JIEF Journal of Islamic Economics and Finance
İslam Ekonomisi ve Finansı Dergisi

ISSN 2149-3820
e-ISSN 2651-5342
2022 8(1)

journal homepage: http://dergipark.gov.tr/jief

PAKİSTAN VE NİJERYA İLE KARŞILAŞTIRMALI OLARAK AFGANİSTAN'DAKİ İSLAMİ FİNANSAL KURUMLARIN ŞER'İ YÖNETİŞİM ÇERÇEVESİ

Abdul Samad KERAMAT[a]
İstanbul Sabahattin Zaim Üniversitesi, Türkiye

Monzer KAHF[b]
İstanbul Sabahattin Zaim Üniversitesi, Türkiye

MAKALE BİLGİSİ

Makale Geçmişi:

Başvuru: 6 Temmuz 2021
Kabul: 31 Ekim 2021

Makale Türü:

Araştırma Makalesi

JEL Sınıflandırma:

G32
G34

Anahtar Kavramlar:

Şer'i Yönetişim,
İslami Finansal Kurumlar,
İslami Bankacılık,
Afganistan.

ÖZ

İslami Finans Kurumlarının (İFK) yapısındaki Şer'i yönetişimin varlığı, İFK'ların Şer'i ilkelere bağlı kalmasını sağlar ve kurumların üst yönetiminin yüksek riskli faaliyetlere girmesini engeller. Bu çalışma, Afganistan'da faaliyet yürüten İFK'ların Şer'i yönetişim çerçevelerini ele almakta ve Şer'i yönetişimin yapısı, hiyerarşisi ve ilgili otoritelerini izah etmektedir. Bunun yanı sıra, Afganistan'daki İFK'ların Şer'i yönetişim çerçevesinin oluşum sürecini detayları ile ortaya koymaktadır. Şer'i yönetişim çerçevesinin tatbik edilmesindeki zorlukları daha net tespit edebilmek için çalışma kapsamında bir anket tasarlanmış olup İslami finans sektöründeki on kıdemli uygulayıcı ile mülakatlar gerçekleştirilmiştir. Çalışmada Afganistan'daki İFK'ların, operasyonlarını yönlendiren kapsamlı bir Ulusal Şer'i Yönetişim Çerçevesi'ne (UŞYÇ) sahip olduğu sonucuna varılmıştır. İslami bankacılık kanunun yokluğu ve nitelikli Şer'i uzmanların azlığı Şer'i yönetişim çerçevesinin tatbik edilmesindeki zorlukları olarak vurgulanmıştır. Piyasada yeterli sayıda Şer'i uyumlu enstrümanın bulunmayışı, toplumsal bilincin oluşmamış olması ve hissedarların İFK'ların operasyonlarına yersiz müdahaleleri bu bağlamdaki diğer zorluklar olarak ifade edilmiştir.

https://doi.org.tr/10.54863/jief.963241

[a] **Sorumlu Yazar:** Doktora Adayı, İslam Ekonomisi ve Finansı, İstanbul Sabahattin Zaim Üniversitesi, E-posta: keramatsamad@gmail.com, https://orcid.org/0000-0003-3948-2177
[b] Prof. Dr., İstanbul Sabahattin Zaim Üniversitesi, İşletme ve Yönetim Bilimleri Fakültesi, E-posta: monzer.kahf@izu.edu.tr, https://orcid.org/0000-0001-7627-7098

Kaynak göster: Keramat, A. ve Kahf, M. (2022). Pakistan ve Nijerya ile Karşılaştırmalı Olarak Afganistan'daki İslami Finansal Kurumların Şer'i Yönetişim Çerçevesi. *İslam Ekonomisi ve Finansı* Dergisi, 8(1). https://doi.org.tr/10.54863/jief.963241

JIEF Journal of Islamic Economics and Finance
İslam Ekonomisi ve Finansı Dergisi

ISSN 2149-3820 e-ISSN 2651-5342 2022 8(1)

journal homepage: http://dergipark.gov.tr/jief

SHARIA GOVERNANCE FRAMEWORK OF ISLAMIC FINANCIAL INSTITUTIONS IN AFGHANISTAN COMPARE TO PAKISTAN AND NIGERIA

Abdul Samad KERAMAT[a]
Istanbul Sabahattin Zaim University, Turkey

Monzer KAHF [b]
Istanbul Sabahattin Zaim University, Turkey

ARTICLE INFO

Article history:

Received: July 6, 2020
Accepted: October 31, 2021

Article Type:
Reseach Article

JEL Classification:
G32
G34

Keywords:
Sharia Governance,
Islamic Financial Institutions,
Islamic Banking,
Afghanistan.

ABSTRACT

The existence of Sharia governance in the structure of Islamic Financial Institutions (IFIs) guarantees the compliance of the IFI to the Sharia principles and prevents the top management of the IFI from involving in high-risk business activities. This research studies the concept of Sharia governance framework of IFIs operating in Afghanistan, the structure of Sharia governance, hierarchy, and authorities are articulated. The study elaborates on the initiation of the Sharia governance framework of the IFIs of Afghanistan. In order to find a clear picture of the challenges in the implementation of the Sharia governance framework, a questioner was developed, and interviews were conducted with ten persons from the senior practitioners of Islamic finance sector. The research found that the Islamic financial institutions in Afghanistan have a comprehensive NSGF in place, which guides its operations. The study highlighted the challenges as the lack of Islamic banking law and lack of qualified Sharia scholars who have experience in the finance and banking sector to serves on the Sharia board. Lack of sharia-compliant products in the market, lack of public awareness, and irrelevant interventions of the shareholders in the operation of the IFIs are also highlighted as challenges.

https://doi.org.tr/10.54863/jief.963241

[a] **Corresponding Author:** PhD Candidate, Islamic Economics and Finance, Istanbul Sabahattin Zaim University, E-mail: keramatsamad@gmail.com, https://orcid.org/0000-0003-3948-2177
[b] Prof. Dr., Istanbul Sabahattin Zaim University, Faculty of Business and Management Sciences, E-mail: monzer.kahf@izu.edu.tr, https://orcid.org/0000-0001-7627-7098
To cite this article: Keramat, A. and Kahf, M. (2022). Sharia Governance Framework of Islamic financial institutions in Afghanistan compare to Pakistan and Nigeria. *Journal of Islamic Economics and Finance, 8(1).* https://doi.org.tr/10.54863/jief.963241

