FROM LEGALISM TO VALUE-ORIENTED ISLAMIC FINANCE PRACTICES: SHARI’AH GOVERNANCE APPROACH IN THE GCC COUNTRIES

Zulkifli Hasan
Contents

• Between Aspiration And Reality: Convergence or Divergence
• Over Legalism and Its Implication
• Towards Value-Oriented Practices: Shari’ah Governance As a Mechanism
• Shari’ah Governance in the GCC
• What to reform?
• Concluding Remarks
Despite the tremendous growth and transformation, there are numerous criticisms on the current practice of Islamic finance, which have led to series of questions as to the distinctiveness of Islamic finance with its conventional counterparts.

The current practices of Islamic finance in general seem unable to attain its authenticity and share many common similarities with conventional finance.

The literature has indicated the growing frustration of scholars and proponents of Islamic economics on the failure of Islamic finance in addressing the real economic and ethical issues beyond the legal realm of Shari’ah-compliance.
A study by Beloufi et al (2015) on 40 researches between 1983-2013 found a significant divergence between the theory and practice of Islamic finance.
• “I would like to tell you, in all frankness, that if I were to start all over again, I would not choose the bank as a framework for the application of Islamic teachings in the field of economy and investment. I would look for a not Shari'ah her framework, which is fully in line with the principles regulating investment. This is due to the fact that we have not been satisfied with taking only the name of the bank but also its basic concept, namely, that it is a financial intermediary. So, we have not been able to find for our financial institutions a concept and a pattern, which goes beyond the issue of financial intermediary. This has led to the fact that the preferred investment patterns of Islamic banks have become a mix of a loan and an investment. It is a mix, which has most of the characteristics of a riba-based loan and the flaws of the Western capitalist system. It fails to highlight the features of Islamic investment based on risk-sharing and real investment. It does not recognize the guarantee of the capital or its return.”
# Critiques on Islamic Finance

<table>
<thead>
<tr>
<th>Themes</th>
<th>Critiques</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives of Islamic law.</td>
<td>Islamic in Islamic finance should relate to the social and economic ends of financial transactions rather than the contract mechanics through which ends are achieved.</td>
</tr>
<tr>
<td>Excessive debt.</td>
<td>The disproportionate percentage of debt-based instruments as compared to equity-based.</td>
</tr>
<tr>
<td>Relying on legal fiction.</td>
<td>In developing a <em>fiqh muamalat</em> caution must therefore be exercised for it is all too easy, when creating and then relying on legal fiction, to fall into the pit of complacency and inadvertently developing a <em>fiqh hiyal</em>.</td>
</tr>
<tr>
<td>Themes</td>
<td>Critiques</td>
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<td>-----------------------------------------------------------------------</td>
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</tbody>
</table>
| Lack of social dimension and poor record of corporate social responsibility. | Lack of commitment of Islamic finance industry to support developmental agenda and corporate social responsibility.  
‘The doctrine of shareholders’ value, which is the bedrock of capitalistic market, has been shown to be the basis of Islamic finance practices’. |
<p>| Identical to the conventional banking.                                | “The ‘applied business model’ of IBs is almost identical to the conventional interest-bearing one. It is neither a ‘two-tier mudharabah’ nor a wakalah (agency) based model but rather a specially ‘engineered’ debt model. The framework adopted in the development of Islamic financial instruments has been to design products in such a way that these are almost equivalent in economic and risk characteristics to conventional debt instruments”. |
| Lack of authenticity and operates within Neo-classical economics.     | “Rather than being part of the Islamic political economy, Islamic finance has been pursuing policies away from the theoretical underpinnings and systemic understanding of Islamic economics and has located a surrogate financial framework in neo-classical economics”. |</p>
<table>
<thead>
<tr>
<th>Themes</th>
<th>Critiques</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over legalistic approach.</td>
<td>“From the legalistic perspective, it is argued that interest is haram for being unjust and exploitative. However these concerns are merely rhetorical, as the new institutions in question have become too cozy with their own exploitative environment about which they are mute. Islamic finance is delinked from the broader goals of development and poverty alleviation” (Farooq, 2007).</td>
</tr>
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<td></td>
<td>Islamic finance is experiencing a “formalist deadlock” where the industry is more concerned with formal adherence to Islamic law instead of promoting Islamic ethical values (Balz, 2008).</td>
</tr>
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<td></td>
<td>“The current trend reduces Islam and its Shari’ah to their legal dimension rather than seeing them within a greater civilizational framework” (Haneef, 2009).</td>
</tr>
<tr>
<td></td>
<td>“Shari’ah scholars approach the issue from a microeconomic perspective, and reflect on how an IB, as a financial firm, should conduct its transactions according to fiqh rules; they do not see it in a macroeconomic terms, with IB, as financial intermediaries, meeting the financing needs of society” (Siddiqi 2000).</td>
</tr>
</tbody>
</table>
• The application of Islamic law in Islamic finance must not only be perceived as merely “law” but as “risk”.

