research shows that the Shariah advisory council in Malaysia is having more powers and functions than Higher Shariah advisory council in Syria.*

***Practical implications:** Shariah Advisory Council in Syria should be giver more powers and authority over Islamic banks in Syria, its ruling is not binding directly on Islamic banks and Shariah Control Committee.*

***Originality**: The paper makes important contribution toward understanding of working mechanism of Shariah Advisory Council in Syria and Malaysia*

Keywords: Islamic banking; Shariah Advisory Council; Higher Shariah Advisory Council; Syria; Malaysia.

1. Introduction

Corporate governance refers to the way by which a corporation is administered or directed. However, unlike conventional banks, Islamic banks have the responsibility to ensure the Shariah compliance in its instruments, management, operations, products and practices. Hence, Shariah governance is another component that is completely relating to Islamic banks. Shariah compliance is the pillar of Islamic banking system; it gives legitimacy to its practices operations. It also boosts the confidence of the shareholders and the public that all the practices and activities comply with the Shariah at all times. The *Shariah* control committee is the unique feature of Islamic banking system, which differentiate it from conventional banking system; its important stems from the fact, that Islamic banks are the only alternative for the usury-based banking system and necessary because it is the authority, which supervises the level of adherence of Islamic banks in their transactions to *Shariah* rulings. It also ascertains the level of abidance in implementing Fatwas and *Shariah* rulings and tries to find expedient and permissible formulas for the impermissible transactions. Furthermore, Islamic banks are involved with a wide changeable variety of

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transactions; and that necessarily required the presence of *Shariah* Control Committee, which issues *Shariah* rulings for these transactions and supervises their implementation. Shariah supervision is essential to avoid crises in the Islamic banking sector because it affects the confidence of the public and it might expose Islamic banks to risks e.g. fiduciary and reputational risks.[1] However, the issue shows the fact that every Islamic bank has its own Shariah Control Committee and this may lead to divergent and different in ruling in one country. Higher Shariah Advisory council solves this issue and harmonise the divergent issues of opinions of *Shariah* committees upon *Shariah* matters regarding Islamic banking

There are two types of *Shariah* Control Committee; the first is the *Shariah* Control Committee inside the Central Bank, which is responsible for all issues related to Islamic banks, examples of this types are the *Shariah* advisory Council in the Central Bank of Malaysia[2] and the Higher *Shariah* advisory Council inside the Central Bank of Syria. The second type is the *Shariah* Control Committee inside Islamic banks with responsibilities of supervision and giving fatwa. This paper highlights the law relating to Sharia advisory council within Central bank of Malaysia and Higher Shariah Advisory Council in Central Bank of Syria.

2. Higher Shariah Advisory Council in Syria

The Higher *Shariah* Advisory Council is the Supreme *Shariah* Advisory Council comprising advisors experts in *Shariah*, jurisprudence and law to opine and assist the Monetary and Credit Council (hereinafter referred as MCC) in applying control over Islamic banks.[3] The Prime Minister issues an order upon the recommendation of MCC to determine salary and allowances of members of Higher *Shariah* Advisory Council.[4]The decision of creating the Higher *Shariah* Advisory Council Specified its objectives as follows:[5]

1. Giving opinion and advice for issues, relating to Islamic Financing, referred to it by the MCC.
2. Contributing to the development of the Islamic Financing Methods.

The appointment of members to Higher *Shariah* Advisory Council is done by MCC of Central Bank of Syria and it shall lay down their operation procedure.[6] The mechanism of work of the Higher *Shariah* Advisory Council becomes clear by the overview on the structure of this council, its membership and its meetings convening.[7] The structure of Higher *Shariah* Advisory Council is stated as under:

1. The Higher *Shariah* Advisory Council composes a chairperson, deputy chairperson and three members. The membership term is three years, renewable.[8]
2. In case of a member seat becomes vacant, the substitute continues the term of his predecessor.[9] The Higher *Shariah* Advisory Council members elect the Chairman of the council and his deputy. The election is repeated when the term of each of them is over.[10]

The convening of Meeting in Higher *Shariah* Advisory Council follows as under:

1. The Higher *Shariah* Advisory Council meets upon convocation from the MCC or from its chairman or his deputy, or by a convocation made by at least two of its members.[11]The meeting shall not be considered correct unless the chairman or his deputy attends it.[12]