INTRODUCTION

The central bank of Afghanistan, known as the Da Afghanistan Bank (DAB), amended the Da Afghanistan bank law in 2003 to update the law and consider the global best banking practices and issued licenses to 17 banks which include state, private, and foreign-owned banks. There has been no Islamic banking law in Afghanistan until now; however, the banking law of Afghanistan dedicated its chapter 7 for regulating activities of Islamic financial institutions in Afghanistan. The draft Islamic banking law was sent to the parliament years ago, but because the drafted law is covering both Islamic banking and conventional banking, the parliament has not discussed it in its meetings and has not been approved so far. In order to cope with this situation, the government of Afghanistan has added a chapter to the banking law through a presidential decree NO 56 dated 26/5/1394 corresponding to 2015 and laid the basis for the operation of Islamic financial institutions.

The legislative decree stated that the Minister of State for Parliamentary Affairs and the Minister of Justice are obliged to bring this decree to the National Assembly thirty days after the commencement of its first meeting. According to the decree, the law was submitted to the National Assembly, but it is still pending and is not discussed in the National Assembly (M. of J. Afghanistan, 2015). The first version of the law is in force without the approval of the National Assembly and the second version is in force similarly. The problem for the National Assembly is that both conventional and Islamic banking are legislated in the same drafted law. In other words, Islamic banking law and interest banking systems have been allowed to operate side by side, and according to the constitution of Afghanistan, it is unconstitutional to pass a law in contradiction with the provisions of Islam. The National Assembly understands that accepting any kind of interest system is a violation of the constitution (Yasini, 2018). Article 3 of the constitution of Afghanistan states that "*in Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam*" (M. of J. Afghanistan, 2004).This article requires the banking law should be according to the principles of Islam, and interest-based banking system is not allowed in Afghanistan.

The amended banking law of Afghanistan has also laid the basis for the creation of the Islamic banking department in the structure of Da Afghanistan Bank and assigned this department to develop regulations and guidelines for further improvement of the Islamic banking industry in the Islamic Republic of Afghanistan. Da Afghanistan bank developed the NSGF for this purpose. All full-fledged Islamic banks and Islamic banking windows in Afghanistan are obliged to implement the NSGF in their course of business. Furthermore, the Sharia review manual, term of reference for Sharia Supervisory Board, Sharia board member's assessment manual, Sharia compliance manual are developed by the Islamic banking department and are approved by the Da Afghanistan Bank. The Sharia governance framework plays an important role in the development and best management of IFIs.

LITERATURE REVIEW

To the authors' knowledge, no research specifically focuses on the Shariah governance framework of IFIs operating in the Islamic Republic of Afghanistan. There is limited literature that discussed some aspects of Islamic finance and the economy of Afghanistan in general terms. Some authors – though they are few– discussed some aspects of Islamic finance and economy in Afghanistan, so there is lack of resources available in this area. In a study conducted in Miawand bank by Sameer Ahmad Mastoor, customers' satisfaction and awareness about Islamic banking and its products in Afghanistan are discussed (Mastoor, 2014). Ahmad Reshad Askarzada investigated in a paper presented to the Aiden University, Islamic banking activities, conventional banking activities, Islamic banking effects in commercial banking, customers' satisfaction, and awareness of the public about the banking activities (Askarzada, 2016). Mohammad Haroon Amiri has discussed in his graduate dissertation the general perceptions about the conventional and Islamic banks operations in Afghanistan and more focused on the level of education and awareness of the public about Islamic banks products (Amiri, 2013). Mr. Siraj Yasini has discussed Islamic banking in Afghanistan, its reality, and challenges; he focused on some aspects of the current situation of Islamic banking and problems of not having Islamic banking law approved so far by the parliament (Yasini, 2018). The review indicates that none of the authors studied the Sharia governance framework of Afghanistan and its compliance with Shari'ah governance standards of AAOFI, keeping in view the banking growth. This study will focus on the Sharia governance framework of Afghanistan and its compliance with AAOIFI standards of Sharia governance. For better understanding the level of comprehensiveness of the NSGF, the research will compare the main points of it with the Sharia governance framework of Pakistan and Nigeria who are ahead of Afghanistan in initiating Islamic banking. The main challenges of Sharia governance implementation will be highlighted; recommendations will be proposed for the improvements. This study is noble and its value can be felt from the fact that such studies on this specific topic are scarce and it will add a good source of information to the literature about Islamic banking in Afghanistan.

CONCEPT OF SHARIA GOVERNANCE

Sharia governance in the Islamic banks has a fundamental effect on the discipline of the Islamic banking industry because the most important distinguishing characteristic of Islamic banks from conventional banks is their commitment to compliance with Islamic Sharia principles (Stambakiyev, Nurzhan & Kahf, 2020). Moreover, the idea of establishing Islamic banks itself stems from the Muslims keenness to abide by the orders of Sharia and avoid prohibitions. That is why it is very important to ensure the commitment of Islamic banks to the provisions of the noble Sharia, as it is their identity that is known by them (Stambakiyev, Nurzhan & Kahf, 2020). The compliance of banks to Sharia principles is contingent on the functionality of Sharia governance in the financial institutions' hierarchy, and that is why Islamic monetary services providers always relied on the fatwas of Sharia scholars during the past decades.

The emergence of Islamic financial institutions and their announcement to the public that their transactions are restricted to follow the provisions and principles of Islamic law imposed on them to establish a system to supervise Sharia compliance in these institutions. This Sharia control that supervises the Islamic financial institutions is not a new phenomenon in the Islamic commerce system. It is rather a continuation of the Islamic supervision system (Hisba) which was applied at the early times of the Islamic State (Zakarya, 2019)

Sharia governance is the unique attribute of IFIs, which distinguishes it from conventional banks and financial institutions. Sharia governance is set there to ensure the compliance of IFIs operations and transactions to the principles of Shari'ah. From another angle, the trustworthiness of Islamic financial institutions in the eyes of the people is contingent upon the strictness of these institutions to the implementation of the principles of Shari'ah. The appropriate structure of Sharia governance and its functionality is the backbone of IFIs' reputation in the eyes of the public. Customers' confidence and satisfaction require two things from IFIs; the first one is to set good standards for the operations of the IFIs by Sharia board and the second one is to conduct systematic supervision about the implementation of those standards in the IFIs (Stambakiyev, Nurzhan & Kahf, 2020).

