



Board, Shariah Committee and Senior Management: Updates on the Bank Negara Malaysia Shariah Governance Policy Document

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ABSTRACT - The paper aims to examine the relevant provisions of the newly released Bank Negara Malaysia (BNM) Shariah Governance Policy Document relating to the board of directors, Shariah Committee and senior management of the Islamic Financial Institutions (IFIs) in Malaysia. The study is qualitative-based research. It reviews two documents, i.e. BNM Shariah Governance Framework 2010, and BNM Shariah Governance policy 2019. It uses a content analysis approach to understand and compare the two frameworks from the perspective of the board, the Shariah Committee and senior management. The study finds that SGP 2019 enhanced features of the preceding SGF 2010 revolving around enhanced board oversight and roles over Shariah governance, strengthened Shariah Committee (SC) requirements in providing independent and sound advice to IFIs, as well as a greater expectation for the board and senior management in promoting Shariah compliance culture. This paper examines the areas which have been addressed by the new framework to improve several issues which have been highlighted during the implementation of the previous framework, SGF 2010.

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INTRODUCTION

With Shariah being the cornerstone of IFIs, it is indeed imperative to ensure Shariah compliance across the institution to maintain public confidence. Failure to uphold the whole process of Shariah compliance would certainly trigger negative repercussions to the IFIs, such as financial loss and massive unwarranted withdrawal. Given the importance of Shariah compliance, the Islamic financial system requires the institutionalisation of a robust Shariah governance structure that would help to ensure an end-to-end Shariah compliance in the Islamic finance practices. The establishment of a Shariah governance framework is essential to Islamic finance system stability.

As defined by IFSB-10, Shariah governance refers to “*the set of institutional and organizational arrangements through which an IIFS ensures that there is an effective independent oversight of Shariah compliance*”

over the issuance of relevant Shariah pronouncements, dissemination of information and an internal Shariah compliance review” (Islamic Financial Services Board, 2009).

Meanwhile, the AAOIFI defines Shariah governance framework as “*a set of organisational arrangements through which Islamic financial institutions ensure effective oversight, responsibility and accountability of the board of directors, management and Shariah committee*” (Malik, 2020).

Through the definition given by AAOIFI, it is clear that the responsibility of sound Shariah governance rests on the shoulders of the board of directors, management, and Shariah Committee. This is found to be coherent with the concept of Shariah governance by BNM which also highlights the crucial role played by these three key players.

Generally, the board holds the oversight accountability of the overall Shariah governance by ensuring Shariah compliance and integration within the IFI’s operations and strategies. Meanwhile, the Shariah committee is responsible to provide objective and sound advice to its respective IFI to warrant Shariah compliance in the business operations, affairs, and activities. Subsequently, the management is expected to observe the directives from the board which is then supported by the necessary advice from the Shariah committee in its day-to-day management to ensure Shariah compliance in the IFI’s business operations, affairs, and activities. It is also important to note that for these three key players to carry out their fiduciary duties, they are supported by four Shariah arms – Shariah research, Shariah audit, Shariah review, and Shariah risk management control.

The many cases over the last two decades, which challenged the Shariah compliance aspect of certain Islamic banking products, have called for the BNM to introduce the Shariah Governance Framework for Islamic Financial Institutions (hereinafter referred to as SGF 2010), issued on 22 October 2010. The SGF aims to strengthen Shariah governance structures, processes and arrangements of the IFIs to ensure Shariah-compliance in place. It requires the IFIs to institute clear internal control and remedial rectification measures to address Shariah non-compliant incidents holistically. Admittedly, among others, the strong legal framework has helped the rapid development and growth of the IFIs in Malaysia. The compliance of the framework has certainly given the confidence and comfort to the market participants that the IFIs are operating according to the Shariah requirements.