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2. The Higher *Shariah* Advisory Council convenes its meeting if attended by at least three members. The opinions are adopted by the majority of the attending members. In case of a tie, the vote of the Chairman, or can be caste by his deputy if the Chairman is absent.[13]

The Central Bank of Syria is in-charge of the Higher *Shariah* Advisory Council Secretariat and shall procure its seat.[14]The major Functions of the Higher *Shariah* Advisory Council are to achieve the objectives of Islamic banking. The Higher *Shariah* Advisory Council has a number of functions, some of them are stated below:[15]

1. Assisting the MCC in finding the monitoring Controls that regulate the Islamic financing order to guarantee their conformity with the *Shariah* rules. This includes all things that are issued by the MCC, such as instructions and different decisions, which pertain to organizing and controlling the function of the Islamic banks and financial institutions.
2. Giving opinion about the extent of legality of the transactions that are made between the Central Bank of Syria and the Islamic Banks, including the opening of accounts, extending financings, selling and buying and issuing monetary tools, etc., in such a way, which does not conflict with the *Shariah* rules.
3. Assisting the MCC to determine issues that are juristically controversial in the *Shariah* Control Committee at the Islamic banks and financing institutions.
4. Making researches and studies, which contribute to the developing of the methods and formulas of the Islamic financing.
5. The specialization of Higher *Shariah* Advisory Council is to unite the decisions pertain to Islamic finance, to avoid controversies in Islamic contract and business.

2.1. Binding Nature of Higher Shariah Advisory Council Rulings

The decision issued by the Higher *Shariah* Advisory Council is not binding directly upon *Shariah* control committee of Islamic banks, it should be issued through MCC, but the *Shariah* control committee of Islamic banks have to adhere to the to the decisions of MCC.

The Higher *Shariah* Advisory Council that belongs to the MCC at the Central Bank of Syria. Its job is to assist the MCC in controlling the Islamic Banks and issuing the standards and stereotyped formulas of the contracts that are concluded in the Islamic Banks. This Higher *Shariah* Advisory Council's authority is derived from the authority of the MCC. Therefore, the *Shariah* Advisory Council itself cannot bind the Islamic Banks and has no authority over them, but it binds them through the MCC. It submits suggestions to the MCC, which issues and binds these decisions on Islamic Banks to implement them and work accordingly.

Here, it is worth mentioning that the *Shariah* Advisory Council in Syria does not issue such standards itself, but it suggests the standard to the MCC which is in charge of all banking operations inside the state. The MCC will, later on, issue these standards and circulate it to the Islamic banks after it is signed by the Governor of the Central Bank of Syria in his capacity as the head of the MCC, and approve it by the Prime-Minister. Thus, the standard gets its lawful qualities.

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2.2. Powers of Higher Shariah Advisory Council in Syria

The decision issued by the Higher *Shariah* Advisory Council is not binding directly upon *Shariah* control committee of Islamic banks, it should be issued through MCC, but the *Shariah* control committee of Islamic banks have to adhere to the to the decisions of MCC. The powers authorized to higher *Shariah* advisory council includes has the following powers:[16]

1. It can invite a person it deems fit to attend its meetings. Such person should have knowledge of Islamic financing, law and economy. It may get assistance from any person if it thought it necessary. It also may depend on a cadre, which is specialized in the control of Islamic banks at the Government Commissariat department at the Central Bank of Syria.
2. The Higher *Shariah* Advisory Council has the right to request to see statements, documents, bills, records, contracts or correspondences, which it deems necessary for enabling it in performing its duties.

Even though the Higher *Shariah* Advisory Council is under the MCC, It is only by name Higher Council, to be different from the *Shariah* Control Committee, Still the Legislative Decree, 35/2005 ambiguous about the following points:

1. The relation between *Shariah* Control Committee and Higher *Shariah* Advisory Council.
2. Binding and prevailed ruling issued by Higher *Shariah* Advisory Council.
3. The procedure for getting an advice or opinion form Higher *Shariah* Advisory Council.
4. The effect of court judgment or arbitral award over Higher *Shariah* Advisory Council.
5. It is not mentioned that the court and arbitrator will consult the Higher *Shariah* Advisory Council.