OVERVIEW OF SHARIA GOVERNANCE STRUCTURES

Internationally, Islamic Financial Institutions have been following several Sharia governance models; it will vary from country to country according to their regulatory frameworks, which are governing Islamic banking and financial activities.

Sharia governance practice can be categorized globally into three different models: centralized structure, laissez-faire, and hybrid structure. The centralized structure exists in some countries where there is a central Sharia Advisory Council (SAC) created at a national level to issue general fatwas on Islamic financial transactions. It also renders advice to the central bank on Sharia matters, issue central guidelines on Sharia governance of IFIs, and executes and appoints Sharia committee at the bank level. Malaysia, Brunei, Indonesia, Iran, and Sudan have adopted this model of Sharia governance. This model is proved to have inclusive guidelines for implementation of Sharia governance and strict rules to be abiding by the Islamic financial institutions (Albarrak & El-Halaby, 2019).

The second model is the self-regulated structure (laissez-faire) in which there is no interference from the supervisory body, and the compliance with Sharia is made through the provision of Sharia advisory of the IFIs. In this model, the reputation of an IFI is thought to be tied up with its compliance with Sharia principles. This Sharia governance structure is more flexible and requires the IFIs to develop a mechanism of ensuring that their business activities and transactions are Sharia-compliant and Sharia non-compliance risk is mitigated. This could result in a situation where different ways for handling Sharia non-compliance risk could arise, and no final supervisory body is there to decide on Sharia issues. GCC countries, including Qatar, Saudi Arabia, Kuwait, and countries in non-Islamic jurisdictions such as Germany, South Korea, France, UK, and Hong Kong have adopted this model (Albarrak & El-Halaby, 2019).

The third model is the hybrid model in which there is a central supervisory body existing at the national level, and at the same time, the IFIs have the responsibility of compliance of their products with Sharia principles and shall regularly report to the central supervisory body. Such a model is followed by the UAE Islamic financial institutions, where every issue arising about Sharia compliance shall be reported to the National Council of Sharia Supervisory committees (Albarrak & El-Halaby, 2019).

Considering the Sharia governance framework established by Da Afghanistan Bank, I think Afghanistan is following the hybrid model for the following reasons:

- There is an independent Sharia Supervisory Board at the Da Afghanistan Bank (Central bank of Afghanistan) with the highest authority of decision making and supervisory role over all IFIs operating in the Islamic Republic of Afghanistan. It has the power of fatwa issuing about Sharia-related matters of IFIs at the national level. Policies, manuals, and regulations of the Islamic Financial Institutions shall be reviewed and approved by the Sharia supervisory board at DAB.
- According to NSGF issued by the Da Afghanistan Bank, every IFI has to establish a Sharia board who shall be the highest authority of decision making on Sharia-related matters at the single bank level. Oversight on the implementation of Sharia compliance is the responsibility of the Sharia board. So, there is two-tier supervision on compliance to the Sharia principles for IFIs operating in the Islamic Republic of Afghanistan; one is at the national level by the Sharia Supervisory Board of Da Afghanistan Bank, and another tier is at IFIs level by their Sharia boards.

METHODOLOGY

This study will describe the significance of the Sharia governance framework for Islamic financial institutions; it will specifically focus on the initiation, comprehension, and compliance of the National Sharia Governance Framework (NSGF) of Afghanistan with the AAOIFI standards. Data will be taken from the original sources such as laws, regulations, and the available guidelines. In order to gauge the comprehensiveness of the NSGF, the main points of the NSGF will be compared in a table with the governance framework of Pakistan and Nigeria. The overall consistency of these principles with the AAOIFI governance standards will be highlighted, and the different aspects of the NSGF of Afghanistan will be described. Documents regarding the Sharia governance of banks will be compared with the requirements of the standards to interpret the findings. Secondary data will be collected from the books, articles available in the area. In order to find a clear picture of the challenges in the implementation of the Sharia governance framework, a questioner was developed, and interviews were conducted with ten persons from scholars and officials at different levels of the Islamic finance sector. The criteria for the selection of the interviewee was set as the interviewee shall have the knowledge and practical experience of Islamic banking. Some were selected from Sharia board members, and others were selected from the Sharia audit unit in order to give us a clear picture of existing challenges. The responses were categorized into two categories: those related to the implementation of Sharia governance –the topic of this research– and those related to the Islamic banking industry in general but do not relate directly to the Sharia governance.

SHARIA GOVERNANCE IN AAOIFI STANDARDS

When we discuss the Islamic financial institutions, governance goes beyond corporate governance, which is vital for conventional financial institutions since IFIs have social and religious connotations to them (AAOIFI, 2017). The Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) has issued seven standards so far discussing Sharia governance. Sharia supervision and compliance consist of a Sharia Supervisory Board, Sharia Review and Internal Sharia Review, Audit and Governance Committee, Independence of Sharia Board, Governance Principles, and Corporate Social Responsibility (AAOIFI, 2017).

Sharia Supervisory Board: Appointment, Composition, and Reporting

"Sharia Board" is defined as the group of Sharia scholars that validates and approves the banking products and activities of an Islamic bank or Islamic banking windows complies with Sharia principles (M. of J. Afghanistan, 2015). According to AAOIFI standards, the Sharia Supervisory Board shall be appointed by shareholders in the annual meeting. The Sharia Supervisory Board shall have at least three members who have expertise in Islamic commercial jurisdiction; it is allowed that SSB includes one member with expertise in Islamic finance in the structure of Sharia board. Prominent shareholders and members of Board of Directors (BoD) cannot serve on the SSB of the same Islamic Financial Institution (AAOIFI, 2017). The IFIs can also hire the services of external professionals to help SSB discharge its duties; the terms and conditions of this assignment should be agreed upon between the institution and the consultant and will be included in the letter of agreement. The main duties and responsibilities of the SSB are to direct, review and supervise IFIs transactions to make sure they are in compliance with Sharia. The SSB should advise IFIs on Sharia matters and develop guidelines for its operations. It will also approve products and services that the IFIs present to the market and shall conduct Sharia review (M. of J. Afghanistan, 2015).

