



RESEARCH PAPER

Comparison of Existing Legal Framework of Corporate Social Responsibility for Banks in Malaysia and United Kingdom

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ABSTRACT

The concept of Corporate Social Responsibility (CSR) is not new in the corporate world. Many researchers and academics have developed their own definitions of CSR over time. Since the 1950s, academics and researchers have been unable to agree on a single, accepted definition of CSR. Companies throughout the world are dealing with a variety of issues related to their new position, which is to fulfil the requirements of the contemporary generation in an ethical manner. Undoubtedly, CSR an innovative idea in Malaysia increases the significance of CSR for banks in Malaysia. The researchers determines the existing legal framework of Corporate Social Responsibility for banks in Malaysia and United Kingdom (UK) by making a comparison of the legal framework between two countries and seeks recommendations for improvement of existing legal framework of CSR for banks in Malaysia. To achieve that, we determines the existing legal framework of Corporate Social Responsibility for banks in Malaysia and United Kingdom and will try to find possible deficiencies in the legal frame CSR for banks in Malaysia. Additionally, it is important to consider the CSR legal framework for banks in UK. The study will attempt to look out for pertinent laws, rules, regulations, and recommendations in the local and international legal frameworks of CSR for banks in UK and Malaysia.

Keywords: Corporate Social Responsibility, Banks, Legal Framework

Introduction

This article centers on CSR in Malaysia and aims to examine regulations and laws on CSR in Malaysia with a view to improve them. This article will then compare these regulations and laws with the regulation and laws in United Kingdom. UK has been chosen as the comparative jurisdiction because the Legal system of Malaysia is based on the Common Law Legal system of UK.

It would be improper to attempt to research and study legal framework of CSR in banks in Malaysia and UK without discussing situation of CSR in Malaysia and UK and also existing legal framework of CSR for banks in both countries. The following four topics will be discussed in this part.

CSR in Malaysia

Malaysia appears to be active in CSR efforts among other developing nations .Additionally, among all of the service sectors, banks, particularly domestic banks, are mentioned as having a vibrant and advantageous engagement in CSR events .For instance, in 2007 and 2008, Public Bank Bhd (PBB) won the Malaysian Business CSR Awards (Zulkifli, N & Amran, 2006). The fact that CSR is on the corporate agenda demonstrates that the banking industry's goals go beyond maximising profit and include helping to promote

investments that are socially and environmentally responsible, as well as, working to forge solid relationships with all of its stakeholders (Chai Guo Le et al., 2017). Additionally, according to Nazir Razak, the CEO of CIMB bank, he showed that CSR efforts no longer revolve around raising money for the present generation. He stated that he intended their CSR activities to be targeted and have a positive, long-lasting impact on the public for future generations. The cornerstone of CIMB is to ensure that these initiatives are focused and scaleable (CIMB Foundation).

In general, domestic banking institutions in Malaysia use similar CSR practises. They are made up of CSR activities like donations, preservation, contributions, employees doing good deeds, to name a few. The pattern of implementation is the only thing that differs. Many banks are involved in CSR based strategies either to build their reputation within the general public by way of community-based activities or to gain long-term and short-term profits (Chai Guo Le, et al., 2017).

Existing Legal framework of CSR of banks in Malaysia

Malaysian legal framework for CSR for private banks consists of two voluntary rules or regulations which include Value-based Intermediation: Strengthening the Roles and Impact of Islamic Finance and Implementation Guide for value-based intermediation.

Malaysian legal framework for CSR for private banks consists of six mandatory laws, rules or regulations which includes Companies Act 2016, Policy, Policy Document on Corporate Governance, Malaysian Code on Corporate Governance 2017, Best Business Practice Circular (BBPC) 6/2017, Bursa Malaysia Sustainability Reporting Guide 2018 and Bursa Malaysia Securities Berhad Main Market Listing Requirements 2019.

Value-based Intermediation: Strengthening the Roles and Impact of Islamic Finance (Voluntary)

The Strategy paper for Value-Based Intermediation was issued by BNM on 12th of March 2018. BNM and Community of Practitioners, after consultation with stakeholders, have developed several strategies to strengthen the impact and roles of Islamic banking institutions (IBIs). The strategies are applicable to all financial sectors (Bank Negara Malaysia, 2018). VBI promotes social, environment and good governance and in that sense is within the same focus as CSR. This Strategy paper is voluntary for Islamic banks.

