
Emerging
Issues in Islamic
Finance Law
and Practice in
Malaysia

UMAR A. OSENI

M. KABIR HASSAN

RUSNI HASSAN

**EMERGING ISSUES IN ISLAMIC
FINANCE LAW AND PRACTICE IN
MALAYSIA**

This page intentionally left blank

EMERGING ISSUES IN ISLAMIC FINANCE LAW AND PRACTICE IN MALAYSIA

EDITED BY

UMAR A. OSENI

International Islamic Liquidity Management Corporation, Malaysia

M. KABIR HASSAN

University of New Orleans, USA

RUSNI HASSAN

International Islamic University Malaysia, Malaysia



United Kingdom – North America – Japan – India – Malaysia – China

Emerald Publishing Limited
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2019

Copyright © 2019 Emerald Publishing Limited

Reprints and permissions service

Contact: permissions@emeraldinsight.com

No part of this book may be reproduced, stored in a retrieval system, transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without either the prior written permission of the publisher or a licence permitting restricted copying issued in the UK by The Copyright Licensing Agency and in the USA by The Copyright Clearance Center. Any opinions expressed in the chapters are those of the authors. Whilst Emerald makes every effort to ensure the quality and accuracy of its content, Emerald makes no representation implied or otherwise, as to the chapters' suitability and application and disclaims any warranties, express or implied, to their use.

“The views expressed in this book are those of the respective authors and do not necessarily reflect the views or policies of any organization the editors and authors are currently serving or served before in whatever capacity.”

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN: 978-1-78973-546-8 (Print)

ISBN: 978-1-78973-545-1 (Online)

ISBN: 978-1-78973-547-5 (Epub)



ISOQAR certified
Management System,
awarded to Emerald
for adherence to
Environmental
standard
ISO 14001:2004.

Certificate Number 1985
ISO 14001



INVESTOR IN PEOPLE

Contents

List of Contributors	ix
Acknowledgements	xxiii

Part I: Introduction

Chapter 1 Introduction: Revisiting the Confines and Significance of Islamic Finance Law	
<i>Umar A. Oseni, M. Kabir Hassan and Rusni Hassan</i>	3

Part II: Wealth and Consumer Protection

Chapter 2 Dealing with Unlawful Sources of Funds among Islamic Banks in Malaysia: The Practitioners' Perspectives	
<i>Badruddin Hj Ibrahim, Marhanum Che Mohd Salleh, Azizah Mohd and Muhammad Laeba</i>	15
Chapter 3 The Objectives of Shari'ah in Nomination for the Payment of Family Takaful Benefits	
<i>Safinar Salleh, Akmal Hidayah Halim, Uzaimah Ibrahim and Mohamad Asmadi Abdullah</i>	33
Chapter 4 Creating Security to Finance Waqf Property Development in Malaysia: Issues and Solutions	
<i>Sharifah Zubaidah Syed Abdul Kader and Nor Asiah Mohamad</i>	53
Chapter 5 Hisbah as a Consumer Protection Institution in Malaysia: A Special Reference to Islamic Consumer Credit Industry	
<i>Rusni Hassan and Ibtisam @ Ilyana Ilias</i>	69

Part III: Regulatory Compliance and Legal Documentation

- Chapter 6 The Role of Financial Regulator in Protecting Bank Consumers from Unfair Contract Terms: The Case of Malaysian Islamic Banks**
Noor Mahinar Abu Bakar, Norhashimah Mohd Yasin, Siti Salwani Razali and Ng See Teong 91
- Chapter 7 Effects of Anti-money Laundering and Anti-terrorism Financing Law on Innovation of Mobile Payment Systems in Malaysia**
Suhaimi Mhd Sarif, Ainul Jaria Maidin, Jamaludin Ibrahim and Abdul Rahman Ahmad Dahlan 117
- Chapter 8 Combating Money Laundering and Terrorism Financing: Perspectives from *Maqāsid al-Sharī'ah***
Raja Madihah Raja Alias, Norhashimah Mohd Yasin, Badruddin Hj Ibrahim and Mohd Yazid Zul Kepli 129
- Chapter 9 Islamic Banks and Money Laundering in Malaysia: A Legal Compliance Perspective**
Norhashimah Mohd Yasin, Nik Nuun Asma Nik Sulaiman and Mohd Yazid Zul Kepli 145
- Chapter 10 Legal Issues in Sharī'ah-compliant Home Financing in Malaysia: A Case Study of a *Bai Bithaman Ājil* Contract**
Umar A. Oseni, Mohd Fairullazi Ayob and Khairuddin Abdul Rashid 171
- Chapter 11 Procedural Laws Governing Event of Default in Islamic Financing in Malaysia: Issues and Challenges**
Syuhaeda Aeni Binti Mat Ali, Rusni Hassan and Ahmad Azam Othman 193
- Part IV: Fintech and Blockchain Technology**
- Chapter 12 Fintech and the Transformation of the Islamic Finance Regulatory Framework in Malaysia**
Ho Wen Hui, Azwina Wati Abdull Manaf and Asfarina Kartika Shakri 211
- Chapter 13 Fintech and Its Impact on Islamic Fund Management in Malaysia: A Legal Viewpoint**
Surianom Miskam, Abdul Monir Yaacob and Romzie Rosman 223

Chapter 14 Cryptocurrencies and Anti-money Laundering Laws: The Need for an Integrated Approach	
<i>Mohd Yazid bin Zul Kepli and Sonny Zuhuda</i>	247
Chapter 15 Regulating Digital Currency: Taming the Unruly	
<i>Syed Fadhil Hanafi Syed A Rahman</i>	265
Index	281

This page intentionally left blank

List of Contributors

Dr Abdul Monir Yaacob is a Professor at the School of Law and Shari'ah, Islamic University Malaysia (UIM). He holds Bachelor of Al-Aliyah from Al-Azhar University, Diploma of Law and Master of Philosophy from the University of London. He obtained his PhD from the International Islamic University Malaysia (IIUM) in 1991. Prior to joining UIM, he was a Lecturer/Professor with the National University of Malaysia and University of Malaya. Apart from his teaching experience, he also served as Director General of Institute of Islamic Understanding Malaysia, Judge of Shari'ah Court of Appeal in various states in Malaysia, Academic Advisor at the Sultan Sharif Ali Islamic University of Brunei Darussalam and Commissioner of SUHAKAM for three terms. He was a member of Shari'ah Advisory Council of Central Bank of Malaysia and Securities Commission of Malaysia. He is the author of 20 books (and editor) and more than 150 articles. Among his works are *Kehakiman Islam dan Mahkamah Syariah* (USIM, 2015) in 2015 and *Perkembangan Pentadbiran Undang-Undang Islam di Malaysia* (IUM, 2016) in 2016.