3. Shariah Advisory Council in Malaysia

Prior to Central Bank of Malaysia Act, 701/2009 (hereinafter referred as CBM Act, 701/2009), Shariah Advisory Council (hereinafter refer as SAC) was regulated by BAFI Act, 1989/372 and followed by CBM Act, 519/1994. Even though section 16-B of CBM Act, 519/1994 has strengthened the regulatory framework of SAC. The Central Bank of Malaysia (Amendment) Act, 2003 failed to resolve the issue pertinent to *Shariah* matters, since the decision made by the SAC is only binding upon the arbitrator and not the court.[17] Also that the provision of sub-section 16-B (8) states that the court may seek opinion from SAC, the decision given by the SAC is not binding on the civil court.

Meanwhile, based on analysis of the approach of the courts in applying the provisions of section 16-B concluded that different approaches were taken by the courts whether to refer to the SAC or not in deciding *Shariah* matters on Islamic financial business.[18]

The legal status of opinion of SAC in Islamic finance dispute resolution is a moot question, although CBM Act, 701/2009 upholds and binds the parties to the rulings issued by the SAC once a matter has been referred to the SAC, the law still provides for discretionary powers of the judge as may be required to refer a case to SAC. [19] If a matter is referred to *Shariah* Advisory Council, Its rulings are binding upon judge.[20]

A judge decides cases pertaining to *Shariah* matters of Islamic banking based on rulings provided by the SAC on an issue. In addition, he depends on the judge's own perceptions and understanding on how he

understands the principles of public interest and the role of public interest in ensuring a fair outcome in the light of the SAC rulings issued.

It has been stated that under CBM Act, 701/2009, the SAC has a wider range of referral and is not simply limited to the issue of whether the matter at hand involves any element, which is not compliance with *Shariah*. By comparing the provisions contained in CBM Act, 701/2009 and CBM Act, 519/1994 pertaining to reference to the SAC by courts. Even though there is a broader range of referral granted to the SAC under paragraph 16-B (9) (a) of CBM Act, 519/1994, the final say must rest with the presiding judge. Accordingly, the court may not be bound by the opinion of the SAC. In contrast, CBM Act, 701/2009 restricts the power of the judge where the judge is bound by the decision or ruling made by the SAC when a reference has been made. The judge could not go behind the documents/agreements before him and could neither check on the substance of it if the judge had referred to the SAC. The legal standing in the event of inconsistency of *Shariah* ruling made by the SAC and the *Shariah* advisory board of IFI. Since the CBM Act, 701/2009 clearly states that the ruling of the SAC shall prevail, CBM Act, 701/2009 has cleared the air of uncertainty and creates no opportunity for such conflicting ruling/advice to be rendered at all.[21]

In comparison study of the courts decisions on Islamic banking issues the provisions pertaining to the SAC as provided under CBM Act, 519/1994 and CBM Act, 701/2009. CBM Act, 701/2009 provides a precise and clear legal framework for Islamic finance, particularly regarding the legal status of *Shariah* resolution and the SAC as the highest authority on Islamic banking and finance. By analysing the Islamic banking cases, the decision of the courts shows that the SAC's deliberations or expert opinions are actually needed. There is no harm in the court seeking the SAC's view and indeed, it could strengthen the court's reasoning and arguments in making the decision. Meanwhile, the first motion made by the learned judge in the case of *Tan Sri Khalid Ibrahim v. Bank Islam Malaysia Berhad*[22]to refer to the SAC indicates a positive development of the court's attitude towards resolving mixed legal and *Shariah* issues in Islamic finance disputes.[23]

In comparing the approach of the court pursuant to provision of CBM Act, 519/1994 and CBM Act, 701/2009 in referring to the SAC for its ruling, the impact of the amendment of section 16-B of CBM Act, 519/1994 relating to reference to the SAC by court or arbitrator is very minimal. The decided cases show that many judges are of the view that referring any question regarding *Shariah* to the SAC as provided under section 56 of CBM Act, 701/2009 as a matter of discretion rather than mandatory. Consequently, the courts, more often than not, have chosen not to refer the *Shariah* issues to the SAC. A significant question pertaining to provision of CBM ACT, 701/2009, that is, to what extent does the ruling of the SAC bind the court. Based on the case of *Mohd Alias Ibrahim v. RHB Bank Bhd & Anor*,[24] the provisions which make it obligatory for the court to refer *Shariah* issues to the SAC as *Shariah* matters are actually meant to assist the judge to reach a just and fair decision. Meanwhile, the duty to decide the other issues pleaded by the parties is still left exclusively to a trial judge.[25]

