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LEGITIMATE OVERSIGHT IN ISLAMIC BANKS

Abstract

Islamic banks and Islamic financial institutes was established to develop the Islamic economic, where one of its main tools from the financial and monetary perspective, but under a provisional system to ensure the legitimacy and correct path as well as the right goals and tools. According to that, a Legitimate (Sharia) Council do these active functions to achieve the obligation of bank and the establishment in the provisions and legal principles. The legitimate Oversight Council protects the banking functions through its system which includes Sharia rules that regulate the various banking activities with accordance of Islamic law and prohibiting banking activities which found opposing the provision of Sharia and Islamic law. It is recommended that to ensure full compliance with the provision of Islamic law and Sharia in financial activities, the Legitimate Oversight Council should exist in any Islamic bank to ensure the compliance of Islamic banking products and activities, and provide full integrity of financial transactions in terms of their Islamic character.

Keywords: *Oversight Council, Sharia Council in Islamic Banks*

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The concept of Oversight Council

The concept of oversight in banks as a term used to describe the means by which to ascertain the extent to which the objectives adequacy and its effectiveness in the specified time (Ibn Mandhur 424/1, Al-Razi 106).

The concept of oversight in banks in its second term is “the evaluation if everything follows a predefined plan and issued instructions with accordance to agreed principles (Al-Shobaki, 1989).

The meaning of legitimate (Sharia) oversight in general is to follow-up, audit, examination and analysis of all works and behaviors and others banking and financial activities to ensure they are in accordance with the provisions and principles of Islamic law as well as matching the behavior of the bank with scholars' views (fatwas), decisions, and recommendations issued by the Fiqh groups and similar Councils, where using a range of appropriate means and methods that are conformity to Islam and its law, and finding irregularities, errors and correct them as well as reporting these errors to the authorities concerned, which including the notes, guidelines, instructions, and describing how to achieve better development. In recent times, and after establishing the Islamic financial institutions, people thought that the Sharia Council is associated with Islamic financial institutions alone only, but the Sharia Council should be applied on individuals, governments, acts, and all transactions, and there are specific characteristics of Sharia oversight as follow (Shehata, no date):

1. The operations of Sharia Council include the following-up all actions and behaviors of individuals, groups, institutions and others, then evaluating them and review them in the light of the provisions and principles of the Islamic Sharia. In addition to that, include the analysis of errors, irregularities, and deficiencies, if any. Moreover, illustrating the reasons for errors, shortcomings and setting the necessary recommendations to resolve them.
2. Applying Legitimate (Sharia) Council is obligatory, and applying it is not limited to a particular area or on particular people, but it should be applied on individuals, businesses, institutions, government agencies, and other bodies (Muhammad, 2012)
3. The principles and standards of Legitimate (Sharia) Council are derived from the combination of provisions and principles of the Qur'an and Sunnah as well as Islamic sources such as scholars' writings and books in this subject, as well as fatwas issued from the Council of Fiqh (jurisprudence) and Fatwa legitimacy in everything novelty and contemporary.
4. There is a legitimate observer and investigator who use legal methods and means to accomplish his/her work, and then selecting them depending on the circumstances and the nature of the monitored matter.

5. The Sharia (legitimate) oversight is founded to guide people toward the law of Almighty Allah and establish commitment with Almighty Allah to help people evaluate and correct their mistakes and irregularities if happened.
6. There are a team of scholars, scientists and experts, who take over the work of the Sharia and who enjoy their independence and neutrality, but the recommendations of the Commission are binding and enforceable and they are not considered a consultant (Bahgat, 1994).

The concept of legitimate oversights in Islamic banks

The legitimate oversight represents the inspection of commitment by the Islamic Bank on the provision of Islam and the whole activities of the bank. The inspection includes the following activities: Contracts, agreements, policies, banking products, transactions, contracts for incorporation, financial statements and reports in particular internal audit and inspection reports by the Central Bank. The inspectors have the right to read all records and transactions (see the committee of professors and economists and banker's immigrants, 1996, and the Accounting and Auditing Organization for Islamic Financial Institution, 2004)