In response to the emerging business complexity and market maturity of the IFIs, BNM has issued a new, revised version of the SGF, namely Shariah Governance Policy (SGP 2019), on 20th September 2019, which supersedes the existing SGF 2010. The process of coming out with this new framework has taken a considerably long period, starting with the Shariah Governance Survey (April 2016), Shariah Governance Discussion Paper (15 November 2016), and followed by an exposure draft issued by BNM on the 9th November 2017. This new framework is set out to strengthen board oversight and responsibilities over Shariah governance, and to enhance requirements for Shariah Committee (SC) in providing objective and sound advice to IFIs. Besides, the SGP also sets a higher expectation for the board and senior management in promoting Shariah compliance culture, as well as higher expectations on the quality of internal control functions. In a nutshell, this new and revised Shariah governance framework aims to reinforce the effectiveness of Shariah governance functions and Shariah compliance culture in IFIs.

The purpose of this paper is to examine the key distinctive features and updates of the new Shariah governance framework concerning the three important organs in Shariah governance, i.e. board of directors (board), Shariah Committee (SC), and senior management. Both the existing SGF 2010 and SGP 2019 are reviewed, compared, and analysed accordingly.

LITERATURE REVIEW

The topic of Shariah governance has gained considerable traction in the academic literature, in tandem with the rise of the Islamic finance industry. In the Malaysian context, this is especially true when BNM issued its first comprehensive framework on Shariah governance in 2010, which has invoked numerous research examining Shariah governance from various aspects. For instance, prior research has looked into the Shariah governance practices across various countries (Miskam & Nasrul, 2013; Mizushima, 2014; Rama, 2015; Alam et al., 2019; Mansoor et al., 2020; Mohamad Asri et al., 2020). Through comparison, the findings from these research have provided good input to having best practices in Shariah governance. Furthermore, the identification of challenges faced in the implementation of Shariah governance has been supplemented by their respective pragmatic solution recommendations (Farook & Farooq, 2011). Akin to the dynamic development of Islamic finance in Malaysia, the industry has been receiving continuous regulatory support from relevant authorities such as Bank Negara Malaysia, Securities Commission of Malaysia, Bursa Malaysia, etc.

An interesting study has been made by Kamaruddin et al. (2020) to compare three important Shariah governance policy documents in Malaysia, namely SGF 2010, IFSA 2013, and SGP 2019.

The findings suggest that among the three, SGP 2019 provides the most comprehensive Shariah governance framework. Nevertheless, the elaboration on Shariah governance definition and objectives are still absent from SGP 2019. In addition, there has also been a significant focus on the impact of Shariah governance on the performance of IFIs in the literature (Nawaz, 2017; Buallay, 2019; Nawaz et al., 2021; Alam et al., 2021; Ben Abdallah et al., 2021). In its effort to find empirical support on the importance of Shariah governance, the discussion around this perspective highlights the effectiveness of Shariah governance in affecting the operational, financial, and market performance of the IFIs.

In the following section of the literature review, the focus is given to the need for Shariah compliance in IFIs in Malaysia. This lays out the backdrop for the discussion on the comparison of Shariah governance policy documents, namely SGF 2010 and SGP 2019 in this study.

The Need for Shariah Compliance in IFIs in Malaysia

Over the last two decades, some cases were brought before the court to question the legitimacy of the Islamic banking products and services, which in some cases resulted in the financial loss to the bank due to the judge's decision to deem the contract null and void. For example, the court declared that *Bai' Bithaman Ajil* (BBA) in the *Arab Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors [2008] 5 MLJ 631* was void because the BBA facility was a *bona fide* sale transaction. Therefore, in the event the bank recalled the facility at a higher total price, the sale was no longer a *bona fide* sale transaction but was merely a financing facility similar to a conventional loan.