• Lack of concern towards excessive debt in Islamic finance practices is a good example to illustrate the legalism and its implication.

• A key obstacle to recovery, growth and prosperity in the advanced economies is too much debt and too little equity in the economy.
Towards Reformation: From Legalism To Value-oriented Islamic Finance Practices

“Everything that lapses out from justice into injustice, and from mercy into its opposite, and from maslahah to mafsadah, and from wisdom into the frivolous, does not belong to Shari’ah, even if it is inducted into it by interpretation” (Ibn al-Qayyim).
Value-Oriented Islamic Finance Practices

• A Value Oriented Jurisprudence has already discussed the idea to employ values in the context of *maqasid al-Shari’ah*.

• History has also proven that moral enforcement supports and complements the legal mechanism to protect the interest and rights of individuals.

• Civilizational oriented dimension is concerned with the social justice and therefore closely related with human well-being.

• The permissibility of a transaction will not only depend on the pillars of a valid contract but also on the outcome or consequences of the transactions
<table>
<thead>
<tr>
<th>Tenet-Bound Fundamentals (tenets derived from <em>Shari’ah</em>)</th>
<th>Principles-Bound Concept is grounded on ethics and values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real-economy Linked Asset-backed transactions with investments in real, durable assets</td>
<td>Society-Service Serving communities, not markets</td>
</tr>
</tbody>
</table>

From Legalism to Value-Oriented Islamic Finance
This paper strongly advocates that Shari’ah governance can be a catalyst for Islamic finance reformation towards value-oriented practices.

To guide IFIs from over legalism towards value-oriented Islamic finance practices.
Islamic Finance in the GCC
## After 40 Years?

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Market Share</strong></td>
<td><strong>Customers</strong></td>
<td><strong>Total Assets</strong></td>
</tr>
<tr>
<td>4 Markets with</td>
<td>Less than 100 million customers (2.5 bn</td>
<td>3 trillion (Global financial asset USD300 trillion)</td>
</tr>
<tr>
<td>30% Market Share</td>
<td>no bank’s account, 1 bn youth across OIC)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 markets with</td>
<td>250 million customers</td>
<td>9 trillion</td>
</tr>
<tr>
<td>40-50% Market Share</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Assets %</td>
<td>Deposits %</td>
</tr>
<tr>
<td>--------------</td>
<td>----------</td>
<td>------------</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>48.9</td>
<td>N/A</td>
</tr>
<tr>
<td>Kuwait</td>
<td>44.6</td>
<td>47.3</td>
</tr>
<tr>
<td>Bahrain</td>
<td>27.7</td>
<td>47.8</td>
</tr>
<tr>
<td>Qatar</td>
<td>23.6</td>
<td>35.7</td>
</tr>
<tr>
<td>UAE</td>
<td>21.4</td>
<td>32.8</td>
</tr>
<tr>
<td>Malaysia</td>
<td>20.7</td>
<td>29.4</td>
</tr>
<tr>
<td>Pakistan</td>
<td>9.5</td>
<td>11.4</td>
</tr>
<tr>
<td>Turkey</td>
<td>5.9</td>
<td>7.1</td>
</tr>
<tr>
<td>Indonesia</td>
<td>5.5</td>
<td>11.4</td>
</tr>
</tbody>
</table>
## Asset and Deposit