Abdul Rahman Ahmad Dahlan is a Senior Academic Fellow in the Department of Information Systems, Faculty of Information and Communication Technology, International Islamic University Malaysia (IIUM). He obtained his BSc (Hons.) in Computation from the University of Manchester Institute of Science and Technology, United Kingdom, and an MBA from the Business Graduate School, University Putra Malaysia in 1999. He has more than 20 years of experiences in the Information and Communication Technology (ICT) industry before entering the academia in November 2009. He has worn various ICT and business-based hats during his career, including that of the General Manager-cum-Head of ICT-based company, General Manager and Manager-cum-Head of ICT departments, Director of the National KnowledgeGRID Malaysia programme, Project Director and Project Manager of various projects, ICT Strategic Planner, System and Database Administrator, Network Administrator, Analyst Programmer, as well as Business Development and Corporate Planner. He has taught Master degree courses in Project and Change Management; Knowledge Management; System Development Methodologies; Entrepreneurship, Innovation and Emerging Technologies; and Strategic Management. For Bachelor degree, he has taught courses in MIS, Computer Networking, Technopreneurship, and Project Management in Information Technology. He has conducted several workshops on Technopreneurship and Project Management. He has written one book, contributed academic

articles in various international academic journals and presented papers at various national and international conferences including as keynote speaker. He was the Deputy Director, Office of Corporate Strategy, IIUM from July 2012 to December 2017. Currently, he is the Director, Office for Strategy and Institutional Change of IIUM.

Dr Ahmad Azam Othman obtained his LLB (Hons.), LLB (Sharī'ah) (Hons.), Master of Comparative Law degrees from the International Islamic University Malaysia (IIUM) and PhD degree from the University of Wales, United Kingdom. Upon completion of his PhD, he returned to Malaysia in January 2001 and took up as an Assistant Professor in the IIUM. Presently, Dr Ahmad Azam Othman is an Associate Professor at the Department of Islamic Law of Ahmad Ibrahim Kulliyah of Laws (AIKOL), IIUM since 17 November 2015. He is one of the co-authors for the books, *Remedies for Default in Islamic Banking: Home and Car Financing* (Sweet & Maxwell/Thomson Reuter, 2018) *Islamic Banking in Malaysia: Cases and Commentaries* (Malaysian Current Law Journal (MCLJ), 2017) and *Islamic Banking and Takaful, 3rd. ed.* (Pearson Malaysia, 2016). He has written numerous articles published in both local and international journal and also presented papers at local and international conferences in the area of Islamic banking and finance, Sharī'ah Governance and Islamic personal bankruptcy. His areas of interests include Islamic banking, takaful, Islamic microfinance, Sharī'ah governance and Sharī'ah risk management. He was the Director of Harun M. Hashim Law Centre of AIKOL (IIUM) for the period 1 June 2011 to 30 June 2012 and Head of Department of Islamic Law of AIKOL for the period 1 June 2006 to 30 May 2008. He has vast experience in teaching for postgraduate as well as undergraduate courses. Besides, he is an External Examiner, Internal Examiner and Supervisor for a number of PhD theses and Master dissertations in various areas including Islamic Banking, Islamic Microfinance, Islamic Capital Market, Takaful, Sharī'ah Governance, Waqf, Taxation and Land Acquisition.

Dr Ainul Jaria Maidin is a Law Professor researching on various aspects relating to the sustainable development goals. Her academic qualification includes LLB (Hons.), International Islamic University Malaysia; Master in Comparative Laws, IIUM; PhD in Land Development and Environmental Planning Law, University of Wales, United Kingdom; and non-practising Advocate and Solicitor, High Court of Malaya. She is a subject matter expert in the legal aspects of land administration, sustainable land development and environmental planning law and property and banking law. She also has experience in conducting workshops for various government agencies and private sector in Malaysia and at international level. She is a member of international expert group endorsed by the Global Land Tenure Network (United Nations Shelter Branch) land administration, Islamic land administration, sustainable land development and environmental planning law and urban legislation areas. She has developed the inter-religious mediation training programme for the Unity Department Malaysia that trains six major religious leaders in Malaysia. She serves as Coordinator for the Certificate in Inter-religious Mediation Programme for the Department of Unity Malaysia,

Member of the National Consultative Council for Islamic Affairs, Malaysia, Member of Advisory Panel of Institut Tanah dan Ukur Negara, Member of Advisory Board of *Land Administration Journal*/*Journal Pentadbiran Tanah* and *Journal of Department of Director General of Land and Mines, Malaysia*.