Establishing a Legitimate (Sharia) Council and its functions

1. The formation of Sharia Council in Islamic banks represent a Legitimate Oversight Council which is unable to fulfill its functions and achieve its role correctly unless includes three complementary departments (boards) as follow:
2. The board of fatwa: the board is responsible for issuing fatwas and rooting of Sharia forensic for developing the mechanisms of Islamic banking, the board of Fatwa is present at all level of each bank, and contribute to the creation of legitimate alternatives and practical solutions to the problems of Islamic banks as well as dealing with the theoretical aspect of Islamic banking (Al-Qattan, Secretary, second).
3. The board of Sharia inspection: this board is present at all departments of Islamic bank and its mission to monitor the implementation of advisory opinions and recommendations of Fatwa Council and ensure that the Islamic bank management is committed to the directives of the Fatwa Council and the advisory opinion of them, and the legitimate limitation drawn to them (Abdul Karim, 2009).
4. The Supreme Oversight Board : This board is at all level of banks, which constitute the reference for all legitimate oversight bodies in Islamic banks, and this board review the legitimate foundations of Islamic financial products, and it is responsible to grant the integrity of Sharia application and the approval of the principles and provisions of Islamic product, decline contracts, approve documents, and monitor mechanisms and purposes of Islamic financial products before processing of classifying them technically and legally according to Sharia (Abdul Karim.2009).

The main functions of Oversight Council (al-Aliat, 2006):

1. To ensure the matching of Islamic banking activities with the provisions and principles of Islamic law, and review Fatwa position before and decision, and may request all associated data that support achieving its mission.
2. To refer the banking, financial and administrative transactions developed for Fatwa board and issue necessary fatwas.
3. Replying all question received by the Sharia Supervisory Board, and read the request of Muslims to determine the legitimacy of the transactions with accordance of Islamic law.
4. Prepare periodic reports during the year, and present them to the Board of Fatwa included the extent of financial transactions which are comply with the provisions and principles of Islamic law.
5. Prepare an annual report and submit it to the General Assembly in a form of a certificate stating the extent of compliance with the provisions and principles of Islamic law to all financial transactions carried out by the Islamic bank.
6. The Council is cooperating with the various regulatory agencies in the interests of the Islamic banks.
7. Stating the new fatwas within the economic and banking sector, which are issued by the jurisprudence bodies, and evaluate the necessary fatwas in the Islamic countries as well as examining its importance.
8. Finding Islamic alternative transactions which found violating the provisions and principles of the Islamic Sharia.
9. Following the developments in the Islamic banking sector to offer new versions of Islamic transactions (Mashal, 2004).

It is not a compulsory that the members of fatwa Council should be available the whole day, but they could be available according to periodic meeting after agreeing and planning by all members, or can gather immediately after a call from the sole legal observer in the Islamic bank if it is necessary, and each member has the right to get all data and necessary information to fulfill the work as well as reading the panels, systems, instructions, records, contracts, and agreement, where the decision of the Council is obligatory to the banks within its area of work.

The role of legal observer in Islamic banks

The legal observer is a representative of legal oversight board in Islamic banks, and the most important roles are the following:

1. Following up all transactions in Islamic bank, and make sure these transactions are carried out in accordance with the provisions and principles of Islamic law, and indicating any irregularities and mistakes in order to inform the general manager of the bank to correct them in time.
2. Processing and collecting the issues that need for interpretation and submitting them to the board of fatwa and Sharia Council in its regular meetings to take the right decisions about them such as issuing new fatwas or raising them to other bodies or scholars or scientific centers specialist in legitimate fatwa (Lal Din, 2009).
3. Inviting the Sharia Council Board to held immediate meeting if it is necessary.
4. Respond to questions sent to him and answering them according to his knowledge, otherwise raise them to the Sharia Council Board if it is not possible to answer them individually.
5. To perform his functions, the observer compiles the necessary data and information and then conducts interviews with the executive department in the Islamic bank.
6. Attending meetings of some important committees in the Islamic Bank, such as: Investment Committee, and the Committee of Personnel affairs (Mashal, 2004).
7. Supervising the work of his deputies and following-up and evaluation of their performance and work to overcome the difficulties they face during the work.
8. Organizing seminars, lectures and meetings related to the development of employees and developing their knowledge about the legitimacy of fatwa as well as responding to their queries (Bayraktar, 2008).

In addition to that, the legitimate observer has the same rights of the legitimate Oversight Council, for example he is authorized to acquire all data and information which are deemed necessary to perform his work and reading all panels, systems, and instructions.