Sharia Review

The function of the Sharia review unit is to check the level of an institution's compliance to Sharia -on behalf of the SSB-. This examination includes the contracts of the IFI, transactions, policies, and other activities. The work of the Sharia review unit, on the one hand, constitutes the basis for SSB annual financial report and, on the other hand, does not discharge the responsibility of the management on compliance of the same institution to the Sharia principles (AAOIFI, 2017).

Internal Sharia Review Department

The internal Sharia review has to be conducted by an independent department or can be part of internal audit functions. It is a constant process of checking the degree of an institution's adherence to the principles of Sharia. Review reports shall be shared on a continuous basis with the audit committee or similar departments of the institution (AAOIFI, 2017).

Audit and Governance Committee

The audit and governance committee is one of the important pillars of Sharia governance as it plays significant roles in IFIs transparency and disclosure for the financial report. It is also attracting the people's trust in the IFIs and will ensure them that the IFIs are in compliance with Sharia rules and principles (AAOIFI, 2017). The audit committee will assist the board of directors to have reliable and integrated financial reporting as well as assist them in safeguarding the interest of shareholders and investors.

Independence of Sharia Board

Sharia board (SB) is an independent body in the structure of Sharia governance. This independence of the board shall be kept in all circumstances to exercise its duty for making objective and informed judgments of the issues related to the Sharia board (AAOIFI, 2017). The independence of the Sharia board is very important for IFIs because this enables the board to make sound and accurate decisions about Sharia matters and enhances the confidence of the public in Islamic Finance Institutions. The Sharia board shall be able to deliver free and objective judgments without the influence of any party. Sound decisions on the Sharia matters brought before them are expected from the Sharia board of IFIs. The Sharia board is expected to report to and notify the BoD on Sharia compliance of the IFIs. Decisions of the Sharia board should not be altered or ignored without the consent of the Sharia board (AAOIFI, 2017). The management shall facilitate an environment where the SB has full access to accurate, timely, and complete data of the IFI. If the SB feels that the information provided is incomplete, it will ask for additional information, and the management shall provide the requested information. In case the management does not provide sufficient information to the SB, it shall inform the BoD, and it shall take appropriate action to mend the situation. The BoD shall take disciplinary measures against that personnel who intentionally did not provide the required information (Bank, nd.). The SB has the duty to inform the board of directors when it realizes that the IFI has done Sharia non-compliant transactions, and it shall recommend appropriate solutions to repair the transaction.

THE INITIATION OF THE SHARIA GOVERNANCE FRAMEWORK IN AFGHANISTAN AND ITS EVOLUTION

After the enactment of banking law in Afghanistan, the Islamic finance department of Da Afghanistan Bank developed the National Sharia Governance Framework (NSGF) as the guiding principle for Islamic Financial Institutions operating in the Islamic Republic of Afghanistan. The National Sharia Governance Framework (NSGF) is enacted to regulate the business activities of all Islamic Financial Institutions operating in Afghanistan. The NSGF is the basic reference document, and the relevant stakeholders are assigned to expand it further by developing manuals and guidelines pertinent to each part of the NSGF. The Islamic banking department of DAB has the authority to review and update the NSGF in consultation with the Sharia Board, management of DAB whenever it feels the review is needed considering market conditions, risk mitigation strategies, and to align it with the general strategy of the bank (M. of J. Afghanistan, 2015).

The NSGF is set out to address the expectations of the DAB regarding the Sharia governance structure of Islamic banks, processes to make sure that banks' operations and transactions are in compliance with Sharia principles. The document will guide the board of directors, the Sharia board, and the management in fulfilling their duties pertaining to Sharia compliance. It will also articulate the overall functions of the Islamic banks pertaining to Sharia compliance.

Sharia Supervisory Board, Hierarchy, Authorities, and Responsibilities

According to the banking law of Afghanistan and based on the NSGF, the Sharia Supervisory Board (SSB) at the central bank is the highest authority at the national level and has the final saying regarding Islamic financial matters.

In the process of recruitment of members of the Sharia board of IFI, SSB at the Da Afghanistan bank has the right to interview all proposed candidates to make sure that they have the required qualifications for the position of board membership.

Every IFI that operates in the Islamic Republic of Afghanistan shall have an independent Sharia board in its organizational structure, and the Sharia board shall report to the board of directors, not to the management of the bank (Central Bank of Afghanistan, n.d.). The banking law of Afghanistan stated that the Sharia board members will be appointed by the shareholders, and the shareholders may authorize the board of directors to set their remunerations on behalf of the BoD; members of the board of directors cannot serve as the member of Sharia board. It is the full responsibility of the Sharia board to ensure that the IFI operations and transactions are in compliance with the Sharia principles. The SB is accountable for these matters. The management of an IFI has the responsibility of providing the Sharia board with adequate resources needed to make sure that the IFI is in compliance with Sharia rules. In case of conflict between the ruling of the Sharia board and the Sharia Supervisory Board's decision on a Sharia matter, rulings of the SSB shall dominate on the matter, and priority will be given to the decision of the Sharia Supervisory Board (C. bank of Afghanistan, n.d.). The Sharia board has the responsibility of oversight on the bank's overall operations in regard to the Sharia compliance aspects and on the other appropriate committees who oversee the operational aspects of the bank's operations (Central Bank of Afghanistan, n.d.)

