

Evaluating Problems Arose Due to Adoption of Dual Legal Framework in Regulating the Transactions under Islamic Capital Market with Special Reference to Malaysia

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Abstract : Almost all the major religions of the world condemn the transactions based on interest which promotes self-centered and materialistic thinking. Still, it is amazing to note that it has become the tradition of transaction at world level hence it is called traditional financial system. The main feature of this system is that it considers economic aspects of the transaction only. This system supports the economic development and not the welfare of humankind. However, it is worth mentioning the fact that, except Islamic financial system no other financial system stood in front of it as a viable alternative system. Although many countries have tried to create financial infrastructure and system, still the Malaysian Islamic financial system has got its own peculiarity. It has made tremendous progress in creating sound Islamic Financial system. However, the historical aspect of this country which has passed through Islamic and traditional financial system has got its own advantages and disadvantages. The advantageous factor is that, despite having mix and heterogeneous culture, it has succeeded in creating Islamic Financial System based on the dual legal system to satisfy the needs of multi-cultural factors. This fact has proved that Islamic Financial System does not need purely Muslim population. However, due to adoption of the dual legal system, several legal issues have been taken place. According to this system, the application of Islamic Law has been limited only up to some family and religious matters. The rest of the matters are being dealt with under the traditional laws, the principles and practices of which are different from that of the Islamic Legal System. The matter becomes all the more complicated when the cases are partially or simultaneously concerned with traditional vis-à-vis Islamic Laws as it requires expertise in both the legal systems. However, the educational principles and systems are different in respect of both the systems. To face this problem, Shariah Advisory Council has been established. But the Multiplicity of Shariah authorities without judicial power has created confusion at various levels. Therefore, some experts have stressed the need for improving, empowering the Islamic financial, legal system to make it more integrated and holistic. In view of the above, an endeavor has been made in this paper to throw some light on the matters related to the adoption of the dual legal system. The paper is conceptual in nature and the method adopted is the intensive survey of literature thereby all the information has been gathered from the secondary sources.

Keywords : Islamic financial system, Islamic legal system, Islamic capital market (ICM) , traditional financial system

Conference Title : ICIBFBC 2017 : International Conference on Islamic Banking, Finance, Business and Commerce

Conference Location : London, United Kingdom

Conference Dates : August 21-22, 2017