Finally, in the case of *Tan Sri Abdul Khalid Ibrahim v. Bank Islam Malaysia Bhd*

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& another Case,[26] a number of matters relating to SAC provided in CBM Act, 519/1994 are clearly explained by Rohana Yusuf J. in her judgment dated 21 August 2009. In this regard, it would be good to reproduce several parts of its judgment, which are relevant to the SAC established under CBM Act, 519/1994 as follows:

> "Section 16-B designates the SAC to be the authority for the ascertainment of Islamic law for the purposes of Islamic banking business, Takaful business or Islamic financial business. Bank Negara, under Section16-B (7) must consult the SAC on Shariah matters relating to Islamic Banking Business, Takaful Business, Islamic Financial Business, Islamic Development Financial Business, or any other business, which is based on Shariah principles. Bank Negara, may issue written directives to banks and Financial Institutions in relation to Islamic banking or Islamic financing businesses in accordance with the advice of the SAC. Its membership as determined under s. 16-B (2) is made of members from related disciplines, besides Shariah scholars"
>
> "Under Section 16-B (8), it is provided that in any proceedings before the court when a question arises concerning a Shariah matter, the court or the arbitrator may take into consideration any written directives issued pursuant to sub-Section (7) or refer such question to the SAC for its ruling..."
>
> "It is clear from Section 16-B that the SAC is the body empowered for the "ascertainment of Islamic Law for the purpose of Islamic banking business." The legislature had intended the SAC to be a legally recognized body under the law to ascertain the Islamic law applicable to Islamic Banking and Finance. With such specific legislative provision, it is obvious that the SAC is a body empowered and recognized under the legislation to issue ruling and direction on the applicable Shariah Law in Islamic Banking Business."

3.1. Shariah Advisory Council: An Overview

Shariah Advisory Council is the highest legal authority in Islamic banking and finance in Malaysia. The Central Bank of Malaysia Act, 2003 was amended in 2009 and incorporated the *Shariah* Advisory Council. The *Shariah* Advisory Council operates as an independent and superior *Shariah* body that is to be consulted by the court or arbitrator regarding *Shariah* disputes in Islamic banking transactions. In addition, the *Shariah* committee of Islamic financial institutions consults the SAC on matters that have not been resolved.[27]

Apart from that, the SAC has been set mainly to create a high level of harmonisation regarding Islamic banking functions. This process of promoting harmonisation and advancing consistency was complemented by the CBM Act, 701/2009. The Act empowers the SAC in two perspectives. **First**, it explicitly states that the Central Bank of Malaysia shall consult the SAC on any question regarding Islamic law relating to Islamic financial business. In addition, it states that Islamic financial institutions may refer to the SAC for a ruling or advice in relation to the Islamic finance operations.[28] The same rule is mutatis mutandis applied to arbitrators and courts, which are also required by the Act to consider any published rulings of the SAC and shall refer any question that arises concerning a *Shariah* matter to the SAC.[29]

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Second, the rulings of the SAC have become binding to all parties, including the court, arbitrator and the Islamic financial institution. The enforceability of SAC decisions is stated in CBM Act, 701/2009,

"Any ruling made by the Shariah Advisory Council pursuant to a reference made under this Part shall be binding on the Islamic financial institutions under section 55 and the court or arbitrator making a reference under section 56. Further, the rulings of the SAC overturn any other contradicting Shariah rulings made in Malaysia." [30] "Where the ruling given by a Shariah body or committee constituted in Malaysia by an Islamic financial institution is different from the ruling given by the Shariah Advisory Council, the ruling of the Shariah Advisory Council shall prevail."[31]

Central Bank of Malaysia issued these guidelines as the first statutory instrument that governs *Shariah* Supervisory Boards in Malaysia. The main objective of this piece of legislation is to specify the role, duties and responsibilities of a *Shariah* Supervisory Board. It also arranges the relationship between these boards and the central SAC.[32] Additionally, the issue of promoting public confidence in the Islamic banking sector has been a major consideration for these governing guidelines. The Central Bank of Malaysia got the right to disqualify any member of a *Shariah* Supervisory Board in certain circumstances.[33]

In other words, the actions and decisions of the members of the *Shariah* Supervisory Board are not left without supervision, because the Central Bank of Malaysia is legally empowered to intervene whenever it is necessary. Further, a member of a *Shariah* Supervisory Board is not allowed to be appointed to the SAC to avoid conflicts of interest.[34] It must be noted that, regarding the two previous corporate governance concerns, the issue of the *Shariah* Supervisory Board has been dealt with in a more effective way especially since the Malaysian authority was more articulate in tackling this issue through enacting the legal rules that dictate the functions, scope of duties and responsibilities of any *Shariah* Supervisory Board, and also by presenting the higher *Shariah* authority (SAC), which will be consulted to resolve any *Shariah* dispute.