<table>
<thead>
<tr>
<th>Bank</th>
<th>Assets $ billion</th>
<th>Deposits $ billion</th>
<th>Overseas focus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Al Rajhi</td>
<td>74.6</td>
<td>61.6</td>
<td>Malaysia</td>
</tr>
<tr>
<td>Kuwait Finance House</td>
<td>57.3</td>
<td>35.8</td>
<td>Turkey</td>
</tr>
<tr>
<td>Dubai Islamic Bank</td>
<td>30.8</td>
<td>21.6</td>
<td>Pakistan</td>
</tr>
<tr>
<td>Maybank Islamic</td>
<td>38.0</td>
<td>25.3</td>
<td>Indonesia, Singapore</td>
</tr>
</tbody>
</table>
Shari’ah Governance as a Mechanism
<table>
<thead>
<tr>
<th>CG Structure in IFIs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Guidelines on Governance</strong></td>
</tr>
<tr>
<td><strong>Code of Conduct</strong></td>
</tr>
<tr>
<td><strong>Infrastructure</strong></td>
</tr>
<tr>
<td><strong>Due Diligence</strong></td>
</tr>
<tr>
<td><strong>Communication</strong></td>
</tr>
<tr>
<td><strong>Internal Control</strong></td>
</tr>
<tr>
<td><strong>Monitoring</strong></td>
</tr>
<tr>
<td><strong>Enforcement</strong></td>
</tr>
</tbody>
</table>
SG as part of CG in IFIs

• SG is a set of institutional and organizational arrangements through which IFIs ensure that there is independent oversight of Shari’ah compliance over the issuance of Shari’ah pronouncements, dissemination of information and an internal Shari’ah compliance review.

• IFIs shall have in place a SB to review and ensure that all financing proposals are Shari’ah compliant at all times.

• Internal/External Shari’ah review unit to assist the SB for Shari’ah-compliance purpose.
Objectives

1. Ensure compliance to Shari'ah Principles
2. Harmonize practices
3. Enhance role of Board, SC and management
4. Insure all public confidence on credibility of Islamic Finance operations

Objectives

Objectives

Objectives

Objectives
<table>
<thead>
<tr>
<th>Function</th>
<th>Common Corporate Governance</th>
<th>Additional of IFI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance</td>
<td>Boards of Director</td>
<td><em>Shari’ah Committee</em></td>
</tr>
<tr>
<td>Control</td>
<td>Internal Audit Division, External Audit</td>
<td><em>Internal Shariah Review, Shari’ah Review by Shari’ah Committee, Shari’ah Audit</em></td>
</tr>
<tr>
<td>Compliance</td>
<td>Regulatory &amp; Financial Compliance Division</td>
<td><em>Internal Shari’ah Compliance (Research)</em></td>
</tr>
<tr>
<td>Risk Management</td>
<td>Risk Management division (Credit, Market &amp; Operational Risk)</td>
<td><em>Shari’ah Compliance Risk Management</em></td>
</tr>
</tbody>
</table>
### Guidelines on *Shari’ah* Governance for IFIs

<table>
<thead>
<tr>
<th>Issuer</th>
<th>Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAOIFI</td>
<td>Governance Standards 1-5</td>
</tr>
<tr>
<td>IFSB</td>
<td>Guiding Principles on SG System for Institutions offering Islamic Financial Services</td>
</tr>
<tr>
<td>Bahrain</td>
<td>The CBB Rule Book Volume 2, Islamic Banks, Part A, High Level Control</td>
</tr>
<tr>
<td>DIFC</td>
<td>the DIFC Services Authority (DFSA) Rulebook on Islamic Financial Business Module</td>
</tr>
<tr>
<td>QFC</td>
<td>the Islamic Finance Rule Book 2007</td>
</tr>
<tr>
<td>Bank Indonesia</td>
<td>BI Rule No 6/24/PBI/2004</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Shari’ah Governance Framework</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Instruction and Guidelines for Sharī’ah Compliance in Islamic Banking Institutions.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Shari’ah Governance Framework</td>
</tr>
</tbody>
</table>
Institutionalization of Shari’ah Board