Dr Akmal Hidayah Halim is an Associate Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She obtained her first degree in law (LLB) from the IIUM in 1998. In 1999, she was awarded with a Master of Comparative Law by the same university and was conferred with a Doctorate degree in 2006 in the area of estate administration in Malaysia. Dr Akmal has presented various papers both locally and abroad and has published several books and articles in her area of expertise. Her publications include two books entitled *Administration of Estates in Malaysia: Law and Procedure* and *The Law of Wills and Intestacy in Malaysia*. She is the co-author for the Malaysian volume of *International Encyclopedia on Family and Succession Law* (Kluwer Law International, Netherlands 2018). She also writes journal articles in the area of law of succession, Islamic wealth management and trust. Dr Akmal has contributed to the *White Book of the Malaysian Civil Procedure* (Thomson Reuters Sweet & Maxwell Asia 2018). She has also secured several research grants most of which have been successfully completed. Her latest grant which is funded by the Fundamental Research Grant Scheme under the Ministry of Education focusses on formulating legal framework for the administration of unclaimed estate in West Malaysia. Recently, her project on easy-to-use application software for administration of estate in West Malaysia has been awarded with Gold medal at the Fourth International Innovation, Design and Articulation 2018.

Asfarina Kartika Shakri is an Academic at the Faculty of Law, Multimedia University, Melaka. She was in practice for about one-and-a-half year in Banking Litigation and Conveyancing. In 2012, she joined Bank Rakyat as their Legal Advisor. After her marriage, she decided to move to Melaka where she started as an Academic in Multimedia University. She teaches Islamic Banking and Finance Law, Land Law, Family Law and Islamic Family Law.

Dr Azizah Mohd is Associate Professor at the Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). At present, she is teaching Islamic Family law and Usul al-Fiqh. Her niche area is Islamic Family law and protection of children's rights in Islam, especially the law on illegitimate and abandoned children. She was the Co-ordinator for IIUM Legal Clinic at AIKOL from 2013 to 2017. She obtained her PhD degree from the same University in the year 2005. Her dissertation mainly examines rules relating to Foundlings (laqit) under Islamic law and the law in Malaysia. The first book authored by her is *Protection and Adoption of Abandoned Children in Malaysia: A Comparative Overview with the Islamic Law* published in 2008. She co-authored her latest book *Islamic Family Law in Malaysia* published in 2016. She writes a number of articles on issues relating to women's rights, children's rights and child protection as well as means of protecting children through adoption, foster care and breastfeeding.

Azwina Wati Abdull Manaf is currently a Lecturer at Faculty of Law, Multimedia University Malaysia (MMU). She was admitted to the bar in 2005 and practised law as an Advocate and Solicitor for six years before she joined MMU in 2012. She is involved in several types of job scope in drafting corporate documentation such as facility documentations for several banks including Kuwait Finance House and assisted in conducting several joint venture and due diligence for companies. In addition, she also practised litigation law and conveyancing. She obtained her LLB from the International Islamic University Malaysia in 2004 and LLM in 2010. She is currently pursuing her PhD in Law in a local university. In MMU, she is the Chair of the University Research Centre, that is, Centre of Shari'ah Law. She published article (indexed and non-indexed) and conference proceeding. Her research interest is in Islamic finance and Shari'ah law.

Dr Badruddin Hj Ibrahim is an Associate Professor at Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). He obtained his LLB. (Shari'ah & Law) and LLM. (Shari'ah & Law) from the International Islamic University Islamabad in 1989 and 1993, respectively. He joined the AIKOL in 1995 as a Lecturer. In 2006, he obtained his PhD from the same university. He held various administrative posts at the Kulliyah and University such as, Academic Advisor, Head of Department of Islamic Law and Board Member of IIUM Institute of Islamic Banking and Finance. He was also the Deputy Dean, Academic Affairs, AIKOL, IIUM and the Head of International Waqf Research Institute of IIUM. He is currently the Chairman of the Shari'ah Committee for Alliance Islamic Bank. Among the subjects he taught was Islamic jurisprudence, Islamic Legal Maxim, Siyasa Shar'iyah, Islamic Law of Transaction and Human Rights in Islam. He has presented papers in various seminars and conferences both locally and abroad. Apart from that, he has published a number of articles related to wealth, hibah, Islamic Banking and waqf. He co-authored his latest book *Islamic Family Law in Malaysia* published in 2016.

Ho Wen Hui is currently a part-time Legal Researcher and Law student at the Faculty of Law, Multimedia University, Melaka. She has participated in a project entitled: Islamic Fintech in Malaysia: A Proposed Legal Framework. Other than Islamic Banking and Finance Law, her areas of interest and legal research also revolve around human rights law as well as consumer law because these areas are closely related to her vehement support for legal empowerment. Discovering her passion in writing and law, she is trying to encourage others, especially other law students to embark on a journey of legal research and writing. She presently holds the position of Director in the Media and Information Division of the Multimedia University Law Society. The main purposes of the Division are to equip the fundamentals of legal research and writing in students and provide a canvas for students to pen down their voices and thoughts pertaining to the legal field. In that capacity, she is in charge of heading a team running an online website, which serves as a platform for law students to showcase their legal writing and research skills.

Dr Ibtisam @ Ilyana Ilias is currently a Senior Lecturer at the Faculty of Law, MARA University of Technology, Malaysia. She obtained her PhD in Law from the International Islamic University Malaysia and LLM from the University of Malaya. She holds her LLB from the International Islamic University Malaysia. She teaches degree and master students including the subject of Consumer Protection Law, Sales of Goods and Hire–Purchase, Law of Contract, Malaysian Islamic Legal System and Malaysian Legal System. Her research interest focusses on the areas of consumer law particularly financial consumer protection, commercial law and Islamic banking. Prior to joining the university, she was an Assistant Manager at Bank Muamalat Malaysia Berhad where she served for six years.

Jamaludin Ibrahim is a Senior Academic Fellow at the Department of Information System, Kulliyyah of ICT (KICT), International Islamic University Malaysia (IIUM). He has been with IIUM since October 2009. Before joining IIUM, he was an Adjunct Professor at KICT teaching postgraduate courses in IT Governance and Information Security Policy and Strategy. He was with the industry from 1995 to 2009 as Managing Director and CEO for a number of ICT and media companies such as Time Quantum (a subsidiary of Time Telekom), Ramgate Systems (a subsidiary of DRB-HICOM), MegaTV (a subsidiary of TV3) and Multimedia Division (a business division of MRCB). Before joining the industry, he was the founding Dean and an Associate Professor at the Faculty of Computer Science and Information System, Universiti Teknologi Malaysia (UTM). He was at UTM between 1980 and 1995. He was educated in the United States and received a BSc with double majors in Mathematics and Economics (1978) from Northern Illinois University, Dekalb, Illinois. He went on to pursue MSc in Operations Research (1980) at Renselaer Polytechnic Institute, Troy, New York. He teaches undergraduate courses in Information Security, Technopreneurship, Management Information System and Introduction to Computer. He also teaches postgraduate courses in Business Continuity Disaster Recovery; Physical Security; Cybersecurity Challenges, Policy and Strategy; Project Management; IT Professional Practices and Mobile Communication.