3.2. Shariah Advisory Council Working Mechanism

The establishment of *Shariah* Advisory Council comes under the aegis of central bank of Malaysia. The Central Bank of Malaysia may establish a *Shariah* Advisory Council on Islamic Finance, which shall be the authority for the ascertainment of Islamic law for the purposes of Islamic financial business.[35] The *Shariah* Advisory Council may determine its own procedures.[36] The *Shariah* Advisory Council shall have the following functions:[37]

1. To ascertain the Islamic law on any financial matter and issue a ruling upon reference made to it.
2. To advise the Central Bank of Malaysia on any *Shariah* issue relating to Islamic financial business, the activities or transactions of the Bank.
3. To advice Islamic financial institution or any other person as may be provided under any law.
4. Other functions that the Central Bank of Malaysia may determine it.

The appointment of members to *Shariah* Advisory Council takes place by order of *Yang di-Pertuan Agong*, on the advice on the advice of the Finance Minister after

consultation with the Central Bank of Malaysia may appoint the following persons as members of *Shariah* advisory council:

1. If the person is qualified and competent in *Shariah* or has experience or knowledge in the *Shariah*, banking, finance and law or such other related specialisations.[38]
2. A judge of the High Court, the Court of Appeal or the Federal Court, or a judge of the *Shariah* Appeal Court of any State or Federal Territory, can be appointed as a member of *Shariah* advisory council, but such appointment shall not be made, except in the case of a judge of the High Court, the Court of Appeal or the Federal Court, after consultation with the Central Bank of Malaysia with the Chief Justice; and in the case of a judge of the *Shariah* Appeal Court of any State or Federal Territory, after consultation with the Central Bank of Malaysia with the Chief *Shariah* Judge of the respective State or Federal Territory, as the case may be.

The term of the office of member of *Shariah* Advisory Council: a member of the *Shariah* Advisory Council appointed under IFS Act, 759/2013 shall hold office under such conditions and terms as may be specified in the letters of appointment, and shall be eligible for reappointment. The Board of Directors of Central bank of Malaysia determines remuneration and allowances of members of the *Shariah* Advisory Council and such salary shall be given to the members of *Shariah* Advisory Council from the funds of the Central Bank of Malaysia.[39] The Central Bank of Malaysia may establish a secretariat and such other committees as it considers necessary to assist the *Shariah* Advisory Council in carrying out its functions and appoint any officer of the Bank or any other person to be a member of the secretariat or such other committees.[40] Any request for advice or a ruling of the *Shariah* Adv[41] The Central Bank of Malaysia shall consult the *Shariah* Advisory Council on the following matter:

1. In respect of Islamic financial business.[42]
2. For carrying out its functions or conducting its business or affairs under CBM Act, 701/2009 or any other written law inconsistent with the *Shariah*, which requires the ascertainment of Islamic law by the *Shariah* Advisory Council.[43]

Islamic financial institution shall consult the *Shariah* Advisory Council on the following matter:

1. Refer for a ruling on the operations of its business so as to ascertain that it does not include any element which is not approved by the *Shariah*.[44]
2. Seek the advice of the *Shariah* Advisory Council on the operations of its business so as to ascertain that it does not include any element which is not approved by the *Shariah*.[45]

3.3. Binding Nature of Shariah Advisory Council Ruling

CBM Act, 701/2009 also provides solution regarding *Shariah* ruling. Any ruling made by the *Shariah* Advisory Council pursuant to a reference made under CBM Act, 701/2009 shall be binding on the Islamic financial institutions, arbitrator and court.[46] "Ruling" means any ruling made by the *Shariah* Advisory Council for the ascertainment of Islamic law for the purposes of Islamic financial business.[47] Where the ruling passed by a *Shariah* committee of Islamic bank is different from the ruling given by the *Shariah* Advisory Council, the ruling of the *Shariah* Advisory Council shall **prevail**.[48] This is parallel to the function of the SAC as the highest authoritative body in the

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ascertainment of Islamic law pertaining to Islamic financial business.[49] Where in any proceedings relating to Islamic financial business before any court or arbitrator any question arises concerning a *Shariah* matter, the court or the arbitrator, as the case may be, shall take into consideration any published rulings of the *Shariah* Advisory Council or refer such question to the *Shariah* Advisory Council for its ruling.