Implementation Guide for value-based intermediation (Voluntary)

Implementation Guide for value-based intermediation was issued by BNM on the 3rd of October 2018. Implementation Guide for Value-based Intermediation issued by BNM is a non-binding document and the findings, conclusions, interpretations and views stated in this guide is not the stated policy of BNM (Bank Negara Malaysia, 2018). The aim of the Guide is to help Islamic Financial Institutions (IFIs) to adopt Value-Based Intermediation (VBI). The Implementation Guide for value-based intermediation expects that all IFIs should also work for society by performing their social responsibility. Implementation Guide for value-based intermediation expects from IFIs to work for community empowerment. Clause 4.11 (ii) provides that all IBIs should maintain a balanced consideration between social and commercial aspects. Clause 4.12 of the Implementation Guide for value-based intermediation also focuses on social responsibility (Bank Negara Malaysia, 2018). It focuses that banking practices should explore alternative funding instruments to finance the varying nature of VBI assets like social finance (e.g. waqf, zakat, and sadaqah) and Socially Responsible Investment (SRI). Funds for serving targeted segment or social development projects should also be identified.

Companies Act 2016 (Mandatory)

The Companies Act 2016 also provides provision for CSR. Section 213 (1) made it mandatory for the directors of the company to act in the best interest of his company (SSM, 2016). Section 252 (1) made it mandatory for the directors of the company to prepare their annual director's report. Section 252 of the Companies Act 2016 requires that the annual report of the company for each financial year must be prepared by the directors of the company and must be attached to the financial statement of the company. Such annual report should be approved and signed by the directors of the company. This section also provides punishment for non-compliance with subsection (1) and subsection (2) and provides that any director of the company who disobeys subsection (1) of section 252 of this Act shall be liable to imprisonment not exceeding one year or a fine not exceeding five hundred thousand ringgit or to both. Moreover, every officer of the company or the company itself shall be liable to a fine not exceeding twenty thousand ringgits, if they contravene subsection (2) of section 252 of this Act.

Section 253 (1) explains about the contents of the directors' report. This section guides the company and directors about the contents to be included in their annual report. Part II (d) (i) of the Fifth Schedule requires that directors of the company may include the impact of the company's business on the environment and other environmental matters while Part II (d) (iii) of the Fifth Schedule requires that directors of the company may include information about any policies or effectiveness of policies regarding social and community issues. These contents of business review encourage companies to do CSR activities.

Policy Document on Corporate Governance (Mandatory)

This Policy Document on Corporate Governance (CG) was issued by BNM on the 3rd of August 2016. This policy document was issued pursuant to sections 29 (2), 57 (1) and 67 (4) of the Islamic Financial Services Act 2013 (IFSA) and sections 47 (1) and 58 (4) of the Financial Services Act 2013 (FSA). The CG by BNM encourages the financial institutions like licensed banks, licensed investment banks, financial holding companies, licensed Islamic banks, licensed Takaful operators and licensed insurers to adopt the comprehensive CG practices and standard practices to protect the role of banks in supporting the real economy (BNM, 2016). Good CG should also be rooted in the culture of the corporation that reinforces professional, prudent and ethical behaviour. Hence, this policy document on CG provides guidelines and expectations on the responsibilities of the directors and board. So, as provided in clause 5.2 of CG, it is mandatory for financial institutions to promote CSR as per clause 8.3 (e) of the CG. The implementation of the standards in the Policy Document on Corporate Governance is mandatory for banks in Malaysia.

Malaysian Code on Corporate Governance (Mandatory)

The Malaysian Code on Corporate Governance (MCCG) was issued by Securities Commission Malaysia and is effective from 26 April 2017. The MCCG is known as Best practices set of corporate governance to be adopted by listed companies (SCM, 2017). All listed companies must also provide a report to Bursa Malaysia regarding the applicability of each practice as defined and set out by the MCCG. Such report must be announced with the annual report of the company and website link to download such disclosure.

Best Business Practice Circular 6/2017 (Mandatory)

Best Business Practice Circular (BBPC) 6/2017 was issued by the SSM basically to give guidance to companies to prepare their business review report as required by the Section 253 – Fifth Schedule, Reference Item 2 (d) (iii) Companies Act 2016 and to promote CSR (SSM, 2017).

The guidance on what to disclose part of the Best Business Practice Circular (BBPC) 6/2017 guides companies to provide information on a voluntary basis regarding the impact

of business on the communities, information about company policies related to community and social issues and investment towards the betterment of the society. This circular is applicable to all companies registered with SSM and banks are also bound to follow this circular for CSR.