As a consequence, it breaches the provisions of the Islamic Banking Act 1983 (IBA) and the Banking and Financial Institutions Act 1989 (BAFIA), which require Islamic banking businesses to comply with the religion of Islam (*Arab Malaysian Finance Berhad v Taman Ihsan Jaya Sdn Berhad & Ors*, 2003). Nevertheless, the Court of Appeal in the case of *Bank Islam Malaysia Bhd. v Lim Kok Hoe & Anor and Other Appeals [2009] 6 CLJ 22* reversed the decision and the existing principle of law that had appeared in the Taman Jaya case, upholding the validity of the BBA as an enforceable contract (CLJ, 2009). The validity of the BBA contract in the financing facility was also tested in the case of *Bank Islam Malaysia Bhd. v Dato' Hj Nik Mahmud Daud, Bank Kerjasama Rakyat Malaysia Bhd. v Emcee Corporation Sdn Bhd, Affin Bank Berhad v Zulkifli Abdullah, CIMB Islamic Bank Bhd. v LCL Corporation Bhd. & Anor*, and other cases.

As Islamic banks have witnessed significant growth and move toward market maturity and increased product complexity, more disputes and lawsuits are expected to continue to emerge (Hasan & Asutay, 2011). Ensuring Shariah compliance aspects and strengthening robust Shariah governance is, therefore, imperative to maintain the confidence of Islamic banking stakeholders (Shafii et al., 2013). This is because insufficient attention to the entire Shariah compliance aspects

would have negative repercussions on the sustainability of the Islamic banking industry (Dusuki & Ali, 2012).

On 22 October 2010, BNM issued the Shariah Governance Framework (SGF 2010) for the IFIs under its purview (Islamic banks and conventional banks offering Islamic financial services, and *takaful* companies). The framework was intended to improve Shariah governance structures, processes and arrangements of the IFIs to ensure that Shariah-compliance aspects are in place (Bank Negara Malaysia, 2010). It also requires IFIs to institute clear internal control and remedial rectification measures in dealing with Shariah non-compliance events in a holistic manner (Bank Negara Malaysia, 2019).

In 2013, the Islamic Financial Services Act (IFSA 2013) was gazetted to reinforce the policy orientation of IFIs ensuring full Shariah compliance in their aims, operations and business activities (Government of Malaysia, 2013). Any breach of Shariah-compliance requirements will subject it to criminal and civil penalties, i.e. imprisonment of its executives and financial penalties. Section 28(8) of the IFSA 2013 clearly states:

“Any person who contravenes subsection (1) or (3) commits an offense and shall, on conviction, be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both” (Government of Malaysia, 2013).

To complement SGF 2010 and IFSA 2013, as well as to strengthen Shariah compliance culture among IFIs, BNM issued a number of Shariah standards, which featured the most prevailing and applicable contracts and principles in Islamic banking and *takaful* industry in Malaysia. These include Shariah standards on *murabahah, mudarabah, musharakah, ijarah, wadiah, istisna', wa'ad, kafalah, hibah, tawarruq, bai' inah, rahn and bai' al-şarf*. These documents provide the necessary guidelines to the IFIs in carrying out their operations.

The achievement of Shariah compliance is often linked to the effectiveness of risk management practices. An interesting study by Embi and Shafii (2018) suggested that aside from the Shariah governance elements, the corporate governance elements also have a positive impact on the risk management practices. Therefore, the findings imply that a strong corporate and Shariah governance may lead to a holistic Shariah compliance culture in IFIs.

METHODOLOGY

This present study applies a comparative analysis of Shariah Governance Framework (SGF) 2010 and Shariah Governance Policy Document (SGPD) 2019. In applying the critical comparison between the two Shariah governance frameworks, the study begins with analysing the key roles and responsibilities of key organs in Shariah governance, namely board of directors, Shariah committee and management. The discussion then delves into the comparison of the two frameworks by highlighting key distinctive features of the new introduced SGPD 2019. Several themes are identified in this respect, including oversight, accountability and responsibility of the board, interaction mechanism between the board and Shariah committee and its dispute mechanism, composition and maximum tenure of Shariah committee, and the responsibility of senior management to continuously strengthen their understanding on Islamic finance.