He is also active in consultancy, as a Business Continuity and Disaster Recovery Consultant to Oil & Gas MNCs; and as an Information Strategic Planning Consultant. His main research interests are in business model design, data analytics, cybersecurity and enterprise architecture.

Sr Dr Khairuddin Abdul Rashid is former Professor in Quantity Surveying and Head, Procurement and Project Delivery System Research Unit, International Islamic University Malaysia (IIUM). He worked as a Quantity Surveyor, initially in London and in Malaysia for 18 years, and taught at a University in the United Kingdom for three years prior to joining IIUM in 2000. At IIUM, he established the Department of Quantity Surveying, the Bachelor of Quantity Surveying, MBA in Construction Business and MSc Quantity Surveying programmes. His past positions include as Senior Quantity Surveyor, PWD Malaysia; Senior Manager, Construction Industry Development Board Malaysia; Head

of Projects' Audit Unit (Unit Naziran) PWD Malaysia; and at IIUM, as Head of Department, Deputy Dean of Academic Affairs and Dean of Kulliyah (Faculty) of Architecture and Environmental Design. Among others, Sr Dr Khairuddin is Co-founder and Co-editor-in-Chief of the *Journal of Quantity Surveying and Construction Business*, founder and former Editor-in-Chief of the *Journal of Architecture, Planning and Construction Management*, Co-founder and Co-chair of the Management in Construction Researchers' Association, International Multi-national Joint Venture for Construction Works, and Shari'ah Compliant in Construction Conference series. He has authored, co-authored, edited and co-edited 16 books and more than 200 technical papers and presentations on quantity surveying, procurement, *Shari'ah-compliant contract*, *zakat* and *wakaf* and Public Private Partnerships and Private Finance Initiative (PPP/PFI).

Dr M. Kabir Hassan is Professor of Finance in the Department of Economics and Finance in the University of New Orleans. He currently holds two endowed Chairs – Hibernia Professor of Economics and Finance and Bank One Professor in Business – in the University of New Orleans. Professor Hassan is the winner of the 2016 Islamic Development Bank (IDB) Prize in Islamic Banking and Finance. Professor Hassan received his BA in Economics and Mathematics from Gustavus Adolphus College, Minnesota, United States, MA in Economics and PhD in Finance from the University of Nebraska-Lincoln, United States, respectively. Professor Hassan is a Financial Economist with consulting, research and teaching experiences in development finance, money and capital markets, Islamic finance, corporate finance, investments, monetary economics, macroeconomics, Islamic banking and finance and international trade and finance. Professor Hassan has done consulting work for the World Bank, International Monetary Fund, African Development Bank, Transparency International-Bangladesh, Islamic Development Bank, Government of Turkey and many private organisations. Professor Hassan has 200 papers published in refereed academic journals. He is the Editor of *Journal of Islamic Economics, Banking and Finance* (ABDC and ABS), *International Journal of Islamic and Middle Eastern Finance and Management* (ABDC and ABS) and Co-editor of *Journal of Economic Cooperation and Development* (SCOPUS). Professor Hassan has also edited and published nine books. Kabir is the Co-editor (with Mervyn K. Lewis) of *Handbook of Islamic Banking, and Islamic Finance*, *The International Library of Critical Writings in Economics* (Edward Elgar, 2007), *Handbook on Islam and Economic Life* (Edward Elgar, 2014) and Co-editor (with Michael Mahlknecht) *Islamic Capital Market: Products and Strategies* (John Wiley & Sons, 2011). He is co-author of *Islamic Entrepreneurship* (Routledge UK, 2010). Dr Hassan has written the first textbook (co-authored with Dr Kayed and Dr Oseni) on Islamic finance that was published by Pearson in 2013.

Dr Marhanum Che Mohd Salleh obtained a PhD degree in Islamic Banking and Finance from the International Islamic University Malaysia (IIUM) in 2014, a Masters in Islamic Finance from the IIUM in 2009 and a Bachelor's degree in Shari'ah and Management (with Distinction) from the University of Malaya in 2006. She is currently an Assistant Professor at the Department of Finance,

IIUM and also a member of the Shari'ah Committee of Syarikat Takaful Malaysia Berhad. Her areas of expertise include Islamic Finance, Banking, Takaful, Shari'ah, Fiqh Mua'malat, Islamic marketing and Waqf. She has been actively engaged in various research projects including the one funded by the Malaysian Ministry of Higher Education since 2013 as well as IIUM. She has published her works in national and international journals including in the *Australian Journal of Basic and Applied Sciences*, *Journal of Islamic Finance and Business Research*, *Journal of Islamic Finance*, *Asian Academy of Management Journal* and *International Journal of at-Thaqafah*.

Dr Mohamad Asmadi Abdullah is currently an Associate Professor at Associate Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). He did his first degree in LLB in 1997 and LLB (Shari'ah) in 1998 at AIKOL, IIUM. He also completed his Master's degree at the same institution and was awarded with a Master of Comparative Law in 1999. He obtained his PhD in Islamic Law of inheritance at University of Durham, United Kingdom, in 2006. His areas of interest are Islamic estate planning, Islamic wealth management, Probate and Islamic law of succession, Islamic state and Islamic law of transaction. From 2011 to 2013, he served as a Shari'ah Committee member of OSK Investment Bank. Currently, he is a member of Shari'ah Committee of OCBC Al-Amin Bank Berhad.