• The AAOIFI Governance Standard No.1 defines a Shari’ah board as “an independent body entrusted with the duty of directing, reviewing and supervising the activities of IFIs for the purpose of Shari’ah compliance and issuing legal rulings pertaining to Islamic banking and finance”

• “a body comprised of a panel of Shari’ah scholars who provide Shari’ah expertise and act as special advisers to the institutions”
Roles of the *Shari’ah* Board

• To advise IFIs on any *Shari’ah* matter such as to its operation, to analyse and evaluate *Shari’ah* aspects of new products/schemes so as to ensure compliance with the shariah tenets and requirements in their operations.

• Ex-ante and ex-post SG process

• Eg. concept and structure of the product, documentation, manuals, business operation, zakah policy and etc.
<table>
<thead>
<tr>
<th>Key Element</th>
<th>Principle</th>
<th>Operational Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competence</td>
<td>Fit and proper criteria</td>
<td><em>Ex ante</em>: Screening process</td>
</tr>
<tr>
<td></td>
<td>Professional training</td>
<td><em>Ex post</em>: Review and assessment</td>
</tr>
<tr>
<td></td>
<td>Formal assessment</td>
<td></td>
</tr>
<tr>
<td>Independence</td>
<td>Adequate capability to exercise objective judgment</td>
<td><em>Ex ante</em>: Appointment, disclosure and full mandate</td>
</tr>
<tr>
<td></td>
<td>Complete, adequate and timely information</td>
<td><em>Ex post</em>: Review and assessment</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Strictly observe the confidentiality</td>
<td><em>Ex ante</em>: Undertaking secrecy</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Ex post</em>: Review and assessment</td>
</tr>
<tr>
<td>Consistency</td>
<td>Fully understand the legal and regulatory framework strictly observes the said framework.</td>
<td>There must be consistency in all <em>ex ante</em> and <em>ex post</em> Shari’ah governance processes.</td>
</tr>
</tbody>
</table>

The adoption of AAOIFI standards and Centralized Shari’ah board.
Elements of Good Shari’ah Board

- Independence
- Competence Acceptable fit and Proper Criteria
- Clear Mandate and Responsibility
- Transparent and Disclosure
- Sound Code of Ethics and conduct
- Well-defined Operating Procedures
Shari’ah Governance in the GCC
Various models and approaches of Shari’ah governance:

– two-tier “centralized model”: a Shari’ah Advisory Council at the level of the central bank and individual Shari’ah committees at the market level in each IFI;
– “centralized model”: Shari’ah Advisory Council at the central bank only;
– “non-centralized model”: Shari’ah committees at the financial institution level only.

9 countries that have centralized Shari’ah board

– GCC region: Bahrain, Oman and United Arab Emirates,
– Asian Region: Bangladesh and Pakistan, and South East Asia: Brunei, Indonesia, Malaysia and
– Africa: Sudan.
– These markets represent approximately USD750 billion of Islamic finance assets are located.
# Shari’ah Governance Model in the GCC