RESULTS

Comparison of SGF 2010 and SGP 2019

Shariah Governance Framework 2010 (SGF 2010)

In 2004, BNM issued the Governance Guidelines for Shariah Committee in IFIs. Among others, it stipulates the duties and responsibilities of the Internal Shariah Committee in IFIs. However, with increasing attention given to Shariah compliance in the ensuing years, the guidelines have been replaced by the new Shariah Governance Framework for IFIs (SGF 2010), effective 1 January 2011. The main objective of this framework is to augment the roles played by the board

of directors, the Shariah Committee and the management in ensuring Shariah compliance in the company. The objectives as outlined by the framework are:

- a) To establish the expectations of BNM on Shariah governance structures, processes, and arrangements in IFIs to ascertain that Shariah compliance is fully observed in all its operations and business activities.
- b) To define appropriate guidelines to the board, the Shariah Committee, and the management of the IFI so that they can discharge their duties about Shariah related matters in effective manners; and
- c) To explain different functions in IFIs, including Shariah review, Shariah audit, Shariah risk management, and Shariah research.

Overall, the framework is deliberated in six sections, namely general requirements of SGF 2010, oversight, accountability and responsibility, independence, competency, confidentiality and consistency, and finally Shariah compliance and research functions. Specifically, Section II of SGF 2010 deliberates further on the oversight, accountability, and responsibility of three key functionaries in the implementation of Shariah governance, i.e. board of directors, Shariah Committee, management.

Board of Directors

The ultimate accountability of the overall Shariah governance falls on the board of directors. The board is expected to devise appropriate mechanisms that are necessary for them to perform their diligent oversight in ensuring effective governance. Also, the board has to make sure that the implementation of the framework corresponds to the size, complexity, and nature of its business. With respect to Shariah-related policies, the board shall approve them upon consultation with the Shariah Committee. Given the critical role of Shariah in the operation of IFIs, it is also important for the board to establish an effective communication policy among the key organs of the IFI to enable smooth escalation of material Shariah matters to the board, as well as to facilitate dissemination of Shariah-related matters from the board to other members of the organisation.

Shariah Committee (SC)

Generally, the Shariah Committee (SC) carries the oversight accountability on Shariah-related matters. SC plays a crucial role in IFI operations because the board relies heavily on the committee's decisions, views and opinions when it comes to Shariah-related matters. Thus, a rigorous deliberation by the SC is required before any decision on Shariah matters is made, binding the IFIs. In achieving this, the committee is supported by the Shariah review and Shariah audit functions that will help to highlight issues that need attention. In addition, the SC also has the responsibility to disclose sufficient information on the aspect of compliance in the annual report. This corresponds to the requirements under the Guidelines on Financial Reporting for Licensed Islamic Banks (GP8-i) and Guidelines on Financial Statements for Takaful Operators (GPT6).

Management

All Shariah rulings and decisions by the National Shariah Advisory Council (SAC) and Shariah Committee are binding on the IFIs. In the Shariah governance framework, the management has to observe and implement these decisions and rules accordingly. Any arising Shariah matters encountered by the management shall be referred to the Shariah Committee for further advice. In addition, the management also plays a crucial role to provide complete and accurate information to the Shariah Committee in due course. The quality of the information will, in turn, determine the quality of the deliberations and decisions made by the Shariah Committee. Another notable responsibility of the management is to ensure that a holistic culture of Shariah compliance is adopted within the organisation. It is believed that this holistic culture of Shariah compliance, i.e. Shariah compliance in its overall financial and business operations, would help to create a positive image of the IFIs and heighten the consumers' confidence and hence good reputations.

Key Distinctive Features of Shariah Governance Policy 2019 (SGP 2019)

This section highlights some of the new features of the SGP 2019 as compared to the 2010 SGF from the context of the three key organs of Shariah governance implementation, i.e. board of directors, Shariah Committee, and senior management.

Board of Directors

In SGF 2010, the oversight, accountability and responsibility of the board were generally focused on upholding the overall Shariah governance framework and Shariah compliance of the IFI. This aspect is seen to be further enhanced in the SGP 2019 whereby Part B: Section 8 (The Board – Key Responsibilities) describes the board’s key responsibilities in more detail which includes focusing on policy approval, oversight and implementation of SAC rulings and SC advice, internal control environment, and implementation of Shariah governance by the senior management. Another interesting detail is the responsibility of the board in promoting a sound corporate culture that represents the importance of full compliance with Shariah requirements. The following are some of the salient features of the SGP 2019 relating to the board of directors and some comparisons with the preceding SGF 2010.

