

COMPARATIVE STUDY OF THE LEGAL AND
REGULATORY FRAMEWORK OF ISLAMIC CAPITAL
MARKET IN MALDIVES AND MALAYSIA: A REFORM
ORIENTED ANALYSIS

BY

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A thesis submitted in fulfilment of the requirement for the
degree of Doctor of Philosophy in Laws

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MARCH 2021

ABSTRACT

The study investigated and analyzed the legal and regulatory framework of Islamic capital market in Maldives, in contrast to the legal and regulatory framework of Islamic capital market in Malaysia. Maldives has no specific statutory provisions governing the country's Islamic capital market apart from a few regulations. On the contrary, Malaysia has a robust legal and regulatory framework, which is one of the significant factors that enables Malaysia to have the most developed Islamic capital market on the globe. Numerous provisions governing Islamic capital market in Malaysia are found in various statutes and multiple regulations issued by the regulator. Through comparative analysis of the legal and regulatory framework of Islamic capital markets in Maldives and Malaysia, the study proposed reforms in the legal and regulatory framework of Islamic capital market in Maldives. The study employed qualitative research methodology where data were collected from various government publications and interviews with relevant stakeholders in the industry. Research methods involved both doctrinal and non-doctrinal research. The findings suggested that when compared to Malaysia, Maldives requires amendments to several existing legislations and regulations, while new legislations and regulations need to be enacted. It is proposed to amend Maldives Securities Act 2006 to include Islamic securities and provide statutory recognition and binding powers to Sharī'ah Advisory Council of Capital Market Development Authority. This study proposes to amend Maldives Monetary Authority Act 1981 to provide statutory recognition and binding powers to Sharī'ah Council of Maldives Monetary Authority. In addition, it is recommended to amend Maldives Land Act 2002, Revenue Stamp Act 1970, and Maldives Companies Act 1996 to provide Islamic capital market investor friendly environment. Finally, it is indispensable to enact a trust companies act in Maldives.

خلاصة البحث

لقد بحثت الدراسة وحللت الإطار القانوني والتنظيمي لسوق رأس المال الإسلامي في جزر المالديف، على النقيض من الإطار القانوني والتنظيمي لسوق رأس المال الإسلامي في ماليزيا. لا توجد في المالديف أحكام قانونية محددة تحكم سوق رأس المال الإسلامي في البلاد باستثناء بعض اللوائح. على العكس من ذلك، فإن ماليزيا لديها إطار قانوني وتنظيمي قوي، وهو أحد العوامل الهامة التي تمكن ماليزيا من الحصول على سوق رأس المال الإسلامي الأكثر تطوراً في العالم. توجد العديد من الأحكام التي تحكم سوق رأس المال الإسلامي في ماليزيا في مختلف القوانين واللوائح المتعددة الصادرة عن الجهة التنظيمية. ومن خلال التحليل المقارن للإطار القانوني والتنظيمي لأسواق رأس المال الإسلامية في المالديف وماليزيا، اقترحت الدراسة إجراء إصلاحات في الإطار القانوني والتنظيمي لسوق رأس المال الإسلامي في المالديف. وقد استخدمت الدراسة منهجية البحث النوعي حيث تم جمع البيانات من مختلف المنشورات الحكومية والمقابلات مع أصحاب المصلحة المعنيين في هذا المجال. وشملت أساليب البحث كلا من البحوث الفقهية وغير الفقهية. وتشير النتائج إلى أن المالديف، عند مقارنتها بماليزيا، تحتاج إلى إدخال تعديلات على العديد من التشريعات واللوائح القائمة، في حين أن هناك حاجة إلى سن تشريعات وأنظمة جديدة. ومن المقترح تعديل قانون الأوراق المالية في المالديف لعام 2006 ليشمل الأوراق المالية الإسلامية، ويوفر اعترافاً قانونياً وصلاحيات ملزمة للمجلس الاستشاري الشرعي لهيئة تنمية سوق رأس المال. وتقتصر هذه الدراسة على تعديل قانون سلطة النقد في المالديف لعام 1981 من أجل منح الاعتراف القانوني وسلطاته الملزمة لمجلس الرقابة الشرعية التابعة لمؤسسة النقد المالديفية. وبالإضافة إلى ذلك، يوصى بتعديل قانون أراضي المالديف لعام 2002، وقانون ختم الإيرادات لعام 1970، وقانون الشركات في مالديف لعام 1996 لتوفير بيئة مواتية للمستثمرين في سوق رأس المال الإسلامي. وأخيراً، لا بد من سن قانون للشركات الاستعمانية في المالديف.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*This thesis is dedicated to my beloved mother
Aishath Ali Didi
for her love and care*