Ir Dr Mohd. Fairullazi Ayob is an Assistant Professor at the Department of Quantity Surveying, Kulliyah of Architecture and Environmental Design (KAED), International Islamic University Malaysia (IIUM). He joined the academic profession in July 2013 after completed a three-year research Doctorate programme at the IIUM. His doctoral research is entitled 'Development of Life Cycle Cost Strategy and Protocol on Cost Data Input in Malaysia'. He is recognised with the award of 'Best Student for Doctor of Philosophy (Built Environment)' in 30th Convocation of International Islamic University Malaysia. Added to this, the 'Best Paper 2014' and 'Special Mention Paper 2015' award in 13th and 14th Management in Construction Researchers' Association (MiCRA) Annual Conference and General Meeting, Silver Medal in International Research Invention and Innovation Exhibition 2014 (IRIIE, 2014) and Silver Medal in Invention and Innovation Awards 2019 of Malaysia Technology Expo (MTE, 2019). He is a registered Professional Engineer (P.Eng.) with Board of Engineers Malaysia and had undergone several years' practical experience in the construction projects as an Engineer (civil) with a construction company before pursuing three-year study in PhD and then started his career in academic, research and consultancy professions. Besides, he was awarded with 'University Outstanding Promising Researcher 2016' by the Office of the Deputy Rector (Research and Innovation), IIUM. He has held several administrative and academic positions including Information and Communication Technology Coordinator, Member of 20 Years KAED Anniversary Celebration, Member of Management Committee Meeting, Coordinator and Organising Committee and Scientific Review Committee of the MiCRA Annual Conference and General Meeting.

Dr Mohd Yazid Zul Kepli is a Law Lecturer and Consultant at the International Islamic University Malaysia (IIUM). Prior to this, he was an Advocate and Solicitor in Messrs Yazid. Dr Mohd Yazid completed his doctorate in international trade law from the University of Hong Kong. Prior to this, he graduated with law degree from the IIUM in 2005. He completed his Master degree and Sharī'ah diploma from the same university. He is currently active in conducting training and consultancy related to international trade law subjects including International Trade Law, Cryptocurrency and Fintech, Carriage of Goods by Sea, Shipping Law and Maritime Law. He is also involved in teaching anti-money laundering and counter financing of terrorism (AML/CFT) law especially to bankers and financial institutions. In addition, he is also involved in consultations for governments and companies in the area of security and counter-terrorism. His main publications include *Anti-Money Laundering and Counter Financing of Terrorism Law in Malaysia* (LexisNexis, 2018), an authoritative textbook on AML/CFT published by LexisNexis, and *Introduction to Islamic Finance* by the CLJ Publication (2015).

Dr Muhammad Laeba is an Associate Professor at the Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM). He obtained his Bachelor's and Master's degrees in Fiqh and Usul al-Fiqh in the Kulliyah of Islamic Revealed Knowledge & Heritage, IIUM in 2001 and 2003, respectively. He completed his PhD in Fiqh from the same Kulliyah and University in 2007. From 2010, he has served as a committee member of Kulliyah Postgraduate Committee and since 2009, he has been a committee member of Islamic Enrichment Unit. He also sat in various committees at Kulliyah level. In 2011, he was appointed as an Editor of *Al-Nur Journal of the Graduate School*, Fattani University. He specialises in Islamic law, Islamic finance, humanities, religious studies and Islamic studies. He has actively presented papers in various local and International conferences and has published a number of writings in this area in local and international journals.

Dato' Ng See Teong is a PhD student at the Institute of Islamic Banking and Finance, the International Islamic University Malaysia (IIUM). He graduated with LLB. (Hons.) from the University of Wolverhampton, United Kingdom, and Certificate of Legal Practice. He also holds an LLM in Islamic Banking and Finance from IIUM and also a postgraduate Diploma in Syariah Law and Legal Practice from IIUM. Dato' Ng See Teong is also an Associate Fellow of the Malaysian Institute of Management and an ordinary member of the Malaysian Institute of Human Resource Management. He is an Advocate and Solicitor of the High Court of Malaya and currently a partner of Ibrahim Kamaruddin & Associates, Jerantut, Pahang.

Nik Nuun Asma Nik Sulaiman is a Senior Consultant for graduate training at Asian Banking School. Prior to that, she worked as a Compliance Officer at Maybank Berhad for more than 20 years. She completed her Master degree with distinction in the Institute of Islamic Banking and Finance, International Islamic University Malaysia for dissertation entitled 'The Extent of Islamic Banks' Adherence to AML/CFT Compliance Programme in Malaysia' in 2011.

Noor Mahinar Abu Bakar is a PhD student in Law at Ahmad Ibrahim Kulliyah of Law of International Islamic University Malaysia (IIUM). Her doctoral research investigates the unfair contract terms in Islamic banking consumer contracts. She is also concerned about Islamic ethics in Islamic banking practices. She graduated with LLB (Hons.) from Staffordshire University, United Kingdom. She holds an LLM in Islamic Banking and Finance from IIUM and Chartered Islamic Professional from the International Centre for Education in Islamic Finance, Malaysia. She has worked at various investment banks such as Botly Securities, TA Securities, Osk Securities, and RHB Investment Bank since 1992 until 2016 and hence has a wide exposure to Malaysian capital market. Currently, she is a Tutor at Open University Malaysia for Islamic Finance, International Finance, Islamic Financial Management, Industrial & Employment Law, Company Law, and Introduction to Law. She is a Chartered professional of Islamic Finance of the professional body of Chartered Institute of Islamic Finance Professional that serve the Islamic finance industry and its stakeholder. Her research interest includes Islamic banking and finance, Islamic wealth management, Islamic economics, comparative banking ethics (Islamic and conventional banking), consumer law and Malaysian capital market. Thus, far she has written a number of papers and presented at several international conferences and published papers in international journals. Some of the papers presented have been awarded as Best Paper Award and nominated as Best Presenter in one conference.