First, the SGF 2010 permitted Shariah Committees to implement stricter Shariah decisions than the SAC BNM published rulings. On the other hand, the 2019 SGP requires banks to inform BNM on any additional restrictions beyond the SAC rulings, supported by any documented deliberation and justification by their Shariah Committees (para 10.7). In light of this issue, it is also observed that the final SGP 2019 has removed a point from Para 9.2 of the BNM Shariah Governance Exposure Draft 2017, which states:

“... where the Shariah committee holds a stricter view on a Shariah matter relative to a published ruling of the SAC and the board seeks to apply the ruling of the SAC, the board must document the justifications for the decision and inform the Bank no later than fourteen (14) days from the date that such decision was made.”

Unlike SGF 2010, where SC decisions should not be set aside or modified without its consent, there is an exception made in the exposure draft regarding this matter. The exception is applicable when SC adopts a more stringent Shariah decision than the National Shariah Advisory Council (SAC) ruling. Until the board is exercising its authority, the impact of this para on the supremacy of the SC decisions is hitherto unknown. In hindsight, it is probably prudent to remove this point from the final SGP 2019 because it conveniently opens the door for the board to challenge any SC decision that is different from the SAC ruling.

Second, the newly-introduced SGPD mandates IFIs to establish effective communication between the boards and Shariah Committees on any issue related to shariah requirements, shariah governance, or shariah non-compliance risks. The boards are also required to provide a regular review on the quality and frequency of the engagement with the Shariah Committees. This would enable both the board and the Shariah Committee to discharge their roles and responsibilities in an effective manner. The previous SGF was, nevertheless, silent on such requirement. Another interesting addition to SGP 2019 is the deliberation of the interaction between the board and SC. It has often been argued whether the interaction and relationship between these two key organs would result in any conflict of decisions. Paragraph 9.1, 9.2 and 9.3 provide a more detail guideline on the interaction between the two, especially on how to handle differences in views without underestimating the integrity of Shariah requirements.

The ‘conflict of decisions’ issue is very much related to the prominent topic of the Shariah Committee's independence. Some argue that board and senior management might act as the ‘invisible hands’ to ensure the decisions are in line with their interests (Muhamad Sori et al., 2015). Therefore, when SGF 2010 first suggested for the board to consider appointing at least one SC member to also sit as a board member, it struck certain parties to believe that it opens the possibility that the appointed SC member might then be under the pressure of the board and

senior management to make decisions that lean towards their preference at the expense of Shariah. Although the intention is to serve as a ‘bridge’ between the board and the SC and to promote better apprehension and appreciation amongst the board members on the SC decisions, some people are still sceptical. Considering the concerns of SC independence, it is particularly interesting to note that the exposure draft of Shariah Governance asked for feedback from the public as to how exactly should the integration be made:

- a) appointment of at least one (1) Shariah committee member as a director; or
- b) inclusion of at least one (1) Shariah committee member as a permanent invitee to board meetings; or
- c) joint meetings between the board and Shariah committee?

However, the SGP 2019 still makes the same recommendation in para 12.10 to appoint SC member as a board member without dictating any specific form of integration as what had been highlighted in the exposure draft. SGP 2019 stresses the importance of integration, i.e. to promote better integration of Shariah governance consideration within the business and risk strategy of the IFI. Given the fact that this argument of the Shariah Committee’s independence is very subjective and will always boil down to the values of the committee member himself, it is believed that this topic shall remain to be the hot potato of Shariah governance.

Shariah Committee

One key highlight of the SGP 2019 is the call for Shariah Committee to better integrate relevant business and risk strategies in deliberating any Shariah issues faced by the IFIs. According to the former Bank Negara Malaysia governor, the new framework “*aims to position these committees as the enabler and catalyst in supporting the board and senior management – one that drives innovation by providing practical, actionable and impactful Shariah advice*” (Damodaran, 2017).