ACKNOWLEDGEMENTS

Alḥamdulillāh. All praise is to Allah, the Most Gracious, for showing His mercy and blessings and giving me strength and courage to complete this journey. May peace and blessings of Allah be upon our beloved Prophet Muḥammad.

A number of people have contributed to making this thesis a reality. First and foremost, my heartfelt appreciation to my supervisor Professor Dr. Rusni Hassan for her valuable advice, moral support, and continued guidance. My appreciation also goes to my co-supervisor Assistant Professor Dr. Safinar Salleh for her assistance. I also wish to thank my internal examiner Associate Professor Dr. Ahmad Azam Othman for his detailed comments and useful suggestions. May Allah bless them and grant them good health. I also appreciate Dr. Umar Oseni and Associate Professor Dr. Aishath Muneeza for their helpful comments. My utmost gratitude to all my lecturers and staff at AIKOL.

My deepest gratitude is to my mother for all her sacrifices throughout my life. Many thanks to all my siblings for their support and encouragement. To my beloved wife Dr. Aisha Mohamed Rashad for her unwavering belief in me and constant support throughout this long journey. To my beloved daughters, Uswa Mohamed Shujau and Ulya Mohamed Shujau, for their boundless patience and love.

I would like to take this opportunity to thank Alima Mohamed Rashad and Athiga Mohamed Rashad for their kind assistance. My sincere thanks to my dear friends who helped me in numerous ways throughout my journey. Especially, Dr. Mohamed Shaheem Ali Saeed, Abdul Latheef Mohamed, Ahmed Shaaz, Aishath Ruhsha Nasheed, Ahmed Saleem, Aishath Khaleela Abdul Sattar, Ikram Abdul Sattar, and Hawwa Shuhaida. And to all those who helped me.

Finally, my sincere thanks to the stakeholders of Islamic capital market in Maldives who gave their valuable time to provide me with the information I needed for my study.

May Allah bless you all. *Jazākum Allāh khairan.*

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International Islamic Liquidity Management Act, 2011 (Act 721)
Islamic Financial Services Board Act, 2002 (Act 623)
Islamic Financial Services Act, 2013 (Act 759)
Labuan Financial Services and Securities Act, 2010 (Act 704)
Labuan Financial Services Authority Act, 1996 (Act 545)
Labuan Islamic Financial Services and Securities Act, 2010 (Act 705)
Maldives Companies Act, 1996 (Act 10/1996)
Maldives Land Act, 2002 (Act 1/2002)
Maldives Monetary Authority Act, 1981 (Act 6/1981)
Maldives Pension Act, 2009 (Act 8/2009)
Maldives Securities Act, 2006 (Act 2/2006)
National Land Code (Revised 2020) (Act 828)
Revenue Stamp Act, (Revised 2020) (Act 828)
Revenue Stamp Act, 1970 (Act 4/1970)
Securities Commission Act, 1993 (Act 498)
Securities Industries (Central Depositories) Act, 1991 (Act 453)
Securities Industries Act, 1983 (Act 280)

