

Capital Market and Services Act 2007

LAB4112

ZULKIFLI HASAN



Governing Laws



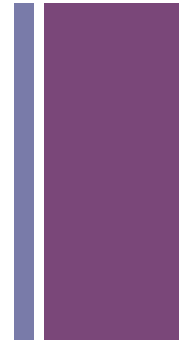
- Capital Markets and Services Act 2007
- Securities Industry (Central Depositories Act) 1991
- Securities Commission Act 1993
- Companies Act 1965
- Offshore Companies Act 1990
- Labuan Financial Services and Securities Act 2010

+ CMSA 2007

- **Prescription by Minister in respect of Islamic securities, etc.**
- **316.** (1) This Division applies to a person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, Islamic securities.
- (2) Where the Minister has made a prescription under section 5 in respect of Islamic securities, the Minister may make such modifications in the prescription on the usage of expressions in the securities laws as may be necessary to give full effect to the principles of *Shariah* in respect of such Islamic securities.
- (3) The Commission may specify in guidelines made under section 377 on the following:
 - (a) any model agreement or documentation relating to a transaction or arrangement in respect of Islamic securities;
 - (b) the duties and responsibilities of the different parties involved in a transaction or arrangement in respect of Islamic securities; and
 - (c) any other matter as may be deemed appropriate,
- in giving full effect to the principles of *Shariah* in relation to a transaction in respect of Islamic securities.

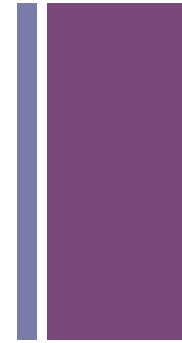
+ CAPITAL MARKETS AND SERVICES (AMENDMENT) ACT 2010

- S2—Shariah Advisory Council || means Shariah Advisory Council established under section 316A;



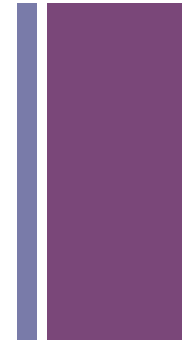
+ Definition of ICM

- (b) by inserting after the definition of —Islamic bank || the following definition: —Islamic capital market business or transaction || means
- (a) the business of carrying on any regulated activity;
- (b) any proposal that falls within subsection 212(2);
- (c) any transaction relating to a futures contract; or
- (d) the establishing, operating or maintaining of a stock market or a futures market,
- which does not involve any element that is inconsistent with the principles of Shariah as may be determined by the Shariah Advisory Council;’.



+ Establishment of Shariah Advisory Council for Islamic capital market

- 316A. (1) The Commission may establish a Shariah Advisory Council for Islamic capital market which shall be the authority for the ascertainment of the application of Shariah principles for the purposes of Islamic capital market business or transaction.
- (2) The Shariah Advisory Council may determine its own procedures.



+ Functions of Shariah Advisory Council

- 316B. The SAC shall have the following functions:
 - (a) to ascertain the application of Shariah principles on any matter pertaining to Islamic capital market business or transaction and issue a ruling upon reference made to it in accordance with this Division;
 - (b) to advise the Commission on any Shariah issue relating to Islamic capital market business or transaction;
 - (c) to provide advice to any person on any Shariah issue relating to Islamic capital market business or transaction; and
 - (d) such other functions as may be prescribed by the Minister.

+ Appointment of members of Shariah Advisory Council

- 316C. (1) The Yang di-Pertuan Agong may, on the advice of the Minister after consultation with the Commission, appoint persons as members of the Shariah Advisory Council who are qualified in—
 - (a) fiqh muamalah;
 - (b) Islamic jurisprudence;
 - (c) Islamic finance; or
 - (d) any other relevant discipline.

+ Cont..

- (2) If a judge of the High Court, the Court of Appeal or the Federal Court, or a judge of the Shariah Appeal Court of a State or Federal Territory, is to be appointed under subsection (1), such appointment shall not be made except—
 - (a) in the case of a judge of the High Court, the Court of Appeal or the Federal Court, after consultation by the Commission with the Chief Justice of the Federal Court; and
 - (b) in the case of a judge of the Shariah Appeal Court of a State or Federal Territory, after consultation by the Commission with the Chief Shariah Judge of that State or Federal Territory, as the case may be.

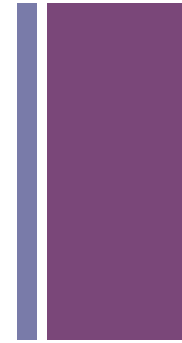
+ Cont..

- (3) A member of the Shariah Advisory Council appointed under subsection (1) shall hold office on such terms and conditions as may be provided in their respective letters of appointment, and shall be eligible for reappointment.
- (4) The members of the Shariah Advisory Council shall be paid such remuneration and allowances as may be determined by the Commission.



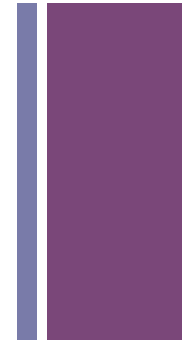
+ Secretariat to Shariah Advisory Council

- 316D. The Commission may—
 - (a) establish a secretariat and such other committees as it considers necessary to assist the Shariah Advisory Council in carrying out of its functions under section 316B; and
 - (b) appoint an officer of the Commission or any other person to be a member of the secretariat or any of such committees.



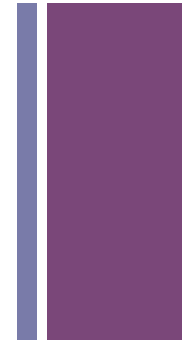
+ Advice or ruling of Shariah Advisory Council

- 316E. Any licensed person, stock exchange, futures exchange, clearing
- house, central depository, listed corporation or any other person may—
 - (a) seek the advice; or
 - (b) refer for a ruling,
- of the Shariah Advisory Council on any matter relating to its Islamic capital market business or transaction to ascertain whether such Islamic capital market business or transaction involves any element which is inconsistent with the Shariah.



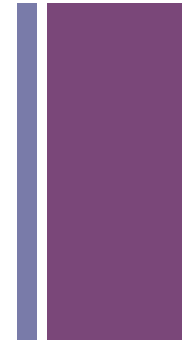
+ Reference to Shariah Advisory Council for ruling from court or arbitrator

- 316F. (1) Where in any proceedings before any court or arbitrator concerning a Shariah matter in relation to Islamic capital market business or transaction, the court or the arbitrator, as the case may be, shall—
 - (a) take into consideration any ruling of the Shariah Advisory Council; or
 - (b) refer such matter to the Shariah Advisory Council for its ruling.
- (2) Any request for advice or a ruling of the Shariah Advisory Council under this Act or any



+ Effect of Shariah ruling

- 316G. Any ruling made by the Shariah Advisory Council under section
- 316E or 316F shall be binding on—
 - (a) the licensed person, stock exchange, futures exchange, clearing house, central depository, listed corporation or any other person referred to in section 316E; and
 - (b) the court or arbitrator referred to in section 316F.



+ Shariah Advisory Council ruling prevails

- 316H. (1) Where a ruling given by a registered Shariah adviser to a person engaging in any Islamic capital market business or transaction is different from the ruling given by the Shariah Advisory Council, the ruling of the Shariah Advisory Council shall prevail.
- (2) For the purpose of this section, —registered Shariah adviser || means a person who is registered under any guidelines issued by the Commission under section 377. || .