It is interesting to see quite a number of further deliberations made on Shariah Committee in the effort to make it more effective and efficient. First, the new SGP 2019 stipulates the maximum tenure of Shariah Committee member to nine years in a single IFI. The 2010 SGF, on the other hand, did not put any limit on the SC reappointment and tenure. This limit is intended to address the complacency issue, which may have an adverse impact on the professional objectivity of the SC. A new Shariah Committee composition is expected to strengthen the SC overall competency and its Shariah deliberations. Nevertheless, this particular clause will only be effective from April 1, 2023 to facilitate the transitional arrangements and sufficient time for IFIs to establish their Shariah Committee compositions.

Second, in terms of composition, both frameworks require an IFI to comprise of at least five Shariah Committee members (Para 2.3 of SGF 2010, and Para 13.2 of SGP 2019). However, SGP 2019 also offers some flexibility (subject to BNM’s approval) to accommodate the small and less complex IFIs, particularly the Islamic window or a foreign branch in Malaysia, whereby it allows for a minimum of three Shariah committee members only (Para 13.4). The justification for this smaller requirement is that a minimum of three SC members is proportionate to meet the business needs of the relevant IFIs.

With regards to the committee composition, it is interesting to highlight the points suggested by the exposure draft, which described the composition of the Shariah Committee to comprise two categories, i.e. Shariah-qualified person and Islamic finance practitioner. To qualify in either category, the requirements are laid out in Para 12.2 and Para 12.3 of the exposure draft. It is noteworthy that the criteria for one to fall under the Islamic finance practitioner group seems to be relatively strict. The requirement of at least one Islamic finance practitioner by this draft is basically to address the concern that some SCs are perceived to be lacking the technical understanding of specific business matters. Therefore, the presence of the Islamic finance practitioner is expected to help avoid any unclear guidance and inappropriate alternative solutions provided about the operationalisation of Shariah requirements. Although it is good in ensuring the quality of the Shariah Committee, it is uncertain whether the industry currently has that large

pool of talent to recruit from to meet the demand. This is plausibly the reason for the SGP 2019 not adopting this particular requirement in its final issue.

Third, in terms of committee meetings, both frameworks require the meetings to be held at least once in two months. However, SGP 2019 further provides that an IFI operating as an Islamic window or a foreign branch in Malaysia is allowed to have the SC meetings at least twice a year only (Para 11.3). It also maintains the 75% attendance requirement for the SC meetings. In SGF 2010, it allows the participation of the SC member to be facilitated through video or telephone conferencing where necessary. However, SGP 2019 stipulates that the attendance of members at any SC meeting, by way other than physical presence, must remain the exception rather than the norm. If any, necessary steps shall be taken to safeguard the confidentiality of the deliberations. Besides, the SGP 2019 also does not allow any SC member to appoint another person to attend the meeting on his behalf. On another note, in the case of IFIs which have only 3 SC members, they have to make sure that the two Shariah-qualified members are present in all Shariah committee meetings.

Fourth, in terms of minimum quorum and decision making, SGF 2010 requires for the meeting attendance to be at least two-third with the majority of the attending members being those of Shariah qualified. Any decision shall only be approved if it is voted by at least two-thirds of the present members, with the majority of the voters being members with Shariah background (Appendix 5). However, this minimum quorum level is no longer applicable according to the SGP 2019. The new policy only requires that the majority of the committee members who attend each meeting is Shariah qualified. Any decision of the committee shall also be made based on a simple majority. The requirement to approve any decision in a Shariah Committee meeting has been scaled down from two-thirds to a simple majority.