LIST OF ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
AOB	Audit Oversight Board
ASCM	Association of Stockbroking Companies Malaysia
ATM	Amana Takaful Maldives
BMIS	Bursa Malaysia Islamic Services
BML	Bank of Maldives
BNM	Bank Negara Malaysia
BOD	Board of Directors
BSAS	Bursa Suq Al-Sila'
CA	Companies Act 2016
CBMA	Central Bank of Malaysia Act 2009
CCM	Companies Commission of Malaysia
CMCGI	Capital Market and Corporate Governance Institute
CMDA	Capital Market Development Authority
CMDS	Capital Market Development Section
CMP	Capital Market Masterplan
CMSA	Capital Market and Services Act 2007
CMSAC	Capital Market Sharī'ah Advisory Council
CMSL	Capital Market Service License
CMSRL	Capital Markets Services Representative License
CPD	Continuing Professional Development
CSR	Corporate Social Responsibility
DJIMI	Dow Jones Islamic Market Index
ETD	Exchange Traded Derivatives
ETFs	Exchange Traded Funds
FIMM	Federation of Investment Managers Malaysia
FSA	Financial Services Act 2013
FSB	Financial Sector Blueprint
FSMP	Financial Sector Masterplan
FX	Foreign Exchange
GAAP	Generally Accepted Accounting Principles
HDFC	Housing Development Finance Corporation
ICM	Islamic Capital Market
ICMDS	Islamic Capital Market Development Section
IFI	Islamic Financial Institutions
IFS	Islamic Financial System
IFSA	Islamic Financial Services Act 2013
IFSB	Islamic Financial Services Board
IFSBA	Islamic Financial Services Board Act 2002
IILM	International Islamic Liquidity Management Corporation

IPO	Initial Public Offering
IPRS	Islamic Profit Rate Swap
I-REIT	Islamic Real Estate Investment Trust
LFSA	Labuan Financial Services Authority
LFX	Labuan International Financial Exchange
LIBOR	London Interbank Offering Rate
LIFSSA	Labuan Islamic Financial Services and Securities Act 2010
LOLA framework	Lodge and Launch Framework
MCIF	Maldives Centre for Islamic Finance
MIB	Maldives Islamic Bank
MIBA	Malaysian Investment Banking Association
MIFC	Malaysia International Islamic Financial Centre
MMA	Maldives Monetary Authority
MoU	Memorandum of Understanding
MSA	Maldives Securities Act 2006
MSD	Maldives Securities Depository
MSE	Maldives Stock Exchange
OTC	Over-the-Counter
PE	Private Equity
PO	Participating Organizations
PRC	Private Retirement Scheme Consultants
PRS	Private Retirement Scheme
REIT	Real Estate Investment Trust
ROC	Registrar of Companies
SAC	Sharī‘ah Advisory Council
SC	Securities Commission Malaysia
SCA	Securities Commission Act 1993
SPV	Special Purpose Vehicle
SRI	Sustainable and Responsible Investment
SRO	Self-Regulatory Organization
SSB	Sharī‘ah Supervisory Board
SSC	Sharī‘ah Supervisory Council
UIT	Unit Investment Trust
UT	Unit Trust
UTCs	Unit Trust Consultants
VCC	Venture Capital Corporations
VCMC	Venture Capital Management Corporations

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Situated just one and a half meters above sea level, the Maldives archipelago is a cluster of 1190 islands¹ located in the Indian Ocean. The population is over half a million with over two-fifth of the total population living in the congested capital city Male'.² Unlike many other countries, Maldives has a homogeneous society with unique features: one race; one language; and one religion. Maldivian Constitution states that Islam is the religion of the country.³

Maldives embraced Islam on 27th June 1153 C.E. (2nd *Rabī' al-ākhirah* 548)⁴ and remained an independent country throughout its history except a few times. The last occupation was in 1887 when Maldives went under the protection of the British and finally gained independence on 26th July 1965.⁵

Although Maldives achieved independence, the financial system as well as other areas are not well developed. In 1971, Maldives was listed as a Least Developed Country by United Nations.⁶ Being a small country, neighboring countries and

¹ High Commission of Maldives, "About Maldives," High Commission of Maldives, <<https://maldives.org.my/about-maldives>> (accessed 13 August, 2020).

² National Bureau of Statistics, "Maldives Population Projections 2014-2054: Assumptions and Result Analysis," Ministry of Finance and Treasury, <<http://statisticsmaldives.gov.mv/nbs/wp-content/uploads/2018/07/UNFPA-Report-Maldives-Population-Projections-2014-2054.pdf>> (accessed 13 August, 2020).

³ Constitution of the Republic of Maldives 2008, article 10.

⁴ Mirani Lister, "Maldivian Archaeology" in *Encyclopaedia of Global Archaeology*, edited by Claire Smith (Switzerland: Springer Nature Switzerland AG, 2019), 1.

⁵ C.H.B. Reynolds, "The Maldives Islands", *Asian Affairs*, vol. 6, no.1 (1975): 42.

