

## The Islamic Financial Services Bill 2012

(Part 1 of 4)

By Gopal Sundaram  
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***This series of articles are written to introduce and explain significant features of the Islamic Financial Services Bill 2012 which was recently passed by Dewan Rakyat and Dewan Negara of the Malaysian Parliament. The Royal Assent to the Bill has not been announced yet. Neither has the new Act been gazetted. The Bill provides that the Act will come into force on a day determined by the Minister of Finance.***

***The new Act when it comes into force will be a landmark law, perhaps the only omnibus Islamic finance legislation in the world. It could easily be called the Islamic Financial Stability Act for it lays the foundation for a comprehensive regime to promote a robust and resilient Islamic financial system in Malaysia.***

Islamic Banking was formally introduced in Malaysia with the enactment of the Islamic Banking Act 1983, the Government Investment Act 1983 and the Takaful Act 1984 by the Malaysian Parliament. Islamic finance in this country developed on the basis of equal competition with conventional banking and finance. The Government only intervened to level the playing field and ensure taxation including stamp duties for Islamic finance transactions were not distortive of the level playing field as compared to conventional finance.

Islamic finance grew very slowly in the first few years of its introduction in Malaysia. For several years, there was only one Islamic bank in the country and one takaful operator; Islamic banking assets constituted less than 5% of the assets of the total banking system. In a bid to encourage greater outreach, Bank Negara Malaysia allowed conventional banking institutions to establish Islamic windows. This initiative spurred growth. Over a few years, several of the Islamic window operations were large enough to become full-fledged stand-alone Islamic banking subsidiaries.

Islamic finance in Malaysia has enjoyed continuous and stable growth and now constitutes more than 20% of the banking assets of the banking system. After some thirty years of resilient and undisrupted growth of Islamic finance in this country, it has become imperative to review and assess the suitability and appropriateness of the legislative and regulatory framework in which Islamic banking and takaful operates.

Following extensive policy research, discussions and consultations, Bank Negara Malaysia issued the *Financial Sector Blueprint 2011 – 2020* in December 2011. As noted in the Blueprint itself, "the 10-year Blueprint is a strategic plan that charts the future direction of the financial system as Malaysia transitions towards becoming a high value-added, high-income economy". The Blueprint notes that "A key pillar of financial sector development for this decade is the strengthening of Malaysia's position as an international Islamic financial centre... Given the more challenging international environment, emphasis will increasingly be placed on enhancing the resilience of Islamic finance, including in liquidity and crisis management, to complement the ongoing efforts in strengthening the relevant regulatory and legal framework for Islamic finance and in promoting greater harmonisation in *Shariah* interpretations."

The Islamic Financial Services Bill 2012 is intended to provide the strengthened regulatory and legal regime to meet the challenges and developments of an increasingly sophisticated and internationalised Islamic finance industry. The Bill consolidates the Islamic Banking Act 1983 and the Takaful Act 1984 and would repeal both these Acts when the Bill becomes law. The Bill is an omnibus legislation for the regulation and supervision of key Islamic financial institutions such as Islamic banks, takaful operators,

international Islamic banks, international takaful operators as well as operators of payment systems which the transfer of funds between Islamic bank accounts or which enables payments to be made by means of Islamic payment instruments, issuers of Islamic payment instruments, takaful brokers and Islamic financial advisor. As an omnibus legislation, it also provides for regulation and supervision of payment systems and the oversight of the Islamic money market and Islamic foreign exchange market.

The principal regulatory objectives of the new law are to promote financial stability and compliance with Shariah. The new law enjoins Bank Negara Malaysia to foster the safety and soundness of Islamic financial institutions, the integrity and orderly functioning of the Islamic money market and the Islamic foreign exchange market as well as safe, efficient and reliable payment systems and Islamic payment instruments and fair, responsible and professional business conduct of Islamic financial institutions. The Bank is also required to strive to protect the rights and interests of consumers of Islamic financial services and products.

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Gopal began his highly distinguished career in Bank Negara Malaysia (BNM) in 1982, pursuant to graduating from University of Malaya on a Bank Negara scholarship. He was appointed as Assistant Governor in 2006. As Assistant Governor he was responsible for the Legal Department, Finance Department and the IT Services (Computer) Department as well the Money Museum and the Art Gallery. During his tenure, he was a member of various committees chaired by the Governor, inter alia, the Management Committee, the Monetary Policy Committee, the Financial Stability Committee, the Budget Committee, the Risk Management/ Committee and in attendance at the Malaysia International Islamic Financial Centre Executive Committee (MIFC), a multi-agency committee appointed by the Prime Minister.

Upon his retirement in 2011, he was appointed as Project Advisor to BNM to advise and supervise the drafting of an omnibus legislation for banking, insurance, payments systems and exchange control as well as an omnibus Islamic legislation for Islamic banking, takaful, payment systems and exchange control proposed to be tabled in Parliament later this year.

Gopal is the only member of the International Monetary Law Committee of the International Law Association (MOCOMILA) from Malaysia. He is also in the Executive Committee of the Malaysian Chapter of ASIL (Asian Society for International Law). Gopal sits on the Board of Directors of Kuwait Finance House (Malaysia) Berhad, the Board of Management of Methodist College Kuala Lumpur, the Council of Education, Methodist Church in Malaysia and the Judicial Council, Methodist Church in Malaysia.

He is a leading adviser on the new Financial Services Act (FSA) and Islamic Financial Services Act (IFSA).

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