The Role of legitimate observers in Islamic banks

The number of legitimate observer is different depending on the size of the Islamic bank and the types of its activity, where they should have adequate knowledge about the nature of Islamic banking and its main functions, also full understanding of the jurisprudence of transactions according to Islamic law and the principles of Fatwas and legitimate banking and finance according to Sharia of Islam and adopt them in new transactions. Furthermore, the legitimate observer should follow other legitimate group, and take their

way and planning of work and how they conduct legal oversight in Islamic banks in weekly and daily basis. The most important tasks that can be performed by the legitimate observer are the following (Raihan, 2007):

1. Verifying documents, records, books, contracts and files, conventions and fatwas issued and banking transactions and ensure they are compliance with the provisions and principles of Islamic law after careful examination and review to them (Hiam ,2013).
2. Inform the executors through legitimate observer of the bank about any mistakes and or irregularities in the implementation of Sharia in Islamic banking as well as fulfilling the provisions and principles of Islamic law in financial activities.
3. Submitting recommendations, guidance, and advice as necessary to straighten the implementation of Islamic banking and avoid irregularities and mistakes in the future.
4. Grouping transactions that need for fatwa and forward them to the Legitimate Oversight Council of the bank in order to verify the compliance with rules of Sharia and the regulations of legitimate Oversight Council.
5. They have the right to attend some meetings related to issuing fatwas and legitimate oversight such as the meetings of internal financial oversight department.
Help legitimate observer if necessary to do his job.
6. Evaluate the legitimate performance in the bank with accordance to Sharia and Islamic provisions before submitting a report to the legitimate Oversight Council as well as prepare periodic reports of legitimate observer about the result of legitimate evaluation.
7. Monitor the implementation of the decisions and recommendations of the Legitimate Oversight Council and the legitimate observer.
8. Act as a legitimate representative in meetings with committees from Islamic banks to make sure that the decisions taken were in conformity with the provision of Islam (Mushaghil, 2004).
9. Any other work assigned to them within the scope of Sharia and Islamic banking.

The characteristics of the members of Legitimate Oversight Council

The members of Legitimate Oversight Council should have special characteristics which distinct them from other members, such as the characteristic of mufti and diligent where they are able to judge in banking and financial issues which are referred to them in order to issue a decision about it (the Committee of Economic Experts and Legislators of Banks, 1996).

Personal Characteristics, academic qualifications

Personal Oversight: The qualities that must be met by members of the Council are numerous such as neutrality and integrity and avoiding bias in decision making, and to be experiences in Arabic language and staying away from extremism in religion, and they should have a good knowledge in science, Quran, Sunnah, the origins of jurisprudence in Islam, and the evidence of population, consensus, and the speech of scholars in religion as well as the purposes of Sharia (the Committee of Economic Experts and Legislators of Banks, 1996).

Occupational Oversight: the good knowledge of the member in the details of his work in Islamic banks and the reality of Islamic banking, also the details of transactions in Islamic banking according to Sharia and the provisions of Islam (Kahtan, 2008). Therefore, it is important to have a team in the Council that combines both specialists in financial transactions and experts in banking aspects to achieve the Islamization of banking transactions obtained by Islamic banks, and the Council is characterized by the following:

1. Staying away from suspicion of personal interest and avoid involving the members of Legitimate Oversight Council in the Bank's Board, and the members of the Council contributes in the bank's capital and are chosen by the General Assembly of the Bank.
2. The specialty of the Council is limited in preparing reports and everything related to the contracts and reviewing them as well as submitting fatwas and following up the execution of them and consultation. Moreover, they are responsible on answering any question related to jurisprudential matters, the authority to stop illegal transaction inside the bank and managing the affairs of Zakat inside the banks. There are many other works could be achieved by those members, where the Council exercise its oversight mission through a representative inside the bank who is entitled to attend the periodic meetings.

The conditions that should be provided in legitimate observer in Islamic banks

Academic and practical qualification:

Scientific qualification: The observer should be qualified scientifically and have some publications in legitimate, financial, and commercial aspects (Laldeen, 2009) as in the following:

- He should be well familiar and understandable in legal aspects associated with Islamic law and Fatwas.
- Should understand the various transactions in Islamic banking.