⁶ Ministry of Foreign Affairs, "Maldives Graduates to Middle-Income Status," Ministry of Foreign Affairs, <<https://www.foreign.gov.mv/index.php/en/mediacentre/news/1754-maldives-graduates-to-middle-income-status>> (accessed 16 August, 2020).

international organizations have helped Maldives in many aspects including the development of the financial system in Maldives. In 1978, Maldives became a partner of the World Bank who assisted Maldives in over 32 developmental projects worth over USD295 million.⁷ Other international organizations such as United Nations and International Monetary Fund also played a vital role in developing Maldivian financial system.⁸ Finally on 1st January 2011, Maldives was listed as Middle-Income Country.⁹ The country's gross domestic product also rose significantly from USD200 in 1978, to USD11,890 in 2018.¹⁰

While many countries and organizations have assisted Maldives to develop the financial system, the vast majority of funds and technical assistance were invested into the development of conventional finance. Therefore, conventional banking and finance have been deeply rooted in the entire Maldivian economy. The existing financial market structure of Maldives consists of two main regulatory authorities. Firstly, Maldives Monetary Authority (MMA) as the central bank of Maldives¹¹ and secondly, Capital Market Development Authority (CMDA) as the main regulator of capital market in Maldives.¹² Maldives banking sector consists of a total of eight banks, of which one is a fully owned subsidiary of a foreign bank, four are branches of foreign banks, and three are local banks.¹³ Mauritius Commercial Bank Maldives Pvt. Ltd. is the fully owned subsidiary.¹⁴ State Bank of India, Habib Bank Limited, Bank of Ceylon, Hong Kong

⁷ World Bank, "The World Bank in Maldives," World Bank, <<https://www.worldbank.org/en/country/maldives/overview#3>> (accessed 16 August, 2020).

⁸ Ahmed Naseer, "Governor's Statement No.7," International Monetary Fund, <<https://www.imf.org/external/am/2017/speeches/pr7e.pdf>> (accessed 17 August, 2020).

⁹ Ministry of Foreign Affairs.

¹⁰ World Bank.

¹¹ Maldives Monetary Authority Act 1981 (Act no: 6/1981), s 3 and 4.

¹² Maldives Securities Act 2006 (Act no: 02/2006), s 3.

¹³ Maldives Monetary Authority, "Banking Sector," Maldives Monetary Authority, <<http://www.mma.gov.mv/#/financialstability/bankingsector>> (accessed 31 October, 2018).

¹⁴ Maldives Monetary Authority, *Annual Report*, (Male': Maldives Monetary Authority, 2010), 22.

Shanghai Banking Corporation Ltd. are the four branches of foreign banks. Bank of Maldives Plc (BML), Maldives Islamic Bank Plc. (MIB), and Commercial Bank of Maldives Pvt. Ltd are the three local banks incorporated in Maldives. By the end of 2019, the net asset composition of the banking industry was MVR54.2billion.¹⁵

There are five insurance companies, eight insurance brokers and 41 insurance agents in Maldives. The five insurance companies operating in Maldives are Allied Insurance Company, Amana Takaful Maldives (ATM), Ceylinco Insurance Company Limited, Solarelle Insurance, and Dhivehi Insurance Company Private Limited. Although ATM is licensed under insurance service provider, it is a hundred percent *takāful* provider in Maldives. Ayadi Takaful, an Islamic window¹⁶ of Allied Insurance Company is also a takaful provider in Maldives.¹⁷ By the end of year 2017, the value of total assets of the insurance industry was MVR529.71 million.¹⁸

In addition, there are three other non-bank financial institutions operating in Maldives. These are Housing Development Finance Corporation Plc. (HDFC) for housing finance, Maldives Finance Leasing Company Private Limited for leasing finance, and SME Development Finance Corporation Private Limited for business finance.¹⁹

Apart from banking and insurance, capital market is also one of the main components of financial system in Maldives. CMDA is the body responsible for the

¹⁵ Maldives Monetary Authority, “Banking Sector,”.

¹⁶ Ayady Takaful, “About Us,” Ayady Takaful, <<https://ayady.mv/about/about-ayady/>> (accessed 31 October, 2018).