<table>
<thead>
<tr>
<th>Country</th>
<th>Model</th>
<th>Shari’ah Governance Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kuwait</td>
<td>Non-centralized Shari’ah</td>
<td>The Shari’ah governance practice in Kuwait is regulated by virtue of Article 93 of the CBK Law, which provides a legal basis for the regulations of the Shari’ah board. Article 4 of law 7 of 2010 decreed for the setup of special rules, regulations and procedures to regulate the activity of individuals working in accordance with Islamic law.</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>Two-tier Centralized Shari’ah</td>
<td>The Federal Law No. 6 of 1985 governs the Shari’ah governance system in the UAE. Article 5 of the Federal Law No. 6 of 1985 requires the establishment of a “Higher Shari’ah Authority” under the Ministry of Justice and Islamic Affairs to supervise Islamic banks, financial institutions and investment companies and to provide Shari’ah opinion on matters pertaining to Islamic banking and finance</td>
</tr>
<tr>
<td>Country</td>
<td>Model</td>
<td>Shariʿah Governance Framework</td>
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<tr>
<td>----------------------------</td>
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<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Bahrain</td>
<td>Two-tier Centralized</td>
<td>The CBB Rule Book Volume 2, Islamic Banks, Part A, High Level Control provides that the CBB requires all banks to establish an independent <em>Shariʿah</em> board complying with the AAOIFI governance standards for IFIs No. 1 and No.2. Bahrain has established a National <em>Shariʿah</em> Advisory Board of the CBB with the purpose of serving and verifying <em>Shariʿah</em> compliance.</td>
</tr>
<tr>
<td>Kingdom of Saudi Arabia</td>
<td>Non-centralized</td>
<td>The SAMA treats IFIs as equal to their conventional counterparts. There is no national <em>Shariʿah</em> advisory board, nor are any institutions the sole authoritative body in Islamic finance. The existing <em>Shariʿah</em> governance system, as practised by IFIs in the kingdom, is a product of self-initiative rather than a regulatory requirement or at a regulator’s direction.</td>
</tr>
<tr>
<td>Country</td>
<td>Model</td>
<td>Shari’ah Governance Framework</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>Qatar</td>
<td>Non-centralized Shari’ah board</td>
<td>The QCB issued prudential regulations for banking supervision known as Instructions to Banks and Part Seven of the Banking Supervision Instructions provides the guidelines for IFIs. Meanwhile, the QFC has its own rules and regulations pertaining to the Shari’ah governance system, as stipulated in the Islamic Finance Rule Book 2007.</td>
</tr>
<tr>
<td>Oman</td>
<td>Two-tier Centralized Shari’ah board</td>
<td>Oman is relatively new in Islamic finance. In 2012, a comprehensive Shari’ah governance framework was introduced in Oman outlining the roles and duties of the board of directors and its main members including the Shari’ah committee and internal Shari’ah auditors. In 2013, the national Shari’ah Advisory Council was established to advise the central bank on Shari’ah matters pertaining to finance.</td>
</tr>
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</table>
# Why does SG matter?

<table>
<thead>
<tr>
<th>Source</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Investment Dar Company v Blom Developments Bank</strong></td>
<td>TID claims that the wakala based deposit in the amount of USD10m did not comply with the <em>Shari’ah</em> and therefore should be considered void.</td>
</tr>
<tr>
<td><strong>The Majma’ Fiqh declaration on Tawarruq</strong></td>
<td>Resolution on <em>Tawarruq</em> at the 19th meeting in Sharjah, UAE on 26-30th April 2009</td>
</tr>
<tr>
<td><strong>Statement of 85% of potential <em>Shari’ah</em> non-compliance sukuk</strong></td>
<td>Has negated in some way public confidence on legitimacy and Islamicity of the sukuk. Sales of sukuk dropped 50% in 2008 and prices fell at an average of 1.51%. According to Bloomberg, sales of global sukuk had dropped to USD856 million in 2008.</td>
</tr>
<tr>
<td><strong>Financial Loss</strong></td>
<td>The BNM received more than 100 submissions from IFIs for <em>Shari’ah</em> non-compliance reporting and less than 21% are actual <em>Shari’ah</em> non-compliance. The amount of actual loss due to this non-compliance is also significant.</td>
</tr>
<tr>
<td><strong>Judgment on BBA</strong></td>
<td>The High Court decreed that the profit derived from BBA facility is unlawful. The defaulters of BBA facility were only liable as to the original facility amount and not the selling price.</td>
</tr>
<tr>
<td><strong>Kleinwort Benson</strong></td>
<td>One of the factors that lead to the closure of KB in 1986 was due to investor’s reservation about the absence of a <em>SB</em>.</td>
</tr>
<tr>
<td><strong>Judgment on BBA</strong></td>
<td>The High Court decreed that the profit derived from BBA facility is unlawful. The defaulters of BBA facility were only liable as to the original facility amount and not the selling price.</td>
</tr>
</tbody>
</table>
Shari’ah Governance Practices in the GCC
## Shari’ah Governance Index