Board of Directors, Sharia Board, and The Management

The existence of the Sharia supervisory board along with the board of directors in the governance structure of Islamic financial institutions is very important because it minimizes the risk involved in business transactions. The existence of a Board of Directors in an IFI is also significant for the safeguard of the benefits of the investors, IFIs' shareholders, and other stakeholders while an independent Sharia supervisory board is there as a second layer of governance that prevents the involvement of management and board of directors of IFIs in high-risk businesses. According to the National Sharia Governance Framework (NSGF) issued by the Da Afghanistan Bank, the board of directors has the responsibility of adaption and the complete implementation of the NSGF and shall have overall oversight on IFIs operations and business transactions. However, Sharia governance has the highest authority pertinent to the compliance of business activities of the IFIs to the Sharia principles and has oversight on the Sharia-related aspects of business transactions. The Sharia board shall deliver final decisions and is answerable and accountable for all the decisions and advice is provided to the IFIs on Sharia compliance matters. Management of IFIs plays the operative and executive role of NSGF on the ground level through monitoring the performance of executive departments of the IFIs to ensure the NSGF is fully implemented and all the IFI's business activities and operations are in compliance with the NSGF. So, a multi-layer control structure exists in the Islamic financial institutions' structure to avoid the involvement of top management in the high-risk business activities and ensure compliance of IFIs with the principles of Sharia.

The Importance of Sharia Audit for Islamic Financial Institutions

The existence of Sharia audit beside the Sharia board is necessary for functional Sharia governance because the duty of Sharia audit is to review and check the extent of the bank's commitment to abide by the fatwas and decisions of the Sharia board. It shall also check business operations of IFIs to make sure that the operations and transactions comply with the fatwas, rulings, and decisions of the Sharia board (Zakarya, 2019). The Sharia board is examining the products' and transactions' compliance with the Sharia principles and then issues fatwas and rulings. However, the Sharia audit unit makes sure that the Sharia board fatwas and rulings are considered by the working committees of the bank and that they carried out their functions in accordance with these principles.

Outsourcing Sharia Governance of IFI to a Third Party

Islamic banking and financial services are considered new in Afghanistan; the lack of qualified human resources in the sector is obvious. Considering this situation, it is temporarily permissible for IFIs –until the development of the capacity of human resources in the field of Islamic finance and economy- to outsource some of the functions of Sharia governance to a third party consultancy (C. bank of Afghanistan, n.d.).

The DAB allowed IFIs operating in Afghanistan to temporary outsource any of its Sharia governance or operational functions or its entire Sharia board to an outer Sharia board or a consultancy. It is also authorized that the IFI outsources these functions to a scholar sitting on the Sharia board of another bank and approved by the DAB as long as this confirms the outsource requirements provided in the guidelines (Central Bank of Afghanistan, n.d.)

OVERLAP OF FUNCTIONS BETWEEN THE SHARIA BOARD AND SHARIA AUDIT DEPARTMENT COMPARE WITH PAKISTAN AND NIGERIA

Islamic financial institutions are unique because they comply with the Sharia principles in all of the transactions they carry out. The function of compliance to Sharia is safeguarded in the IFIs through the existence of many structures of Shariah Governance; one of these structures is an independent Sharia board; another one is the existence of a Sharia audit and governance committee. The functions of these two units are similar in ultimate objectives, which are to make sure that IFIs' operation and transactions comply with Sharia principles. However, they are different from each other as their scope of work and area of focus vary. Sharia board has oversight on IFIs operations and activities' compliance with Sharia and to the Sharia board resolutions. Sharia board shall have observations on IFIs transactions and receive the report from the Sharia department to spot out if there are any non-Sharia issues and takes needed corrective measures. Sharia board also assists the management of IFIs in supervising the implementation and application of Sharia board resolutions. One of the tasks of the Sharia audit is to monitor the bank's compliance with the Sharia board's fatwas and decisions. Also, Sharia Audit will periodically evaluate the IFIs transactions and activities to develop a timely assessment to add value to the IFI and make sure the compliance of business operations to Sharia principles is improved. So, Sharia audit is doing more groundwork on assessment and provides bases for the Sharia board report. The comparison of these functions and other features of Sharia governance structures in the Sharia governance framework of Pakistan and Nigeria is highlighted in the below table.

Table 1. *Overlap of Functions Between the Sharia Board and Sharia Audit Department Compare with Pakistan and Nigeria*

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Appointment of Shariah Supervisory Board	''*Every Islamic banking institutions (IBIs) shall have a Sharia board appointed as per the fit and proper criteria notified by State Bank of Pakistan (SBP)*'' (Pakistan, 2018).	''*Banks conducting Islamic Business activities must establish a Shariah Board.*'' (Central Bank of Afghanistan), n.d.)	''*All licensed none-interest financial institutions (NIFIs) shall establish a Shariah Advisory Committee (SAC) to be approved by the Central Bank of Nigeria*'' (CNB, 2004).	''*Every Islamic financial institution shall have a sharia supervisory board to be appointed by the shareholders*" (AAOIFI, 2017).
Criteria for SSB members	"*SSB Chairperson has to have minimum five years of experience as Sharia advisor/member of sharia board and the members have to have three years of experience as Shari Advisor/member of sharia board*" (Pakistan, 2018)	*The majority of the SSB members shall hold a degree in Sharia of Islamic economics/finance from a recognized university or have attained the status of a recognized scholar in the Islamic Republic of Afghanistan's society. Have at least three years of experience in research and development of Islamic banking and finance* (Central Bank of Afghanistan, n.d.)	*"The proposed member of the SAC shall at a minimum have an academic qualification or possess the necessary knowledge, expertise or experience in the sciences of the Sharia with particular specialization in the field of Islamic transactions/Commercial jurisprudence (fiqhu al mua'amalat)*'' (CNB, 2004).	"*The SSB is an independent body of specialized jurists in fiqhu al muamalat. However, the SSB may include a member other than these specialized in fiqhu al muamalat but who should be an expert of Islamic finance institutions with knowledge of fiqhu al muamalat*" (AAOIFI, 2017).

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Independence of sharia board	''*The Sharia Board shall discharge its duties independently and objectively. In this regard, the sharia committee shall functionally report to the board of directors''* (Pakistan, 2018).	Independence of the Sharia board shall be kept in all circumstances to exercise its duty for making objective and informed judgments about the issues related to the Sharia board. *"The Sharia Board shall report to the Board of Directors and regularly inform the Board on relevant Sharia matters. Sharia board shall consist of qualified sharia Scholars appointed by the management on behalf of the bank's board* ''[a] (Central Bank of Afghanistan, n.d.).	''For playing its role effectively, the SAC has to operate independently and shall have the principles of competence, consistency, and confidentiality in its operations. An independent SAC will promote public confidence which will promote the growth and development of the industry'' (CNB, 2004)	'' A sharia supervisory board is an independent body of specialized jurists in fiqh ul muamalat. Directors and shareholders of the same IFI cannot serve as members of the SSB. *The SSB members should not be employees of the same IFI. The SSB member should not involve in the managerial or operational decisions of IFI*' (AAOIFI, 2017).

