

Thematic Workshop on Shari'ah Governance

Is the Current Model of Shari'ah Governance Fit for Purpose?



London, 26th October 2016



Introduction

Attracting over 100 participants and 19 local and international industry experts, the Islamic Finance Council UK (UKIFC) and the International Shari'ah Research Academy for Islamic Finance (ISRA) were proud to organise a thematic workshop, entitled **“Is the Current Model of Shari'ah Governance Fit for Purpose?”** in London on 26th October 2016. The event, hosted by K&L Gates LLP, which included the launch of the UKIFC / ISRA's External Shari'ah Audit Report, provided an opportunity for leading Islamic finance experts to reflect on and respond to the increasing focus, across all financial markets, on issues of Shari'ah governance, regulation and personal ethics.

Scholars Session

Leading international scholars participated in a live audience debate exploring the robustness of the current Shari'ah governance model. Perspectives were offered from Prof. Dr. Mohamad Akram Laldin (Malaysia), female scholar Dr Marjan Muhammad (Malaysia), Dr. Bashir Aliyu Umar (Nigeria), Sheikh Bilal Khan (UK) and Sheikh Haytham Tamim (UK).

Key discussion points:

- Scholar remuneration
 - » Issues of remuneration were discussed by scholars discussing whether taking payment and operating on commercial terms impairs or dilutes the religious and spiritual imperative of the Shari'ah scholars' role in the eyes of public and other stakeholders?
 - » Given complexity of their role and the requirement for detailed knowledge of both the Shari'ah and complex financial transactions it is reasonable that scholars should receive some remuneration
 - » Scholars who own commercial businesses must have strict governance processes in place to ensure separation of interests between that of a scholar and that of a business
 - » Reputation of Shari'ah more important than reputation of individual Shari'ah scholars
 - » Explanation of how Hanafi scholars have reconciled varying statements within the Sunnah as to whether remuneration and to what level was admissible in principle
 - » Establishing a professional body, with a full code of conduct in line with those of other professions, was the need of the time. A possible role for AAOIFI
 - » Important not to doubt the intention of the scholar as the industry has been built on their shoulders

Workshop Summary

- UKIFC's first full day conference in London
- Over 100 attendees with insights shared by 19 UK and global experts
- Deputy Governor of State Bank of Pakistan commends “unique” scholars session
- Launch of seminal report on “External Shari'ah Audit”
- Unique perspective shared by Bank of England
- Bankers and economists outline international approaches to individual ethics
- Delegate feedback: “insightful”, “excellent”, “informative”, “panels well conducted”, “covered relevant issues”

External Shari'ah Audit Report Launch

The seminal Report was introduced by Mezbah Uddin Ahmed of ISRA and Nadeem Haq of UKIFC. Based on 35 in-depth interviews with stakeholders across four jurisdictions – Pakistan and Oman (which have both already introduced an external Shari'ah audit requirement), Bahrain (which has announced ESA implementation for 2017) and Malaysia - the report compared and contrasted existing issued legislation and examined the varying implementation experience. While broad stakeholder feedback is in favour of moving to a mandatory requirement for external audit, significant challenges remained in relation to the availability and experience of potential auditors and their scope of work. The question of the public disclosure of external audit reports also remains a thorny issue.



- Auditing your own fatwa and the role of external Shari'ah audit
 - » Support in principle for introduction of external audit requirements Challenges around audit capacity and resources
 - » Role of internal audit could be extended to review the functioning of the Shari'ah board
 - » Scope to strengthen the role of the local regulator and improving disclosure
- Risk of “fatwa shopping”
 - » An issue which needs to be considered further as it has positive and negative sides (i.e. in exploring possible different solutions to a new or particularly challenging problem)
 - » Forms another argument in favour of external Shari'ah audit to avoid the risk of scholars auditing their own fatwas
 - » All scholars subject to the overriding duty of protecting the interests of the relevant institution's shareholders (as part of their wider duty to preserve wealth)

Regulators Session

Chaired by Stella Cox (DDCap), with Dr Saeed Ahmad (State Bank of Pakistan) and Arshadur Rahman (Bank of England), this session explored the challenges in regulating the Shari'ah governance process and individual scholars.