It is also noteworthy that in the BNM Shariah Governance Exposure Draft, a question on voting rights was posed to the public for feedback: “*Question 3 - Please provide views on whether equal voting rights for all Shariah committee members (including members without qualification in Shariah) will affect the perceived quality of any decisions by the Shariah committee.*” This question is very interesting and relevant because in making a Shariah decision, it is only intuitive that a Shariah's opinion carries more weight than the others. For instance, in 3-2 votes, would a decision be considered as Shariah-reliable if the three voters are coming from 2 non-Shariah plus 1 Shariah qualified member? However, it is noticed that this issue is not included in the SGP 2019. Therefore, it is taken that there are equal voting rights for all the Shariah Committee members.

Fifth, while SGF 2010 was silent on the presence of board members or senior management during the Shariah Committee meeting, the SGP 2019 highlights some important points regarding this controversial issue. It is stated that while they are allowed to sit in the Shariah Committee meeting to give inputs and insights on any business, technical or operational matters, they must not exercise undue influence that could hamper the Shariah Committee from preserving its professional objectivity. With this, it is hoped that the Shariah Committee could exercise objective judgment in its deliberations and decision-making (Para 11.13).

Finally, the SGP 2019 did not allow active politicians to serve Shariah Committee members. This is another new, enhanced feature in the new SGPD where the previous SGF 2010 was silent on this issue.

Senior Management

As senior management, the responsibility to constantly develop and strengthen one's understanding of Islamic finance and other relevant areas is embedded in the job function itself. Although the existing SGF is silent on this, it is often considered as the tacit responsibility of the management. Note that para 2.14 of SGF 2010 states:

“The management is responsible to provide continuous learning and training programs to the key internal stakeholders including the board, the Shariah Committee, and the relevant staff in Shariah and finance matters.

This is to ensure that every function in the Shariah governance framework is sufficiently exposed to current

developments in Shariah-related matters.”

However, Para 15.2 of SGP 2019 explicitly mentions that senior management themselves “*must continuously develop and strengthen his understanding of Islamic, as well as keep abreast with developments that may impact Islamic financial business.*”

Another noteworthy element in the SGP 2019 is the new dedicated section on the Shariah compliance culture elaborated in Part F of the policy document. Previously in SGF 2010, the responsibility of the holistic Shariah compliance culture within the organisation was highlighted to be on the shoulders of the management. However, in the SGP 2019, it becomes the collective responsibility of all key organs in the IFI. In particular, SGP 2019 stipulates the adoption of ‘tone from the top’ approach in communicating the Shariah compliance requirement.

In view of the Shariah compliance culture, it is essential to understand that Shariah compliance goes beyond the justification of permissibility or prohibition of something. In line with the complexity of current modern financial system, it is important to consider the realisation of maqasid al-Shariah in formulating pragmatic Shariah solutions to the financial activities – aiming to effectively harmonise the theory and reality (Ishak & Nasir, 2021). A contemporary example in relation to this issue is highlighted by Shaharuddin (2020), discussin on how ‘Islamic’ was Islamic banks in handling the moratorium package during the COVID-19 pandemic in Malaysia. Apparently, some critics argued that the implementation does not truly respresent the philosophy of Islamic finance.

Pursuant to the preceding discussion of the SGF 2010 and SGP 2019, Table 1 presents the comparison between the two frameworks.

Table 1: Comparison between SGF 2010 and SGP 2019

Discussion	SGF 2010	SGP 2019	Relevant key organs
Board’s oversight accountability and responsibility	<ul style="list-style-type: none"> Generally focused on upholding the overall Shariah governance framework and Shariah compliance of the IFI 	<ul style="list-style-type: none"> More detailed, which includes focus on policy approval, oversight and implementation of SAC rulings and SC advice, internal control environment, and implementation of Shariah governance by the senior management 	<ul style="list-style-type: none"> BOD
Effective communication of Shariah related matters	<ul style="list-style-type: none"> BOD must provide effective communication policy between the IFI’s key functions of the IFI in order to ensure material Shariah matters could be smoothly escalated to the BOD 	<ul style="list-style-type: none"> Mandates IFIs to establish effective communication between the BOD and SC on any issue related to Shariah requirements, Shariah governance, or Shariah non-compliance risks. BOD is also required to provide a regular review on the quality and frequency of the engagement with SC 	<ul style="list-style-type: none"> BOD SC Senior management
Interaction between BOD and SC	<ul style="list-style-type: none"> BOD to consider appointing at least one SC member to sit as a board member 	<ul style="list-style-type: none"> BOD to consider appointing at least one SC member to sit as a board member More detailed guidelines on how to handle differences in views between BOD and SC without underestimating the integrity of Shariah 	<ul style="list-style-type: none"> BOD SC