[a] The NSGF paragraph 5.8 expresses that the Sharia board can be assigned by the management of the IFI on behalf the bank's board, in this case, the issue of independence of the Sharia board can be jeopardized. However, this seems in contradiction with the banking law which sets that the Sharia board can be appointed and dismissed by the general meeting of shareholders of the bank. The AAOIFI standards authorize the Shareholders to allow the board of directors to set remuneration for Sharia board members on behalf of the Shareholders.

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Duties of SSB	The SSB shall advise the board of directors and the executive management of the IBI on sharia matters. All the SB decisions/rulings/ fatwas are binding on the IBIs, whereas the sharia board shall be responsible for all its sharia decisions (Pakistan, 2018).	It is the duty of the Sharia board to provide constant oversight on the bank's operations' Sharia matters through the observations and report receiving from the Sharia department and to identify possible Sharia issues, if any, and propose the necessary corrective measures (Central Bank of Afghanistan), n.d.).	This is expected that the SAC is responsible and accountable for all Sharia opinions, decisions, and viewpoints rendered by them. SAC shall advise the NIFI's management and board on Sharia-related matters to ensure the institution's compliance with Sharia principles at all times (CNB, 2004).	Sharia Supervisory board is SB is given the duty of supervising, reviewing, and directing the activities of the IFIs to ensure that they comply with the Islamic sharia rules and principles. (AAOIFI, 2012).
Quorum of the SSB	The Sharia board of every IBIs shall have at least three sharia scholars who shall come as per the fit and proper criteria(FAPC) notified by the SBP (Pakistan, 2018).	The Sharia Board shall consist of at least three Islamic scholars appointed and dismissed by the general meeting of shareholders of the bank'' (M. of J. Afghanistan, 2015)	For the effective function of SAC, it shall have at least three Sharia scholars (CNB, 2004).	"*The Sharia Supervisory board shall consist of at least three members''* (AAOIFI, 2012).

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Outsourcing Sharia governance functions	Not applicable	Considering the situation of Islamic financial institutions in Afghanistan, it is temporarily permissible for IFIs –until the development of the capacity of human resources in the field of Islamic finance and economy- to outsource Sharia governance or operational functions or its entire Sharia board to an outer Sharia board or a consultancy, it is also authorized that the IFI outsources these functions to a scholar sitting on the Sharia board of another bank and approved by the DAB (Bank, n.d.)	Not applicable	Not applicable
Duration of SSB	The initial employment term of SSB members is three years and shall be eligible for reappointment (Pakistan, 2018).	'The initial appointment term of the SB members is three years, and members may be reappointed for the same additional term (Central Bank of Afghanistan), n.d.).	The initial employment term can be for a renewable term of four years, subject to a maximum of three terms (CNB, 2004).	Not applicable

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Appointment of Sharia advisors	In collaboration with management, the SSB of an IBI should appoint one of the SSB members other than the Chairperson as Resident Sharia Board member RSBM to give guidance/advice on day-to-day Sharia-related operational concerns (Pakistan, 2018).	It is suggested that the bank hire at least one qualified Sharia expert to head its Sharia department and be in charge of Sharia compliance (Central Bank of Afghanistan), n.d.)	Not applicable	Not applicable

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Responsibilities of Sharia advisor	The RSBM/Sharia advisor is responsible for providing advice on day-to-day or regular Sharia-related matters, Sharia training, post-product approval, conducting Sharia reviews, submitting a quarterly report to the Sharia board, and responding to Sharia-related inquiries (Pakistan, 2018).	The Sharia adviser unit/function will give advisory support to the management of the bank's Sharia compliance activities in line with Sharia board decisions and judgments (Central Bank of Afghanistan), n.d.)	Not applicable	Not applicable
Sharia compliance department	Every IBI must have a Sharia Compliance Department that is supervised by an IBI's full-time Sharia advisor. The SCD will serve as a liaison between the SB and the IBI's management. It will also go through agreements, contracts, and manuals about the Islamic bank's products. (Pakistan, 2018)	The Sharia compliance unit/function will provide a continuous assessment of Sharia-compliant activities based on local laws and regulatory purview to ensure regulatory compliance and will immediately notify the Management Board in the event of a conflict between Sharia and regulatory laws in order to avoid regulatory sanctions (Central Bank of Afghanistan, n.d.)	All NIFIs are expected to have a dedicated Internal Sharia Compliance Unit comprised of officer(s) with relevant Sharia and conventional financial qualifications and expertise to serve as the first point of contact for Sharia compliance problems (CNB, 2004).	Not applicable

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Sharia compliance review	The Sharia compliance department shall perform Sharia compliance review to verify that all Sharia government organs are functioning properly (Pakistan, 2018).	"*The Sharia review/function will provide regular reviews on Sharia compliance in the bank's activities and operations, to ensure that the bank's activities and operations do not violate Sharia principles*" (Central Bank of Afghanistan, n.d.)	All IIFs licensed in Nigeria shall have an internal review mechanism to ensure compliance with the Sharia principles under this model (CNB, 2004).	The SSB will undertake a Sharia assessment to confirm that an Islamic financial institution's activities do not violate Sharia principles (AAOIFI, 2012).