Bursa Malaysia Sustainability Reporting Guide 2018 (Mandatory)

The second edition of the Sustainability Reporting Guide was released by the Bursa Malaysia Securities Berhad in the year 2018 (Bursa Malaysia, 2018). The purpose of the Sustainability Reporting Guide is to assist the companies to prepare their Sustainability Statement as required under Part A of Appendix 9C of the Main Market Listing Requirements, paragraph 9.45 (2) and paragraph (29) of the Main Market Listing Requirements of Listing Requirements of Bursa Malaysia Securities Berhad. Listed issuers must take care to prepare their Sustainability Statement according to Sustainability Reporting Guide. All previous regulations or rules are in conjunction with this Guide.

Bursa Malaysia Securities Berhad Main Market Listing Requirements 2019 (Mandatory)

Clause 9.25 of Chapter 9 of said requirement made it mandatory for every PLC to disclose separately in its annual report about the items set out in Part A of Appendix 9C. Paragraph 15.25 of the Listing Requirements made it mandatory for all listed issuer to disclose the application of corporate governance and confirm that their Sustainability Statement is meaningful and balanced as per the Sustainability Reporting Guide (Bursa Malaysia, 2019). The Sustainability Statement in an annual report must state about the CSR practices or activities. Banks in Malaysia are also public listed companies and it is mandatory for banks to follow these Listing Requirements. Paragraph 16.19 of Chapter 16 of the Listing Requirements imposes penalties for any non-compliance under the Listing Requirements.

Having explained the regulations and laws in Malaysia the article moves on to describe CSR in the United Kingdom and its regulations and laws.

CSR in the United Kingdom

The greater the organization of the banking sector the more likely it is to comply with the reporting of CSR (Day, R. & Woodward, 2009). Nearly every big UK Company is including information about its environmental and social activities in its annual report (Utman, L., 2009). Many banks from the United Kingdom are no exception to this. The key banking principle is focused on supporting local areas where their offices, banking centers, and branches are located, with special emphasis on industry, employment and education (Santander, 2020).

For example, Royal Bank of Scotland (RBS), one of UK's biggest banks, is striving to create a more sustainable bank and socially responsible organization. RBS aims to continue to manage its contribution towards the betterment of society. Banks in the UK have stepped up to implement creative CSR schemes.

CSR Laws in Banks in the UK

Under this section, the laws and regulations relating to CSR in the UK will be examined.

Companies Act 2006

According to Section 172 of the Companies Act 2006, a company's director must act in good faith to further the company's performance, employees, environment and community. Section 178 of the Companies Act 2006 provides punishment for breach of the general duties of director of a company as mentioned in Section 172 of this Act. The punishment for non-compliance is on conviction, a fine for directors who fail to submit an annual report. The Act also provides detail about contents to be included in the strategic report. Section 414C clearly provides details about the contents of the strategic report. This section requires companies to report on CSR activities and thus indirectly makes companies necessarily do CSR activities. As banks are also companies so they are also bound to follow this section.

The UK Corporate Governance Code 2018

An updated set of Principles has been provided in the UK Corporate Governance Code 2018. The set of Principles highlights the value of good corporate governance (Financial Reporting Council, 2018). This Code also emphasizes on the application of the Principles. Although, no part of the UK Corporate Governance Code 2018 is especially concerned about CSR yet there is some recognition in clause 5 of part 1. So, clause 5 of part 1 of the UK Corporate Governance Code 2018 requires that the matters and interests of the stakeholders as provided in section 172 of the Companies Act 2006 should be observed. Section 172 (1) (d) specifically encourages companies to do CSR.

United Nations (UN) Global Compact Principles

UN global compact principles were introduced in the year 2003 in the UK and are voluntary principles (UNGC, 2003). As these are not mandatory, private banks in the UK are at liberty whether to adopt UN global compact principles or not. These are just general principles, but a lot of other private Banks in the UK have adopted and implemented UN global compact principles. Standard Chartered Bank has been a participant of UN global compact principles since 22 August 2001, The Royal Bank of Scotland Group PLC (RBS) is a participant of UN global compact principles since 10 October 2003, Lloyds Banking Group is a participant of UN global compact principles since 24 February 2016.

A summary of the legal framework in UK and its comparison with the legal framework on CSR in Malaysia is made below.