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Shari’ah Governance Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Disclosure of Commitment to <em>Shari’ah</em> Governance</td>
</tr>
<tr>
<td>15</td>
<td>Disclosure of <em>Shari’ah</em> Board Information</td>
</tr>
<tr>
<td>2</td>
<td>Disclosure of <em>Shari’ah</em> Board Remuneration</td>
</tr>
<tr>
<td>2</td>
<td>Disclosure of <em>Shari’ah</em> Report</td>
</tr>
<tr>
<td>3</td>
<td>Disclosure of <em>Shari’ah</em> Pronouncements</td>
</tr>
<tr>
<td>1</td>
<td>Disclosure of <em>Shari’ah</em> Compliance Review</td>
</tr>
<tr>
<td>2</td>
<td>Disclosure of Information on Products and Services</td>
</tr>
</tbody>
</table>
• 54 IFIs in the GCC.
• Most of IFIs (46%) are ranked as Emerging Practice followed by 30%, Improved Practice, 22%, Underdeveloped and 2%, good practice.
• Bahrain are generally producing low disclosure practices.
• 50% of IFIs are ranked as Improved Practice, 42%, Emerging Practice and 8%, Underdeveloped.
Majority of IFIs (60%) are ranked as Emerging Practice followed by 20% Underdeveloped and Improved Practice. There is no single IFI achieved the level of Good Practice or Best Practice.
The level of disclosure and transparency is also low in Qatar. The graph shows that 40% of IFIs are ranked as Emerging Practice, 50% as Underdeveloped and 10% of IFIs as Improved Practice.
• Majority of IFIs (46%) are ranked as Emerging Practice followed by Improved Practice (38%) and Underdeveloped (15%).
• 44% of IFIs are ranked as Emerging Practice followed by 22% of IFIs as Improved Practice and Underdeveloped and 11% of IFIs as Good Practice.
• IFIs in Malaysia presented slightly better score as compared to GCC and the UK. Most of IFIs in the GCC (20%) fall into the Improved Practice category and 17% into the Underdeveloped Practice category.
• (1) the number of IFIs with at least three members in their Shari’ah board
• (2) the number of Shariah scholars with at least one board membership, and
• (3) the number of scholars with more than five board memberships.
<table>
<thead>
<tr>
<th>Country</th>
<th>Shari’ah Governance Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahrain</td>
<td>142</td>
</tr>
<tr>
<td>Malaysia</td>
<td>116</td>
</tr>
<tr>
<td>Kuwait</td>
<td>106</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>92</td>
</tr>
<tr>
<td>Sudan</td>
<td>89</td>
</tr>
<tr>
<td>Oman</td>
<td>70</td>
</tr>
<tr>
<td>Indonesia</td>
<td>57</td>
</tr>
<tr>
<td>Pakistan</td>
<td>56</td>
</tr>
</tbody>
</table>
High Concentration on Few Scholars