Comparing points	State Bank of Pakistan (SBP)	Da Afghanistan Bank (NSGF)	National Bank of Nigeria	AAOIFI
Internal Sharia Audit Unit	Depending on the size of the bank, each IBI must have an internal Sharia audit unit (ISAU), which may be part of the internal audit department or an independent entity (Pakistan, 2018).	The Sharia audit unit/function will conduct periodic assessments in order to give an impartial evaluation and objective assurance aimed to add value and enhance the level of compliance of the bank's business operations (Central Bank of Afghanistan, n.d.)	All licensed IIFS must have an internal review system in place to verify compliance with the model's principles. As part of their governance frameworks, they must also establish an Advisory Committee of Experts (ACE0) (CNB, 2004).	Internal Sharia review shall be conducted out by a separate division/department or a division of the Internal audit department (AAOIFI, 2012).
Internal Sharia Audit	Internal Sharia audits will be conducted by the internal Sharia audit unit to guarantee Sharia compliance at IBI, and the report will be reviewed and authorized by SB (Ahmed, Zia Uddin, & Iqbal, 2017).	The Sharia audit unit/function will conduct a periodic review to provide an independent assessment and objective assurance designed to add value and improve the level of compliance of the bank's operations (Central Bank of Afghanistan, n.d.)	All IIFS should have an internal review and audit system to check and evaluate the level of compliance with the rules and principles applicable to this model on a periodic basis (CNB, 2004).	A thorough Sharia review will be performed to analyze and assess the extent to which Islamic Sharia norms, principles, fatwas, and directions given by IFIs SSB are being followed (AAOIFI, 2012).

The above table shows that the general principles of the Sharia regulatory frameworks of these three countries are mostly similar to each other in many issues such as the appointment of Sharia supervisory board, the independence of Sharia board, the qualifications necessary for board members, duties of SSB, the quorum of SSB, Sharia compliance department, Sharia review but still, there are differences in some aspects as the following.

The duration of service of the Sharia supervisory board is three years in both Afghanistan, and in Pakistan's Sharia governance framework. However, it is four years in the Nigeria Sharia governance framework. Considering the situation of Islamic financial institutions in Afghanistan, it is temporarily permissible for IFIs –until the development of the capacity of human resources in the field of Islamic finance and economy- to outsource Sharia governance or operational functions or its entire Sharia board to an outer Sharia board or a consultancy. It is also authorized that the IFI outsources these functions to a scholar sitting on the Sharia board of another bank and approved by the DAB while such principle cannot be found in the Sharia governance framework of Pakistan or Nigeria. Afghanistan and Pakistan Sharia governance frameworks recommend that the IFI shall appoint one of its SSB members as the Sharia advisor or head of the Sharia department to give day-to-day advices on Sharia matters and to be in charge of sharia compliance. However, such a recommendation is not existing in Nigeria's Sharia governance framework.

CHALLENGES IN THE IMPLEMENTATION OF THE SHARIA GOVERNANCE FRAMEWORK IN THE ISLAMIC BANKS OF AFGHANISTAN

In order to find a clear picture of the challenges in the implementation of the Sharia governance framework, a questioner was developed, and interviews were conducted with ten persons from the Islamic finance sector. Questions were put in the questioner based on their relevancy to the topic of the research. Explanations about the main problems the Islamic finance practitioners face due to the lack of Islamic banking law, the availability of Sharia compliant products in the market, availability of professional staff for the industry, and the serious challenges toward the implementation of NSGF were asked from the interviewees. The criteria for the selection of the interviewee was set as the interviewee shall have practical experience in Islamic banking. Some were selected from Sharia board members, and some were selected from the Sharia audit unit in order to give us a clear picture of existing challenges.

Table 2. *List of Interviewees*

Participant Cluster	Respondent's Number	Organization
Sharia Board Member	3	Islamic Bank
Audit Unit	2	Central Bank
Expert/Researcher	5	Islamic Finance Expert

Their answers about the challenges were similar in some instances. After analyzing the answers collected from the interviews about the challenges of IFIs, it appeared that the challenges that the interviewees mentioned in their answers are of two categories: first, the challenges that relate directly to Sharia governance. The second category is the challenges that relate to the banking industry in general. The first category challenges are lack of banking law to cover and regulate the Islamic banking sector, lack of qualified Sharia scholars who have knowledge and experience of both Sharia and banking sector to serve on the Sharia board. Lack of commitment of the board of directors and other stakeholders toward the effective Sharia governance and irrelevant interventions of the shareholders in the operation of the IFIs were also highlighted as challenges. Lack of banking products in the market to invest in and make a return for IFIs, lack of Takaful, and Sukuk laws in Afghanistan are highlighted as challenges. Lack of financial relation – as correspondents – with the international banks due to lack of compliance and supervision in Afghanistan were also highlighted as challenges to the banking industry, including the Islamic banking sector.

FINDINGS

The focus of the interviewees from the banking sector – Sharia board and audit unit- was on highlighting the lack of qualified Sharia scholars, lack of Islamic banking law, irrelevant interventions of the shareholders in the operations of the IFIs, lack of commitment of the board of directors and other stakeholders toward effective Sharia governance. While the interviewees from the researchers highlighted that there are not diverse Sharia compliant products in the market for Islamic banks to invest the depositors' money in.

The research found that Islamic financial institutions in Afghanistan have a comprehensive national Sharia governance framework in place which guides its operations. The NSGF covers the Sharia governance structure, hierarchy of authorities, its responsibilities such as the appointment of the Sharia supervisory board (SSB), independence of SSB, and the rules and responsibilities of SSB. It also discusses the existence of a board of directors and its rules and responsibilities. The research also found that there is not Islamic banking law for regulating Islamic financial institutions in the Islamic Republic of Afghanistan; only one chapter of banking law with few articles that covers some aspects is dedicated to Islamic banking. The National Sharia Governance Framework's principles are generally in compliance with AAOIFI standards. Meager deviations are there to some extent which is highlighted in Table 1. Lack of qualified Sharia scholars, lack of Islamic banking law, irrelevant interventions of the shareholders in the operations of the IFIs, lack of commitment of the board of directors and other stakeholders toward effective Sharia governance are highlighted as challenges.

RECOMMENDATIONS

The research found that the challenges are as the lack of qualified Sharia scholars who have knowledge and experience of both Sharia and the banking sector to serve on the Sharia board. It is recommended that the Islamic financial institutions shall focus on the capacity building of their current Sharia board members and other employees to familiarize them with the best practices and knowledge of Islamic banking needed for this sector. Ministry of higher education and other educational institutions such as banking and finance institution of Afghanistan shall add Islamic finance subjects to the curriculum of higher education institutions.