¹⁷ Maldives Monetary Authority. “Register of Insurance Providers,” Maldives Monetary Authority, <<http://www.mma.gov.mv/#/financialstability/insurancesector/insuranceproviders>> (accessed 17 August, 2020).

¹⁸ Maldives Monetary Authority, “Banking sector,”.

¹⁹ Maldives Monetary Authority. “Other Financial Institutions Sector,” Maldives Monetary Authority, <<http://www.mma.gov.mv/#/financialstability/otherfinancialinstitutionssector#housingfinance>> (accessed 17 August, 2020).

development of Islamic capital market (ICM) in Maldives under Maldives Securities Act 2006 (MSA) (Act No: 2/2006). CMDA has statutory authority to license securities market intermediaries such as dealers, advisors, brokers, asset managers, credit rating agencies, custodians, central depositories, and stock exchanges.²⁰ Under the regulation of CMDA, there is one stock exchange, one central depository, two dealers license holders, one custodian license holder, two dealer's representative license holders, four investment adviser license holders, one investment adviser representative license holder, one Sharī'ah advisor, two investment fund management companies,²¹ and ten listed companies.²² Although Maldives has seen development in conventional capital market, ICM has only recently been introduced into the Maldivian economy.

Maldives witnessed the listing of the first Sharī'ah compliant securities in Maldives Stock Exchange (MSE) in year 2011²³ where the first initial public offering (IPO) of ATM and its shares were oversubscribed.²⁴ In June 2019, MIB launched its IPO that was also oversubscribed²⁵ and was listed as the second Sharī'ah compliant stock at MSE.²⁶ This shows the potential development of ICM in Maldives. However, in order to develop ICM at the required speed, a comprehensive legal and regulatory framework is vital.

²⁰ Maldives Securities Act 2006 (Act no: 02/2006), chapter 4.

²¹ Capital Market Development Authority. "Registered Entities," Capital Market Development Authority, <<https://www.cmda.gov.mv/en/public/licensed-or-registered-entities/>> (accessed 17 August, 2020).

²² Maldives Stock Exchange. "Listed Companies," Maldives Stock Exchange, <<https://stockexchange.mv/listedcompanies>> (accessed 17 August, 2020).

²³ Capital Market Development Authority. "Islamic Capital Market," Capital Market Development Authority, <<http://www.cmda.gov.mv/developments/islamic-capital-market/>> (accessed 3 August, 2012).

²⁴ Ibid.

²⁵ Maldives Islamic Bank, *Annual Report 2019*. (Male': Maldives Islamic Bank, 2019), 18.

²⁶ Capital Market Development Authority, *Annual Report 2019*, (Male': Capital Market Development Authority, 2019), 15.

On the other hand, Malaysia is at the forefront in terms of ICM. Malaysia leads ICM globally and is also the pioneer in innovation and thought leadership.²⁷ Malaysian ICM held 64 percent of Malaysian capital market by the end of year 2019. The size of ICM also rose to RM2 trillion in year 2019, an eight percent growth compared to year 2018.²⁸ At the end of year 2019, Shari'ah compliant securities represented 76 percent of a total of 929 securities that were listed in Bursa Malaysia.²⁹ Having a robust legal and regulatory framework that consists of several legislations, regulations, and guidelines governing ICM³⁰ contributed to Malaysia becoming a global leader in developing ICM.

1.2 STATEMENT OF THE PROBLEM

In a globalized world where international trade and finance are interconnected, ICM is not immune from the globalized financial system. Local funds are insufficient to develop and sustain not only the Maldivian economy, but any country's economy. Foreign funds must be attracted and invested to develop a country's economy. However, foreign funds will not be attracted unless security and protection are provided to the relevant stakeholders. Since the introduction of ICM in Maldives, it has been undergoing some regulatory developments as few regulations related to ICM have been issued by CMDA.

Having a sound legal and regulatory framework is vital to develop ICM not only in Maldives, but in any country including Malaysia. However, the existing rules and

²⁷ Securities Commission Malaysia, *Annual Report 2019*, (Kuala Lumpur: Securities Commission Malaysia, 2019), viii.

²⁸ *Ibid.*, 10.

²⁹ *Ibid.*, 180.