Dr Norhashimah Mohd Yasin is a Professor at Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM), Malaysia. She obtained her LLB (Hons.) in 1987, Master of Comparative Laws in 1989 from the same university. She received her LLM and PhD in Law in 1990 and 1994, respectively, from the University of Warwick, United Kingdom, in the area of Comparative Banking Law. Prof. Norhashimah regularly conducts lectures and presents papers at conferences, both locally and internationally, in the areas of comparative banking laws, Islamic insurance (Takaful), money laundering and terrorism financing. She has been a regular Trainer for Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Investigation Programme (CFIP) organised by Bank Negara Malaysia (BNM). She has also conducted a series of AML/CFT trainings in commercial banks such as Maybank which is known as Certified Compliance Officers Programme as well as Development Financial Institutions Act (DFIA) 2002. She has published articles in both local and international journals. She is the author of three celebrated books namely *Legal Aspects of Money Laundering from the Common Law Perspective* (LexisNexis, 2007) and *Islamisation/Malaynisation: The Role of Islamic Law in the Economic Development of Malaysia* (A. S. Noordeen, 1996) as well as *Anti-Money Laundering and Counter Financing of Terrorism in Malaysia* (LexisNexis, 2018). She is also a contributing Editor to Annotated Statute on Anti-Money Laundering and Anti-Terrorism Financing Act 2001 and Takaful Act 1984. Prof. Norhashimah is a qualified Advocate and Solicitor of the High Court of Malaya and a member of Shari'ah Committee for both SME Bank and UOB (Malaysia), respectively.

To' Puan Dr Nor Asiah Mohamad received her first degree in (LLB Hons.) (1988), double-degree in LLB in Sharī'ah (1989) and Master of Comparative Laws (LLM in 1992) as well as PhD in Law (2003) from Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She serves as an Associate Professor of Law at the Civil Law Department, AIKOL, IIUM (1989–2019) and her area of specialisation are land law, strata titles law, Islamic endowment or waqf and housing. She has deep and limitless interest in the area of harmonisation of laws. She belonged to the first batch of LLB. in Sharī'ah class in 1989. She has contributed immensely in student development and has held various academic-administrative positions such as Principal, Director for Student Development, Head of Civil Law Department and her current post is Deputy Dean of Postgraduate Studies. She has taken lead in various research and consultancy work including Water Commission Project, Strata Titles Problems and Management, Residential Tenancies, Waqf as well as Housing. She also serves in Harmonisation of Laws Committee at the National Level. She authored book on waqf, land law as well as equity and equitable remedies.

Raja Madihah Raja Alias graduated for her LLB (Hons.) and LLM in Islamic Banking and Finance from Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). As a means of further enhancing her knowledge and research, she is currently pursuing a PhD in Law researching in the area of anti-money laundering and anti-terrorism financing on the money services business sector in Malaysia. Prior to her doctorate study, she gained vast experience throughout her legal practice as a practising lawyer or an Advocate and Solicitor in various areas of laws which include, but not limited, to civil litigation, drafting and rendering legal opinions and had attended conveyancing and corporate matters. She also had appeared and conducted hearings, appeals and trials proceedings before the Court of Law in Malaysia during her tenure of practice in the legal profession. In addition, thereto, in keeping abreast with the law and current developments, she is also active in presenting and/or participating in various local and international conferences in several countries for instance in Thailand, Philippines, Singapore, Indonesia and Brunei.

Dr Romzie Rosman is an Associate Professor at the International Islamic University Malaysia (IIUM), specialising in Islamic banking and finance. He graduated with a BA (Hons.) in Accounting and Finance from Lancaster University, United Kingdom, in 2000. He was awarded with a Master of Business Administration (Islamic banking and finance) in 2005 and a PhD. (Islamic banking and finance) in 2012 from the IIUM. He has published his research in several referred journals, such as *Journal of Economic Cooperation and Development*, *Pacific-Basin Finance Journal* and *Journal of Islamic Accounting and Business Research*. His research interests include accounting and Islamic finance.

Dr Rusni Hassan is a Professor at the IIUM Institute of Islamic Banking and Finance, International Islamic University Malaysia. She graduated with LLB (Hons.), LLB (Sharī'ah) (First Class), Master of Comparative Laws and PhD

in Law. She teaches courses on the Legal Aspects and Contemporary Issues in Islamic finance for postgraduate students. She is an active Researcher, Consultant and Academic Expert in teaching IF courses, supervising master and PhD students as well as involve in IF curriculum development and accreditation. She has published five books; many chapters in book and more than 80 articles in local and international journals. She received a number of awards at the university level including Promising Researcher Award (2012) and IIUM Top 10 Contributor for publication in IF (2017). She is the Shari'ah Committee (SC) member for a number of Islamic banks and Takaful company in Malaysia. She is also the SC member for Association of Islamic Banking Institutions Malaysia and the member of SAC of Central Bank Malaysia. Internationally, she is the SC member for HDFC Maldives and also Advisor to Women on Boards Maldives. She is a registered Shari'ah Advisor in the Securities Commission Malaysia. She is the Secretary and Assistant Secretary for the Association of Shari'ah Advisors in Islamic Finance Malaysia and the International Council of Islamic Finance Educators, respectively. She is an expert Trainer in seminars, workshops, conferences and trainings on various IF issues. Her works and contribution to IF has been recognised internationally when she was listed among the Top 10 Women in IF (2013); Most Talented Woman Professional in Islamic Banking (2014); Women of Distinction in IF and Law (2016); the 50 Influential Women (2017) in Business and Finance; Distinguished Woman in Management (2018) and the Top 50 Most Influential Women in Islamic Finance (2018).