It is also highlighted that the lack of Islamic banking law –which is stalled in the parliament- is a challenge towards having effective Sharia governance and to the Islamic banking sector as well. It is recommended that the Da Afghanistan bank separately send the Islamic banking law to the parliament so that the law could be enacted and approved by the parliament. In this case, another challenge is that if the Islamic banking law is enacted and the conventional banking law is annulled, the whole banking system has to be converted to the Islamic banking system. Currently, this is not practical because of the weak infrastructure of the Islamic banking sector and lack of professional personnel, and many more reasons. However, this challenge can be overcome by allowing both systems simultaneously as a transition period. During this period, all stakeholders shall work on developing the required infrastructure for the full-fledged Islamic banking system, and the Islamic banking sector could gradually replace conventional banking in the country.

Lack of commitment of the board of directors and other stakeholders toward effective Sharia governance is also highlighted as a challenge. It is recommended that the central bank's Islamic banking department conducts inclusive supervision on the compliance of IFIs and shall not let the IFIs management and other stakeholders to deviate from the implementation of the Sharia governance framework.

Irrelevant interventions of the shareholders in the operations of the IFIs was also highlighted as a challenge towards having a sound Sharia governance It is recommended that the central bank of Afghanistan and the Sharia Supervisory Board shall conduct strict supervision on the implementation of the NSGF and warn the shareholders to maintain obedience to the rules and ensure the independence of Sharia board.

REFERENCES

AAOIFI. (2017). *Sharia Standards*. https://doi.org/www.daralmaiman.com

Afghanistan, C. bank of. (n.d.). *(CENTRAL BANK OF AFGHANISTAN) Regulations on Licensing to Islamic Bank / Window Regulations on Licensing to Islamic Bank / Window*. 1–14. http://dab.gov.af/sites/default/files/2018-12/1LicensingforIslamicFIsv3finalversion20122015141812767553325325_2.pdf

Afghanistan, M. of J. (2004). *Constitution of Afghanistan*. https://doi.org/https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

Afghanistan, M. of J. (2015). *Legislative Decree of the President of Islamic Republic of Afghanistan on issuance of Banking Law of Afghanistan*. (30), 1–114. Retrieved from http://dab.gov.af/sites/default/files/2018-12/BankingLawofAfghanistanEnglishTranslation22762018113414921553325325_1.pdf

Ahmed, M. M., Zia Uddin, & Iqbal, M. (2017). The Role of Shariah Board in Islamic Banks: Pakistan's Perspective. In *Global Regional Review*. https://doi.org/10.31703/grr.2017(ii-i).25

Albarrak, H., & El-Halaby, S. (2019). AAOIFI governance standards: Sharia disclosure and financial performance for Islamic banks. *Journal of Governance and Regulation*, *8*(1), 19–37. https://doi.org/10.22495/jgr_v8_i1_p2

Amiri, M. H. (2013). Growth and Future of Islamic Banking in Afghanistan. *Antimicrobial Agents and Chemotherapy*, *58*(12), 7250–7257. https://doi.org/10.1128/AAC.03728-14

Askarzada, R. (2016). *Islamic vs Conventional Banking in Afghanistan*. *3*(1933), 1934. https://doi.org/https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3301445_code3258444.pdf?abstractid=3301445&mirid=1

Bank, C. (n.d.). *(Central Bank of Afghanistan) Shariah Compliance Manual DA AFGHANISTAN BANK Shariah Compliance Manual Contents*. 1–24. Retrieved from http://dab.gov.af/sites/default/files/2020-10/Shariah Compliance Manual.pdf

Central Bank of Afghanistan). (n.d.). *National Sahria Governance Framework*. Retrieved from https://dab.gov.af/sites/default/files/2018-

CNB. (2004). Guidline on Shari'ah governance, Nigeria. In *Canadian Journal of Cardiology* (Vol. 20). https://doi.org/10.1007/978-3-030-54572-7

Mastoor, S. A. (2014). Islamic Banking System in Afghanistan. In *10th International Academic Conference, Vienna*. Retrieved from https://ideas.repec.org/p/sek/iacpro/0200302.html

Pakistan, S. B. of. (2018). Shariah Governance Framework for Islamic Banking Department State Bank of Pakistan. *State Bank of Pakistan*, (June). Retrieved from http://www.sbp.org.pk/ibd/2018/C1-Annex-A.pdf

Stambakiyev, Nurzhan & Kahf, M. (2020). (2020). Al-Hawkamah al-Shar'iyyah fi-l-muassasat al-maliyyah al-Islamiyyah fi Kazakhstan: Waqi' wa tahaddiyat [Shariah Governance in Islamic Financial Institutions in Kazakhstan: Reality and Challenges]. *Journal of King Abdulaziz University, Vol. 33(3), Pages 189-212*, 195–218. https://doi.org/10.4197/Islec.33-3.10

Yasini, S. (2018). *Islamic Banking in Afghanistan, Realities and challenges*. 1–8.

Zakarya, Y. M. (2019). *Al-Daleel al-'amaliy li-l-mudaqqiq al-Shar'iy fi-l-masareef al-Islamiyyah [A practical guide for the Shariah auditor of Islamic banks].* Retrieved from https://kantakji.com/files/KIE_BAHkS.pdf

APPENDIX A

THE INTERVIEW QUESTIONS

1. What kind of problems raised because of the lack of the Islamic banking law?
2. Do the Islamic banks have enough Islamic banking scholar to serve on Sharia board and other relevant departments?
3. How many Sharia compliant products are available for IFIs in Afghanistan to invest the deposits of the customers to do a lucrative business and gain profit?
4. What are the serious challenges towards the implementation of Shari'ah governance framework in Islamic financial institutions in Afghanistan?

AUTHORS’ PERCENTAGE-BASED CONTRIBUTION

The contributions of each author to the study by percentages are as follows: The percentage-based contributions of the 1st author and 2nd author are %50, respectively.
1st Author: Literature review, research design, writing.
2nd Author: Research design, writing.

DECLARATION OF CONFLICTING INTERESTS

There is no financial or individual relationship with a person or an institution in the context of the study. Also, conflicting interests do not exist.

ETHICAL APPROVAL OF THE STUDY

All rules within the scope of “Instruction on Research and Publication Ethics for the Higher Education Institutions” were observed throughout the study. No actions mentioned in the Instruction's second chapter titled “Actions Against to Scientific Research and Publication Ethics” were taken in the study.