Practical Qualifications: The observer should have adequate experience in his work not less than 10 years in Islamic banks and his work should be in the field of legitimate oversight as well as similar activities in order to be familiar with various banking aspects and how to apply legitimate Fatwas in Islamic banks (Shahata, 2002).

The conditions that should be available in legitimate auditor in Islamic banks

Legitimate auditors represent the executive tools for the legitimate oversight in any Islamic bank. Therefore, it is important to select them and prepare them as well as develop their skills and knowledge by training, where the personal characteristic and scientific and practical qualification of the legitimate observer from others only be the level of knowledge and experience which might be relative as follow (Alber qadar, 2008):

Scientific qualification:

- The legitimate auditor's qualification should be at least at the university level in the field of Islamic law and trade.
- Understanding and conversant of legitimate fatwas in banking and financial transactions.
- Knowing the functions of Islamic bank, and have a good knowledge in scientific issues and legitimate oversight in commercial and financial aspects.

Practical qualification:

- The legitimate auditor should be well trained in in the field of Islamic transactions and finance.
- The experience of legitimate auditor should not be less than three years in the field of Islamic banking and related activities.

The independence of legitimate Oversight Council and the extent of its obligations

Independence and Objectivity

The independence of the Legitimate Oversight Council in Islamic banks is necessary, Banks need a oversight system which is supervised the financial activities inside the bank and enjoy objectivity and independence, and ensure that the bank's operations conform to the provisions of Islamic law and achieving the purposes of Sharia, and if there is any doubt in the independence and objectivity of the Council the confidence of depositors and bank's customers will be affected, also the absence independent Council would raise doubts to clients about the level of genuine Islamic banking as well as raising uncertainty among them which me may lead to stop dealing with the bank (Abomouamer, 1989).

The Islamization of conventional banks may raise suspicious about the objectivity and independence of the Council which should be well clarified, and it is a condition that the legitimate oversight is not biased

and neutral and staying away from any external or internal pressure on its work. The independence of Legitimate Oversight Council

Should be perfect in order to fulfill its duties and all members should be independent as well. Shekh Qurah Dagh refers to independence of a member in the Council is “not subject either by saying or work to internal effect or personal purpose or managerial pressure” (Qurah Dagh, 2011). The evidence for that from the verses of Quran: (O ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do) (Surat Al-Maaida, Verse 8).

The independence of Legitimate Oversight Bod (Al-Shaikh, 2006)

This is divided to the following:

Intellectual independence: The Council is intellectually independence which enable it to issue decisions with objectively and freedom, and the Council can carry out comprehensive oversight of its organization and access important information and understanding Islamic banking products and its purpose, where its benefit has an impact on the society and achieve the legitimate goals. The Council can participate in the work of the bank from the first inception or to create Islamic products to the day of release following the financial institution's support, and the balance of the organization in achieving its goals, and produces understanding between the institution and the Council, and performing the duties of the Council with clear mind, and to meet the needs of the community without the pursuit of profit, and to improve the relationship and increase cooperation between organization and management of the bank, and Council is an important factor and not a hindrance to the progress of the bank.

The organizational independence: The organizational independence of the Council is associated with its position in the organizational structure of the bank, where its position should belong to the general assembly, and the assembly should have an authority for employment and termination of jobs, whereas the management has no power. To ensure the independence of the Council in Islamic banks there should be special regulations that organizes the work of the Council and specify its mission and objectives as well as the relationship between the internal legitimate Council, the general assembly, the board of the bank, the employees, and the clients of the bank (Albekadar, 2008).

The importance and goals of the legitimate oversight in Islamic Banks (Kuwaiti finance, 1985)

The Legitimate Oversight Council is responsible for issuing Fatwas, and during the annual report before the management and stakeholders, the Council inform them about the judgment of Almighty Allah, in particular accountability (Husbah), testimony, documentation and arbitration. The goal of the Council is to ensure that the activities of the Islamic bank are not a contrary to the Islamic law, then it requires to ensure all decisions and recommendations by the Council are binding, which are represent the following:

The main goals of Legitimate Oversight Council

1. A statement for dissolution or prohibiting Islamic banking transactions carried out by for the application of Halal transactions and avoid the prohibited, and encourage the dealers with Islamic banks to comply with the provisions and principles of Islamic law in order to distribute the benefit for society (Kuwait Finance House, 1985).
2. To ensure full confidence that the systems and internal regulations of Islamic banks has been prepared in accordance with the provisions and principles of Islamic law and holding accountable those who deliberately breach these regulations (Hassan 2002).
3. To ensure that the selection of professionals and employees in Islamic banks have been achieved according to Islamic standards and these standards concerning personal characteristics and scientific qualifications for them (Shehata, 2002).
4. Ensure that the systems and models, records, and other cards have been designed in accordance with the provisions and principles of Islamic law (Sharia) and any violation are being modified (David, 1996).
5. Continuous to follow-up, audit and analysis in Islamic banks to ensure that implementation of Islamic regulations are in accordance with the provisions and principles of the Islamic law (Sharia) and the defining the problems and difficulties as well as the tools to overcome them.

The importance of Legitimate Oversight Council

The Legitimate Oversight Council is considered one of the bases of the Islamic banking system, and one of the elements of discrimination from the conventional banking system, and that is clear in the standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions, and each Islamic institute should have a Legitimate Oversight Council (Accounting and Auditing Organization for Islamic Financial Institutions, 2004). When and a conventional bank is changed to an Islamic bank there must be Legitimate Oversight Council inside the bank after the change as well as Internal Oversight Council, where some countries like Malaysia made is a special law for any conventional bank aims to change for Islamic banking (the Malaysian Code, 1983).

The Legitimate Oversight Council grant confidence for the bank and provide legal framework to Islamic banking activities, also encourage people to deal with the bank because the existence of the Council is necessary to issue Fatwas on important matters and transactions which require knowing the legal (Sharia) position with regard to them where the majority of dealers with the bank have no idea about the provision of Islamic law in financial activities, also the specialist in Islamic law and Sharia could have more time to invent and develop Islamic banking products which is compatible with the requirement of the market and Sharia at the same time. Therefore, the presence of Legitimate Oversight Council ensures the finding of financial and investment units that support individuals and community in applying Islamic law and Sharia, and verify that all banking activities are compatible with Sharia. The stakeholders include the legitimate board, shareholders, the management, the personnel, and bank's clients. According to that, a mutual understanding should be existed between them so that the rights of each party is preserved and grant no party put obstacles against others. However, the terms and condition associated with the performance of

the Council is necessary to be clarified, in particular the independence and neutral performance, which can be achieved through mutual cooperation between all parties (Hamad, 2006).

The Results

The findings from this study showed that Islamic banks become a necessity for work in financial sector in Islamic and Arabic countries. Therefore, it is essential to have an oversight system including a legitimate oversight unit that organizes the work of Legitimate Oversight Council in a way that grant the maximum degree of cooperation between the members of the Council and bank's management. The Islamic banks practice their work with accordance to the provision of Islam and Sharia, and support the banking functions through special guidelines the follow the Islamic law in order to employ money correctly and should be Halal as instructed by Sharia and the principles of Islam in financial deals, where the legitimate oversight become an essential part of this role. Finally, the result of this study showed the important role of Legitimate Oversight Council in enforcement the legitimate oversight and right opinion in practicing banking activities in Islamic banks, but with a condition that this Council should be independent and neutral as well as it should be formed by specialists and experts in Islamic law and Sharia, also they should be able to invent and develop the work in Islamic banks.

Recommendations

The researcher suggests a set of recommendations based on the findings and result of the study and future work of Islamic banks as follow:

1. There is a need to find new levels in legitimate oversight which include experts and specialist in Islamic banking and Islamic law in the organizational structure of the bank, those experts should well understand the principles of Fiqh, Sharia, audit, and legitimate qualification, where there should be an integrated team to ensure quick response to the challenges facing Islamic banks.
2. To ensure full compliance with the provision of Islamic law in financial activities, the Legitimate Oversight Council should exist in any Islamic bank to ensure the compliance of Islamic banking products and activities, and full integrity of financial transactions in terms of their Islamic character.
3. It is necessary to have a common guideline for Islamic Fatwas associated with Islamic banking, the update of these guidelines is important to follow the latest development in Islamic banking rules.
4. The independence and neutrality of the Legitimate Oversight Council is essential in order to avoid an interfere by other parties on its decision that may affect the performance of the Islamic bank.
5. Selecting qualified members to work in the Legitimate Oversight Council who have long experience in the work of Islamic banks.

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