Key discussion points:

- The need for internal Shari'ah Boards within Islamic financial institutions will not cease as new questions will continue to arise
- Role of the external Shari'ah auditors in Pakistan not seen as extending to reviewing the terms of fatwas themselves but rather to auditing compliance with the fatwas issued by the State Bank's own Shari'ah Board thus highlighting the role of a central bank Shari'ah board to enable a controls based approach to external Shari'ah audit
- Recent development in Pakistan was the addition of a CPD requirement for external Shari'ah auditors
- Fundamentally different perspective within a non-Islamic jurisdiction such as the UK
- As a secular regulator, Bank of England's policy was not to promote Islamic finance over conventional but to provide a level playing field so as to remove any potential disincentives to Islamic finance
- Focus of the FCA as regulator is on product disclosures is key (i.e. in this context ensuring that statements as to Shari'ah compliance are accurate). Up to customer to decide if they are comfortable with the interpretation of Shari'ah presented
- No legal requirement in UK that an institution should have its own Shari'ah Board
- Recent consultation in UK to consider availability of sufficient Shari'ah-compliant assets to enable Islamic banks to obtain emergency liquidity support

Individual Ethics Session

The final session, chaired by Jonathan Lawrence (K&L Gates LLP) was on individual ethics and views were shared by Sultan Choudhury (Al Rayan Bank Plc), Mohamad Noranuar Bin Sajari (Bank Nizwa), Professor Iqbal Asaria CBE and Umer Suleman (UKIFC / HSBC). With the recent public dismay towards bankers' bonuses, rate fixing and miss-selling scandals in conventional banking markets it was explored to what extent Islamic bankers were immune towards such and what role the fatwa played in removing the personal responsibility of the Islamic bankers.

Key discussion points:

- Conventional banks expanded their ethical codes post financial crisis but no code can ever be completely comprehensive.
- "Culture vs Character" - the balance between a code of conduct and personal virtues
- Those who elect to work in Islamic institutions at least partly motivated by ethical considerations
- Banks must have broader goals than purely profits (i.e. looking to promote the prosperity of their own customers and society as a whole)
- Fatwas play an important role not just in addressing technical issues but in setting an ethical framework as a whole
- Warning against a "tick box" approach to compliance and ethical issues
- Personal integrity in relation to financial products offered and how they are sold and operated must be compliant with principles of Shari'ah. Fatwa is relevant but when distorted and not applied correctly by bank staff it becomes less relevant
- Public disquiet with the behaviour of financial institutions has been more concerned with immorality than illegality

Delegate Insight

The event was attended by over 100 Islamic finance professionals. Their feedback stated:

- **56% thought that the current model of Shariah Governance is NOT sufficient**
- **76% felt that external Shariah audit WILL strengthen Shariah Governance**
- *The main barriers to the growth of Islamic finance in the UK were considered to be lack of knowledge and inadequate financial resources*



The UKIFC was established in 2005 as a specialist advisory and developmental body focused on promoting and enhancing the global Islamic and ethical finance industry. As a dynamic and forward-thinking not-for-profit organisation its Advisory Board Members, who provide pro bono support, have defined and evolved the role the UKIFC plays in making a tangible impact in the sector. Its principle service areas are: Advisory, Ethical Finance, Training and Awareness and Thought Leadership.

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ISRA is an autonomous body established under the direction of the Central Bank of Malaysia (Bank Negara Malaysia) to promote applied research in the area of Shari'ah and Islamic finance. ISRA provides a platform for greater engagement among practitioners, scholars, regulators and academicians via research and dialogue, in both the domestic and international arenas. Through pioneering research and rigorous intellectual dialogue, ISRA aims to promote innovation and dynamism and thus extend the boundaries of Islamic finance.

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