Dr Safinar Salleh is an Assistant Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She obtained her Bachelor in Shari'ah (Hons.) from Al-Azhar University Cairo in 1999. She pursued her Masters in Shari'ah and became a tutor in the Department of Fiqh and Usul, Academy of Islamic Studies, University of Malaya, where she started developing her expertise in the area of Islamic law of Contracts and completed a dissertation on Islamic pawn broking. Upon completion of her Master in 2005, she took up a Lecturer position at AIKOL, IIUM. In July 2013, she obtained her PhD from Glasgow Caledonian University and her research was on Takaful (Islamic insurance). Currently, Dr Safinar is a Shari'ah Committee member for a number of financial institutions in Malaysia including MUFG Bank (Malaysia) Berhad, Swiss Reinsurance Company Ltd. (Swiss Re Retakaful) and Export-Import Bank of Malaysia Berhad (EXIM Bank). She is a Shari'ah Committee member of MUA Life Ltd. in Mauritius.

Dr Sharifah Zubaidah Syed Abdul Kader is Associate Professor at the Civil Law Department of Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She has been serving IIUM for 26 years as a Law Lecturer, teaching subjects like Land Law and Equity. She is a contributing author of several books, including, *Principles of Malaysian Land Law* (LexisNexis, 2008) and *A Student Guide to Equity and Equitable Principles* (LexisNexis, 2016). Dr Sharifah Zubaidah has held posts such as the Chief Editor of the *IIUM Law Journal*, Deputy Dean (Academic Affairs) of AIKOL and Director of the

International Centre for Waqf Research. Her main areas of interest are land law as well as waqf governance and management. She is also a non-practising Advocate and Solicitor of the High Court of Malaya, previously practicing in Nik Saghir, Yaacob & Ismail, Kuala Lumpur.

Dr. Siti Salwani Razali is a Lecturer/Associate Professor at the Department of Business Administration of the Kuliyyah of Economics and Management Studies of the International Islamic University Malaysia (IIUM) since 2001. She obtained her Bachelor of Laws and Master of Comparative Laws both from IIUM. She was conferred with PhD in Business Law from University Putra Malaysia and her thesis specialised in Islamic Law of Contract. She has vast experience in Sharī'ah, Takaful and Islamic finance and has a close relationship with the industry, hence she was appointed as an expert in these areas. Currently, she is the Sharī'ah Panel for Silver-Birds Group of Company, Board Member for the Institute of Islamic Banking and Finance IIUM and Associate Advisor for AFTAAS Sharī'ah Advisory Sdn. Bhd and Sharī'ah consultant for KAH advisory and legal firm. She is also the Consultant and Trainer for JAWHAR under Prime Minister's Department Office and has helped in developing the contract for Umrah at the national level. She has written several books, journals and presented in several international conferences and published papers in international journals. Some of the papers presented have been awarded the Best Paper Award. She has authored several academic books including *Islamic Law of Contract* (Cengage Learning, 2010), *Malaysian Business Law* (Pearson Custom Pub., 2011) and *Commercial Law* (Prentice Hall, 2008). Finally, she teaches Commercial Law, Company Law, Introduction to Islamic Commercial Law, and Malaysian Business Law at IIUM.

Dr. Sonny Zuhuda is an Associate Professor and Cyber Law Course Coordinator at the Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, the International Islamic University Malaysia. His main interest is the intersection of law and technology, especially concerning information law, Internet governance, information security and data protection law. Sonny completed his PhD in Information Security Law from IIUM in 2010. Sonny is a recipient of Web-science Doctoral summer fellowship from the Oxford Internet Institute, the University of Oxford, United Kingdom, and a two-time Fellow of the US-based Internet Corporation for Assigned Names and Numbers. He is also a member of the global researchers' Cyber Stewards Network hosted by the Citizen Lab, University of Toronto, Canada. He recently was a Visiting Researcher at the University of Toronto, Canada (2018) and the University of Leiden, the Netherlands (2019). Sonny's recent research works include critical information infrastructure protection, data theft, digital surveillance and privacy, Internet of things legal framework, as well as the open data policy in Malaysia. His consulting works include the formulation of Malaysian National Cyber Security Policy which became the policy basis for the development of cyber security laws and governance in the country. In the past few years, Sonny advised the Office of Personal Data Protection Commissioner of Malaysia on various aspects of data protection law, from training to the codes of practice, and from the issues of trans-border data flow to data breach notifications.

Dr. Suhaimi Mhd Sarif is Associate Professor at the Department of Business Administration, Faculty of Economics and Management Sciences, International Islamic University Malaysia (IIUM). He has been with IIUM since February 2000. Prior to that, he was with a local constructions firm for two years and with an international plantation company for a few years. He received his academic and industrial training in Malaysia and doctoral training in commerce from Murdoch University, Perth, Western Australia, Australia. At IIUM, he used to hold a few administrative positions, namely Fellow of Student Hostel (2001–2002), Principal of Student Hostel (2002–2003), Head of Department (2012–2016), Deputy Director of Corporate Strategy (2017) and Director of Alumni Division (2018). He is also a member of Malaysian Institute of Management, Malaysia Nature Society, World Academy of Islamic Management and International Council for Islamic Finance Educators. He used to be working group committee of Quality Management Systems from Islamic Perspectives MS 1900:2014, *Halalan-Toyyiban* Assurance Pipeline – Part 1: Management system requirements for transportation of goods and/or cargo chain services MS 2400-1:2010, *Halalan-Toyyiban* Assurance Pipeline – Part 2: Management system requirements for warehousing and related activities MS 2400-2:2010 and *Halalan-Toyyiban* Assurance Pipeline – Part 3: Management system requirements for retailing MS 2400-3:2010 at SIRIM. Currently, he is a committee member in IIUM flagship project of sustainable development goals in the construction of a local mosque. His research interests include social entrepreneurship, business ethics, knowledge transfer, strategic management, *Tawhidic* paradigm in management and innovation management.