• 10 Shari’ah scholars serve in approximately 497 IFIs representing 76% the total IFIs with Shari’ah boards.
• 3 scholars with the highest number of board memberships serve about 40% of IFIs globally.
• The number of institutions increases and the amount of work increases.
• There is deficiency of about 1700 Shari’ah board members, whereby it is expected that the requirement for Shari’ah scholars will rise to 3000 in next 5 years if 5% growth is assumed in the number of IFIs.
• Succession Plan – Serious action required
• Performance Assessment (Collective & Individually)
<table>
<thead>
<tr>
<th>Shari’ah Scholar</th>
<th>Data as of 31.12.2008</th>
<th>Data as of 10.10.2009</th>
<th>Data as of 12.04.2010</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>467 Board Positions in 19 Countries</td>
<td>956 Board Positions in 22 Countries</td>
<td>1050 Board Positions in 24 Countries</td>
</tr>
<tr>
<td>Shaikh Nizam Mohammed Saleh Yaquby</td>
<td>46</td>
<td>77</td>
<td>78</td>
</tr>
<tr>
<td>Dr. Abdul Satar Abdul Karim Abu Ghuddah</td>
<td>45</td>
<td>72</td>
<td>77</td>
</tr>
<tr>
<td>Dr. Mohammed Eid Elgari</td>
<td>31</td>
<td>64</td>
<td>65</td>
</tr>
<tr>
<td>Dr. Abdulaziz Khalifa Al Qassar</td>
<td>22</td>
<td>37</td>
<td>38</td>
</tr>
<tr>
<td>Dr. Mohd Daud Bakar</td>
<td>22</td>
<td>35</td>
<td>38</td>
</tr>
<tr>
<td>Shaikh Abdulla Bin Sulaiman Al Manea</td>
<td>20</td>
<td>37</td>
<td>38</td>
</tr>
<tr>
<td>Dr. Hussein Hamid Hassan</td>
<td>19</td>
<td>29</td>
<td>32</td>
</tr>
<tr>
<td>Dr. Ali Mohi Eldinne Al Qaradaghi</td>
<td>17</td>
<td>23</td>
<td>31</td>
</tr>
<tr>
<td>Dr. Essa Zaki Essa</td>
<td>17</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Shaikh Ajeel Jasim Al Nashmi</td>
<td>15</td>
<td>24</td>
<td>22</td>
</tr>
<tr>
<td>Average</td>
<td>25.3</td>
<td>42.3</td>
<td>44.4</td>
</tr>
</tbody>
</table>
The total number of Shari’ah scholars reached 952 covering 652 IFIs in more than 46 countries.

75% within the top 10 countries (Malaysia, Bangladesh, Indonesia, Kuwait, Saudi Arabia, Bahrain, Sudan, UAE, Pakistan, Oman)

41% in the GCC region.

26% South East Asia

16% in South Asia

11% in MENA nations

2% Europe
### Shari’ah Scholars in the GCC

<table>
<thead>
<tr>
<th>Countries</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia</td>
<td>203</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>173</td>
</tr>
<tr>
<td>Indonesia</td>
<td>131</td>
</tr>
<tr>
<td>Kuwait</td>
<td>70</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>68</td>
</tr>
<tr>
<td>Sudan</td>
<td>60</td>
</tr>
<tr>
<td>Bahrain</td>
<td>60</td>
</tr>
<tr>
<td>UAE</td>
<td>57</td>
</tr>
<tr>
<td>Pakistan</td>
<td>43</td>
</tr>
<tr>
<td>Oman</td>
<td>32</td>
</tr>
<tr>
<td>Qatar</td>
<td>30</td>
</tr>
</tbody>
</table>
• A small percentage of 3.7% of 54 IFIs in GCC countries disclosed Shari’ah board’s remuneration.
• The Shariʿah board members of IFIs in Bahrain and the UK receive a larger amount of remuneration compared to their counterparts in Malaysia with averages of USD76,432 and USD74,553 respectively.
• A chairman of a Shariʿah board could earn USD50,000 to USD100,000 per board.
• A top scholar could gain up to USD250,000 on a typical capital markets deal.
What to Reform?
Value-Oriented Reformation

- Islamic finance practices require reformation from all stakeholders especially *Shari’ah* governance system.
- As the industry has matured and gained experience, *Shari’ah* governance framework plays major roles in guiding Islamic finance towards more value-oriented practices.
- *Shari’ah* scholars have a responsibility to act cautiously and to anticipate to the best of their ability the consequences of their *Shari’ah* supervisory practices.
- Increasing complexity in the role of *Shari’ah* scholars and at the same time with additional liabilities has been transforming the nature of fatwa, necessitating higher levels of sophistication and comprehension.
• Islamic jurisprudential issue vs public policy or prudential issue.
• Islamic financial system — real or cosmetic?
• The permissibility of a transaction will not only depend on the pillars of a valid contract but also on the values, ethics and outcome or consequences of the transactions.
Specialization of Shari’ah Scholars

• The “one scholar fits all” approach is unlikely to be relevant in the future due to increasing complexity of a growing industry.