³⁰ Securities Commission Malaysia. "Regulation," Securities Commission Malaysia, <<https://www.sc.com.my/regulation>> (accessed 17 August 2020).

regulations governing ICM in Maldives are not adequate to attract local and foreign investment investors. Maldives still faces many legal and regulatory challenges in the development of ICM in Maldives. To ensure an attractive market for both locals and foreign investors, the legal and regulatory framework of ICM in Maldives needs to be efficient and up-to-date. In contrast, Malaysia has a robust capital market legal and regulatory framework. As the global leader in Islamic Finance, Malaysia's strategy for developing its ICM offers a valuable benchmark for other developing capital markets.³¹

Hence, this research examines the legal and regulatory framework of ICM in Malaysia, and using it as a guideline, proposes reforms in the legal framework for ICM in Maldives. More specifically, this research answers the following questions:

1. What is the legal and regulatory framework of Islamic capital market in Maldives?
2. What is the legal and regulatory framework of Islamic capital market in Malaysia?
3. What is lacking in the existing legal and regulatory framework of Islamic capital market in Maldives?
4. What can be adopted from the legal and regulatory framework of Islamic capital market in Malaysia?
5. What reforms are needed in the existing legal and regulatory framework of Islamic capital market in Maldives?

³¹ Gemma Varriale, "How to Build a Finance Hub: The Secret to Malaysia's Success", *International Financial Law Review*, vol. 32, no. 8 (2013): 2.

1.3 OBJECTIVES OF THE RESEARCH

The specific objectives of this research are:

1. Analyze the legal and regulatory framework of Islamic capital market in Maldives.
2. Evaluate the legal and regulatory framework of Islamic capital market in Malaysia.
3. Compare the legal and regulatory framework of Islamic capital market in Maldives with the legal and regulatory framework of Islamic capital market in Malaysia.
4. Propose reforms in the legal and regulatory framework of Islamic capital market in Maldives.

1.4 HYPOTHESIS

To date, CMDA has issued only four main regulations: Regulation on Capital Market Shari‘ah Advisory Council; Regulation on Issuance of Şukūk Securities; Regulation on Screening Islamic Securities; and Regulation to Register of Shari‘ah Advisers. Therefore, the existing laws and regulations of CMDA are not sufficient to meet with the growing demand for ICM products in Maldives. On the other hand, Malaysia has the most extensive regulatory framework on the globe that governs ICM with comprehensive guidelines for all ICM products that are offered.

1.5 LITERATURE REVIEW

This section presents a review of recent literature on legal and regulatory framework of ICM in Maldives and Malaysia. Although there are many materials on legal and regulatory framework of ICM in Malaysia, there are limited works on ICM in Maldives.

For ease of presentation of these works, this review is divided into two parts. The first part focuses on literatures of ICM in Maldives while the second part of the review focuses on ICM in Malaysia. The literatures are organized in chronological manner and are reviewed to understand their contributions and relationship to the current study.

Research on ICM in Maldives is limited in number. In year 2013, Aishath Muneeza³² discussed about the progress of ICM in Maldives. The paper highlighted the first Shari‘ah compliant stock listed in Maldives, issuance of a few regulations governing ICM, and issuance of the first corporate *sukūk* in Maldives. The issuance of the main regulations governing ICM and its significant features were briefly discussed in the paper. Several challenges in the development of ICM in Maldives including legal challenges were also discussed in the paper. Some of these legal challenges include issues in Stamp Act and Land Act. However, no detailed discussion was made with reference to specific provisions of these acts. Furthermore, the study briefly highlighted the need for amendment of MSA and statutory recognition of ICM and Capital Market Shari‘ah Advisory Council (CMSAC) of CMDA. The paper also argued that existing legal and regulatory framework is drafted in a manner that caters to conventional capital market products. It highlights the need for harmonization of capital market laws and related laws to cater for ICM products. In the paper, the need for a bankruptcy act to regulate and protect the interests of creditors are also discussed. Islamic real estate investment trust (I-REIT), Islamic unit trust (IUT) and Islamic fund management are briefly stated in the paper as the opportunities to develop ICM in Maldives, however no detailed discussions were found in this regard.

³² Aishath Muneeza (2013, September). Progress of Islamic Capital Market in the Maldives. Paper presented at Seminar on Second COMCEC Capital Markets Regulators Forum organized by COMCEC, Istanbul.