Surianom Miskam is a Lecturer at the Faculty of Syariah and Law, Kolej Universiti Islam Antarabangsa Selangor (KUIS). She holds LLB (Hons.) from the International Islamic University Malaysia and LLM from the National University of Malaysia. Prior to joining KUIS in 2007, she was a Magistrate at Mahkamah Majistret Sungai Petani, Kedah and Mahkamah Majistret Gurun, Kedah. Her research interests include Islamic finance, company law and banking law. She is the co-author of *Commercial Law in Malaysia: Theories and Principles* (2009) and *Halal Legal Spectrum: Quick Reference across the Region* (2017).

Syed Fadhil Hanafi Syed A Rahman is currently serving as a Senior Legal Counsel at Legal Department, Bank Negara Malaysia (Central Bank of Malaysia) with the responsibility to advise the Central Bank primarily on laws concerning foreign exchange, money services business, anti-money laundering and terrorism financing and sukuk. He has experience in advising the Central Bank in several high profile cases including the probe into Malaysia Development Berhad and the Royal Commission of Inquiry on Bank Negara Malaysia's Forex Losses in the 1990s. He is also a non-practising Syarie Lawyer of Federal Territories Malaysia. He holds Master of Comparative Law, First-class Honours Bachelor Degree in Shari'ah Law and First-class Honours Bachelor Degree in Law from the International Islamic University Malaysia.

Syuhaida Aeni Binti Mat Ali is a Senior Lecturer at the Faculty of Law, Universiti Teknologi Mara (UiTM), Shah Alam since 2007. She teaches Islamic Banking and Securities, Banking Law and Practices, Remedies: Bankruptcy and Winding Up, Personal and Corporate Insolvency. She supervises both postgraduate as well as undergraduate students. She obtained her PhD from the International Islamic University Malaysia (IIUM) in 2017. Her PhD is on Islamic Banking entitled 'A Study on Laws applicable to Musharakah Mutanaqisah Home Financing in Malaysia'. She also obtained her Master of Comparative Laws, LLB (Hons.) and Diploma of Syariah Law and Legal Practice from the IIUM. She has presented papers in conferences and seminars in the field of Islamic finance and authored several articles at various journals. Prior to joining UiTM, She was an Advocate and Solicitor of High Court of Malaya. She had practiced with the legal firm of Azhar & Wong and has vast experience in handling civil banking litigation cases. She was also a Syariah practitioner.

Dr Umar A. Oseni is the Acting Chief Executive Officer and Executive Director (Legal & Compliance) of the International Islamic Liquidity Management Corporation, a supranational financial institution headquartered in Kuala Lumpur. Prior to this, he was an Associate Professor of Law and Regulation of Islamic Finance at the International Islamic University Malaysia. Umar was also a Visiting Fellow at the Islamic Legal Studies Program of the Harvard Law School, Harvard University from 2011 to 2012. Apart from being a Harvard-certified negotiator and dispute resolution expert, Umar has consulted for numerous bodies in the areas of law and regulation of Islamic finance, Islamic finance research and publication and alternative dispute resolution in Islamic law. He has also published numerous articles in refereed journals and books in conflict management and avoidance; alternative dispute resolution; arbitration, comparative law; Islamic finance and international commercial arbitration. He is a member of the following professional organisations: Mediators Beyond Borders; Young International Arbitration Group, London Court of International Arbitration; Nigerian Bar Association; Association of Professional Negotiators and Mediators; and Mediation & Conflict Management Group. He is also an Associate Member of the International Centre for Dispute Resolution.

Dr Uzaimah Ibrahim is currently an Assistant Professor at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM). She did her LLB, LLB (Sharī'ah) and Master of Comparative Laws in AIKOL, IIUM. She obtained PhD from the University of Wales, United Kingdom. Dr Uzaimah qualified as a Syariah lawyer in 1995. In 2005, she served as Deputy Director of IIUM Islamic Banking and Finance Institute, an international centre for Islamic financial education and research. She has conducted various research on Islamic commerce law, Islamic law, banking law, derivative, Islamic securitisation, takaful and corporate social responsibility. She has also made numerous presentations in seminars and workshops and contributed a chapter in *Halsbury's Laws of Malaysia* published by the Malayan Law Journal. Dr Uzaimah has been a member of the Sharī'ah Supervisory Council of Bank Islam Malaysia Berhad since 2009. She has also served as a Sharī'ah Committee member at Hong Leong MISG Takaful Berhad since 2006. Prior to that, she was also a Sharī'ah Advisor at Hong Leong Islamic Bank Berhad.

Acknowledgements

Editing a book on emerging legal issues in one of the most advanced Islamic financial services industries in the world - Malaysia - may seem to be challenging, but all efforts put into it are rewarding. There is always the need to clarify complex legal and Shari'ah issues in Islamic financial transactions. In doing so, numerous people would have contributed to the success of such endeavour. While efforts have been made to identify the key people, who contributed significantly to this book, others who are too numerous to mention are also appreciated.

We would like to thank the organisers of the Seventh International Conference on Law and Society held in Sabah, Malaysia, from 11 to 13 April 2018, particularly Ahmad Ibrahim Kulliyah (Faculty) of Laws, International Islamic University Malaysia. We also thank Professor Ida Madieha Abdul Ghani Azmi who came up with the idea of publishing a select number of papers on emerging legal issues in Islamic finance law in Malaysia.

One of the contributors, Associate Professor Nor Asiah Mohamad, coordinated all communications with authors from the beginning until the final submission of the manuscript. Her patience, perseverance and professionalism in the entire iterative peer review process contributed to the success of this book.

Thanks to everyone on the Emerald publishing team, particularly the commissioning editor and the production editor. We hope the efforts in clarifying knotty Shari'ah and legal issues would spur future research in this field and further guide Islamic finance professionals in handling relevant matters.

Finally, the book focusses on emerging legal, Shari'ah and regulatory issues in the Islamic finance industry in Malaysia. Even though the book focusses on the Malaysian legal framework, the issues raised and discussed cut across borders, and as such, could be transposed to other Islamic finance jurisdictions.

Umar A. Oseni, M. Kabir Hassan and Rusni Hassan

7 March 2019