• Specialization of Shari’ah scholars by the different segments of the industry which will enable them to better serve the industry in a more efficient manner.

• Eg. Retail banking, investment banking, capital market, asset management, takaful, wealth management and etc.
The overall performance of *Shari’ah* research is unsatisfactory. (Malaysia scored 211 points representing 31% of the total research papers on Islamic finance in the world).

*Shari’ah* Research & development plays an instrumental role in the development of an industry.

Innovative products to cater to the changing needs of customers in a complex environment, while giving due consideration to *maqasid al-Shariah*.

*Shari’ah* scholars are important stakeholders in R&D.
Reasonable Understanding on Finance and Regulatory Framework

- Understand dispute resolution environment for adjudication and dispute settlement at the national and international levels;
- Legal certainty of *Shari’ah* contracts enforcement;
- Responsive and sensitive to legislative change.
- To have reasonable understanding or sufficient knowledge on finance.
- The SC to learn and understand the overall operations and policy of IFIs.
# Understanding the Roles of Standard-Setting Agencies

<table>
<thead>
<tr>
<th>Areas of Standards</th>
<th>Key Agency(s) in the International Financial Architecture</th>
<th>Corresponding Agency(s) in Islamic Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Accounting</td>
<td>International Accounting Standards Board (IASB), International Federation of Accountants (IFAC), Committee on Banking Supervision (BCBS)</td>
<td>AAOIFI</td>
</tr>
<tr>
<td>Auditing</td>
<td>International Federation of Accountants (IFAC)</td>
<td>AAOIFI</td>
</tr>
<tr>
<td>3. Banking</td>
<td>Committee</td>
<td>IFSB</td>
</tr>
<tr>
<td>4. Corporate Governance</td>
<td>OECD, Basel Committee, World Bank</td>
<td>AAOIFI and IFSB</td>
</tr>
<tr>
<td>5. Data Dissemination</td>
<td>IMF</td>
<td>Common</td>
</tr>
<tr>
<td>6. Fiscal Transparency</td>
<td>IMF</td>
<td>Common</td>
</tr>
<tr>
<td>7. Insolvency and Creditor Rights Systems</td>
<td>World Bank, United Nations Commission on International Trade Law (UNCITRAL), International Bar Association (IBA)</td>
<td>Not yet addressed but especially critical for Islamic financing as it is based on risk sharing</td>
</tr>
<tr>
<td>8. Insurance Regulation</td>
<td>International Association of Insurance Supervisors (IAIS)</td>
<td>Not yet addressed but within the mandate of IFSB</td>
</tr>
<tr>
<td>11. Securities Market Regulation</td>
<td>International Organization of Securities Commissions (IOSCO)</td>
<td>Not yet addressed but within the mandate of IFSB</td>
</tr>
</tbody>
</table>
• The SC to have due regards to all stakeholders.
• The SC has the duties to act in the best interests of the IFIs and at the same time to act in the best interests of customers.
• To balance the interest and rights of all stakeholders.
• To understand the roles of regulators.
• Shareholders, Customers, depositors and investment account holders.
• *Shari’ah* scholars have not been engaging with the public extensively and intensively.

• *Shari’ah* scholars must actively engaging the communities.

• The more *Shari’ah* scholars engage with the society, the higher the level of confidence of the general public with Islamic finance.
Concluding Remarks
There are some valid and legitimate concerns on the current practices and trends of Islamic finance. In simple words, ‘ask our heart’, whether the recent Islamic finance practices have fulfilled the real higher objectives of *Shari’ah*.  

It is important to critically evaluate the performance of IFIs against their foundational base and at the same time to maintain its positive development.  

This paper strongly advocates the roles of *Shari’ah* governance system in guiding the industry towards value-oriented Islamic finance practices. With the *Shari’ah* governance system in GCC countries as the case study, this paper submits that strong and robust *Shari’ah* governance system can be a catalyst and appropriate mechanism for Islamic finance reformation.
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