Comparisons of CSR Laws in Private Banks in the UK and Malaysia

Table 1
Comparison of CSR Laws in Banks in the UK and Malaysia

UK	Malaysia
CSR Laws for Banks (Voluntary)	CSR Laws for Banks (Voluntary)
1- UK Corporate Governance Code 2018	1- Value-based Intermediation: Strengthening the Roles and Impact of Islamic Finance 2- Implementation Guide for value-based intermediation 2018

CSR Laws for Banks (Mandatory)	CSR Laws for Banks (Mandatory)
1- Companies Act 2006	1- Companies Act 2016 2- Policy Document on Corporate Governance (Mandatory) 3- Malaysian Code on Corporate Governance 2017 4- Best Business Practice Circular (BBPC) 6/2017 5- Bursa Malaysia Sustainability Reporting Guide 2018 6- Bursa Malaysia Securities Berhad Main Market Listing Requirements 2019
International CSR rules and regulations adopted by Banks	International CSR rules and regulations adopted by Banks
- Standard Chartered Bank - The Royal Bank of Scotland Group plc. - (RBS) Lloyds Banking Group	NIL

Results and Discussion

CSR Laws for Banks (Voluntary)

The table above provides a comparison regarding CSR laws or rules and regulations between the UK and Malaysia. The 1st row summarizes the voluntary CSR laws or rules and regulations for private banks in both countries. Next a detailed comparison is made.

Clause 5 of part 1 of the UK Corporate Governance Code 2018 requires that the matters and interests of the stakeholders as provided in section 172 of the Companies Act 2006 should be observed. On the contrary, there is no concept of Clause 5 of part 1 of the UK Corporate Governance Code in Malaysian legal framework for CSR of banks. The private banks of Malaysia are not following international CSR rules and regulations like UN Global Compact issued by UN but three banks including Standard Chartered Bank, the Royal Bank of Scotland Group plc - (RBS), Lloyds Banking Group of UK are following and implementing international CSR rules and regulations like UN Global Compact issued by United Nations.

CSR Laws for Banks (Mandatory)

The 2nd row summarizes the mandatory CSR laws or rules and regulations for private banks in both countries. The Government of UK issued Companies Act 2006 on the 8th of November 2006. The Companies Act 2006 it is opined made it indirectly mandatory for banks in UK to do CSR. The Companies Act 2006 made it mandatory for the companies to prepare its annual directors report. Section 172 of the Companies Act 2006 (UK) requires that the company's director should act honestly to advance the company's prosperity, employees, environment and community. Section 213 (1) of the Companies Act 2016 (Malaysia) also made it mandatory for the directors of the company to act in the best interest of his company

Section 178 of the Companies Act 2006 of UK provides punishment for breach of Section 172 of this Act. Section 178 of the Companies Act 2006 of UK only provides civil consequences in case of breach. Section 178 of the Companies Act 2006 of UK only provides civil consequences in case of violation of Section 172 of the Companies Act 2006 of UK. On

the contrary, section 252 of the Companies Act 2016 (Malaysia) also provides punishment for non-compliance with subsection (1) and subsection (2) and provides that any director of the company who disobeys subsection (1) of section 252 of this Act shall be liable to imprisonment not exceeding one year or a fine not exceeding five hundred thousand ringgit or to both. Moreover, every officer of the company or the company itself shall be liable to a fine not exceeding twenty thousand ringgits, if they contravene subsection (2) of section 252 of this Act.

Section 414D of the Companies Act 2006 (UK) requires that a strategic report must be approved by the Board of Directors of a company and such report must be signed by the secretary or director of the company. Moreover, the strategic report must comply with the requirements of the Companies Act 2006 (UK) and in case of failure, the responsible person or directors shall be deemed to have committed an offence as provided in section 414D subsection (2). Any person or director of the company guilty of an offence shall be convicted with a fine as provided in section 414D, sub-section (3) of the companies Act 2006. On the contrary, there is no concept of approval and signing of strategic report in the Companies Act 2016 (Malaysia).

Conclusion

This article has traced the regulations and laws in relation to CSR in Malaysia and UK and then compared the CSR regulations and laws of both jurisdictions. The study revealed that there are a number of voluntary and mandatory regulations and laws of CSR for private banks in both Malaysia and UK. When comparing the laws and regulations of the two jurisdictions it can be seen that there are some provisions such as directors' duties on CSR which both Malaysia and UK have in common. However, further analysis shows that there are certain provisions of the regulations and laws of UK which have no equivalent in Malaysia, such as Section 414D of the Companies Act 2006 (UK). The private banks of Malaysia are not implementing UN Global Compact and it is suggested that Malaysian banks may get better results from CSR by implementing the UN Global Compact. It is recommended that these provisions which are unique in the UK legal framework on CSR may be of benefit for inclusion in the legal framework on CSR in Malaysia.

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