3.4. Establishment of Shariah Advisory Council

SAC for Islamic finance may be established by Central Bank of Malaysia. The council is an authoritative body to ascertain principles of *Shariah* for business transactions of Islamic nature[50] and it may also determine its own procedure.[51]

3.5. Functions of Shariah Advisory Council

SAC is having different functions such as:

1. It pronounces a ruling on a reference, which is made to it and ascertains Islamic principles on any matter of financial nature.
2. Based on *Shariah*, it advises Central Bank of Malaysia on issues like activities, business or other financial transactions.
3. It also provides advice to a person or financial institutions, which is provided under any law. Further, it performs all those functions which are determined by the Central Bank of Malaysia. [52]

At present, the framework installed by Central Bank of Malaysia consists of two main components a **Central *Shariah* Authority**, the role of which was enhanced in 2009 by the CBM Act, 701/2009; [53] and the governing rules of *Shariah* Supervisory Boards in every Islamic financial institution known as *Shariah* Committee.[54]

3.6. Appointment of Members to Shariah Advisory Council

The Yang di-Pertuan Agong[55] may appoint members of SAC who are well versed with *Shariah* or have knowledge and experience in banking, finance, law and other related disciplines, on the advice of minister of Finance after consulting the Central Bank of Malaysia.[56] The appointment of judge of *Shariah* appellate court or a judge of court of appeal or federal court or high court of federal territory or any state shall not be made except:

1. After consultation by the bank with chief justice in case of a judge high court or court of appeal or federal court.
2. After the Central Bank of Malaysia consults chief of *Shariah* judge of the state or federal territory concerned, in case of appointment of judge of *Shariah* appeal court of a state or federal territory

Any person appointed, holds office subject to the terms conditions presented in the appointment letter and such person appointed is eligible for re-appointment. i.e., the term of office is renewable. The allowances and remuneration paid to such appointed members of *Shariah* Advisory Council from the funds of Central Bank of Malaysia as decided by of its board.

3.7. Restrictions on Members of Shariah Advisory Council

The member of the *Shariah* Advisory Council cannot be a member of any *Shariah* committee or act as a *Shariah* consultant or *Shariah* adviser with any banking institution or other financial institution. This prohibition is not present in Syria i.e. dual membership

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of one person, where one person may act as member in Higher *Shariah* Advisory Council as well as in the *Shariah* committee

3.8. Secretariat to Shariah Advisory Council

To assist *Shariah* Advisory Council in performing its functions properly and smoothly, the Central Bank of Malaysia establishes a secretariat or any such committees as the situation requires or is deemed. The Central Bank of Malaysia has not only established secretariat in such other committees but also appointed an officer to represent the Central Bank of Malaysia in the secretariat.[57]

3.9. Consultation of Shariah Advisory Council by Central Bank of Malaysia

The Central Bank of Malaysia has to consult SAC on any issue, which is related to Islamic financial business and to ascertain any Islamic *Shariah* by SAC with the object to conduct business or affairs or to carry out functions under this Act or any other law for the time being in force according to the precept laid down in *Shariah*. In order to be sure that its business does not include anything violates of the Islamic *Shariah*, any financial institution may seek an advice or request for a ruling on any of its business operations.[58]

3.10. Shariah Advisory Council and Courts

If any question relating to a *Shariah* matter in Islamic finance or banking business is put before an arbitrator or any court, before deciding the matter they shall take into account published rulings of SAC or refer the questions relating to sharia matters pertaining to Islamic financial business to SAC. Any referred request to SAC for its advice or ruling should be submitted to the secretariat.[59]

Conclusion

The ruling of Sharia advisory council in Malaysia is binding upon courts, arbitrators and all Islamic financial institution in Malaysia while the ruling Higher Shariah advisory council in Syria is not binding upon Islamic banks and Shariah control committees, the Legislative Decree 35/2005 was silent about the possibility of binding ruling of Higher Shariah advisory council upon courts or arbitrators. The legislature in Malaysia has extensively regulate all aspects of Shariah advisory council under the Central Bank of Malaysia Act, 2009.

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