Implementation of stricter Shariah decisions than the SAC BNM rulings	<ul style="list-style-type: none"> • Permitted 	<p>requirements</p> <ul style="list-style-type: none"> • Requires banks to inform BNM on any additional restrictions beyond the SAC rulings, supported by any documented deliberation and justification by their SC 	<ul style="list-style-type: none"> • BOD • SC
SC reappointment and tenure	<ul style="list-style-type: none"> • No limit 	<ul style="list-style-type: none"> • Maximum 9 years tenure of SC member in a single IFI 	<ul style="list-style-type: none"> • SC
SC composition	<ul style="list-style-type: none"> • At least five SC members 	<ul style="list-style-type: none"> • At least five SC members • Offers some flexibility (subject to BNM's approval) to accommodate the small and less complex IFIs, particularly the Islamic window or a foreign branch in Malaysia – allows for a minimum of three SC members only • Does not allow active politicians to serve as Shariah Committee members 	<ul style="list-style-type: none"> • SC
SC meetings	<ul style="list-style-type: none"> • At least once in two months • SC member is required to attend at least 75% of the meetings • Allows SC members to attend the meeting via video or telephone conferencing where necessary • Minimum quorum is two-third, with the majority of Shariah qualified members • Any decision shall only be approved if it is voted by at least 	<ul style="list-style-type: none"> • At least once in two months; but an IFI operating as an Islamic window or a foreign branch in Malaysia is allowed to have the SC meetings at least twice a year only • SC member is required to attend at least 75% of the meetings • The attendance of SC members at the meeting, by way other than physical presence, must remain the exception rather than the norm. If any, necessary steps shall be taken to safeguard the confidentiality of the deliberations. • Does not allow any SC member to appoint another person to attend the meeting on his behalf. • Only requires that the majority of the SC members who attend each meeting in Shariah qualified. • Any decision of the committee shall be made based on a simple majority. • In the case of IFIs which have only 3 SC members, 	<ul style="list-style-type: none"> • SC

	two-third of the present members, with the majority of the voters being members with Shariah background	they have to make sure that the two Shariah-qualified members are present in all Shariah committee meetings.	
Presence of BOD member or senior management in SC meeting	<ul style="list-style-type: none"> • Silent 	<ul style="list-style-type: none"> • They are allowed to sit in the SC meeting to provide inputs and insights on any business, technical or operational matters. • They must not exercise undue influence that could hamper the SC from preserving its professional objectivity 	<ul style="list-style-type: none"> • BOD • SC • Senior management
Knowledge in Islamic finance	<ul style="list-style-type: none"> • To have reasonable understanding on the principles of the Shariah and its broad application in Islamic finance. 	<ul style="list-style-type: none"> • Must continuously develop and strengthen the understanding of Islamic finance, as well as keeping abreast with developments that may impact Islamic financial business. 	<ul style="list-style-type: none"> • BOD • Senior management

CONCLUSION

This preliminary comparison between SGF 2010 and SGP 2019 reveals that the new policy emphasizes on effective management of Shariah non-compliance risks through control function and heightened expectations towards effective Shariah governance and culture. Therefore, the implication of this study towards academia is validating the improvement and contribution of the new policy from the previous one. Meanwhile, the implication of this study on the industry stems from the findings which indicate that the new SGP 2019 is another important step in the commendable development profile of Islamic banking and finance in Malaysia, which is expected to strengthen the public confidence about Shariah compliance credibility of Islamic financial institutions in the country.

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