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Sharia Monitoring of the Investment Industry - The Most Prominent Challenges and The Most Appropriate Solutions

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ABSTRACT

The idea of this paper is centered on explaining the role of Sharia supervision in reviewing the business of the Islamic investment industry, and the extent of its compliance with the provisions of Islamic Sharia and focusing on the most important challenges facing Sharia monitoring in the development of the investment industry, with a mention of appropriate solutions to overcome these challenges, and the paper concluded that the most important of these are The challenges are represented in the duplication of work in some banks, the lack of independence in its comprehensive sense, the lack of accounting tools that enable them to review and control the Islamic banking business, the different and contradictory fatwas between one bank and another, the non-compulsion of the views of the Sharia board in some banks. The paper reached several conclusions, in the forefront of which is the need to be careful in appointing members of the Sharia supervisory board, with attention to the accounting aspect, and not to over-adopt the jurisprudential licenses, and to call for the formation of a global supervisory body that supervises the business of Islamic banks away from the hegemony of central banks.

1. Introduction

In recent times the activity of the Islamic investment industry has expanded, both in terms of its number, or in terms of the percentage of dealers with it and the size of its assets, reaching its percentage, according to the latest statistics issued by the General Council of Islamic Banks and Institutions in (2004) around the world 284 Islamic banks with a volume of more than 261 billion business One billion dollars, in addition to more than 310 traditional (commercial) banks that provide Islamic banking services with a business volume of more

than 200 billion dollars (El-Beltagy, 2005). The size of this industry increased worldwide in the year (2019), reaching about \$ 2.4 trillion. Salah, 2019).

This increase and expansion has resulted in a large number of challenges facing the Sharia supervisory bodies supervising the investment industry as a result of the multiplicity of transactions, the diversity of services, and the multiplicity of environments, especially in non-Islamic countries, with a large percentage of the branches of interest-based banks in Arab countries operating under the Islamic Sharia system. A desire to preserve the investment of clients' money from escaping with their money to Islamic banks, and this reality imposed on the control committees the necessity to follow up all the bank's actions whose percentage increases day after day in order to make sure that they agree to the teachings of Islam and investigate their safety from suspicions of usury.

This paper has been keen to mention the most prominent current challenges facing the supervisory committees, while stating the most appropriate solutions to overcome them, hoping to reach the existence of Sharia committees that perform their work in the fullest way, and to achieve an Islamic investment industry that matches the aspirations of the Islamic peoples away from the domination of usurious banks.

2. About The Concept Of Sharia Monitoring

Sharia censorship is defined in the language as waiting, guarding and guarding, supervision, elevation, and trust (Ibn Manzur, 1414 J4 / 425)

The same meaning has been used in the Qur'an. The Almighty said: *(فَأَنْتَقِبَ إِنَّهُمْ لَا يُرَقَّبُونَ فِي مُؤْمِنٍ إِلَّا وَلَا نَمَّةً) [التوبة: ١٠] / (مُرْتَقِبُونَ) {الدخان: 59}*

As for the Sharia: there are a large number of definitions, summarized by what Al-Rajhi Banking Corporation mentioned as: Ensuring that the activities of the Islamic financial institution conform to the provisions of Islamic law, according to the fatwas issued and the decisions approved by the fatwa authority (Hammad 2004: p. 3).

Based on this, "an Islamic bank is not without the Sharia Supervisory Committee. Its primary function" is to examine the extent of the institution's commitment to Sharia in all its activities, including: examining contracts, agreements, policies, products, transactions, incorporation contracts, basic systems, financial statements, reports, especially reports. The internal audit and reports of inspections carried out by the Central Bank and circulars" (Control Standard, 2014. p. 14).

3. About The Most Prominent Challenges Of Sharia Control In The Investment Industry

3.1 Duplication of work in some banks

Some Islamic banks combine the Sharia auditor, internal control, or accounting in one business, where we find the Sharia mufti himself the superintendent, or the accountant, and this duplication affects the credibility of the banking business with clients. The bank loses the element of transparency and clarity, and ambiguity in the transaction remains the master of the situation.

In this regard, the work of the Sharia Supervision and Fatwa Committees should be separated from the work of the Department of Monitoring or Internal Audit and Accountability by a chapter that reveals the nature and work of each of them.

Sharia supervision "has a wider scope and more important role, because it monitors all areas of transactions in institutions in terms of their system, operations, products, or gains throughout the period of their establishment and striving to make all bank business acceptable to the Lord of the worlds.

As for the legal and accounting review, it analyzes only a part or a private sector in the bank, such as the framework, the legal effect, or the financial statements related to the bank and prepares a report in its designated field only, and it is said that the objective of the auditor is to verify the real financial position of the institution only. And the auditing of the bank does not take place until after the end of the business. As for the Sharia control, it is from the beginning of the establishment of the Islamic financial institution to its end. In addition to that, the membership of the Sharia Supervisory Board is made up of Sharia scholars and owners of sciences that combine Sharia, law, mathematics or economics, that is, people who are competent in analyzing all the system and operations of the bank and the authority also takes state laws and accounting principles or auditing into consideration in the development of Islamic products (Abu Ghadda, 1998, p. 20) and (Lal al-Din, 2009, p. 3).

The reference for this overlap between the two work is the absence of regulations governing the work and tasks of the Sharia Board in most Islamic financial institutions, whereby the objectives, actions, rights, duties, and related mechanisms of correlation are defined and the nature of the relationship between the Sharia Board and the internal control and all other parties in the business of the financial institution such as the association. The general public, the board of directors, the shareholders, the employees, and the public of dealers.

3.2 The Sharia's lack of independence in its comprehensive sense

which means the following:

- a. Independence, in the sense that there are no material interests of the auditor, or one of his family members, in the establishment whose operations he is reviewing, so that he is not a partner, a shareholder, or a worker in it, in contrast to his agreed fees.
- b. Autonomy or mental independence, meaning that the auditor is professionally independent, without any pressure or interference on the part of the client or any higher authority in the optimal performance of his duties.
- c. Independence in the field of examination in the sense that the auditor has freedom to view and inspect all the necessary documents and documents and to collect information from any sources in the company.
- d. Independence in preparing the report and the results and facts it contains. The references need to distance themselves from personal relationships and create mutual interests that negatively affect his work (Al-Khulaifi, 2003, p. 291).

In my opinion, the Sharia supervision will not bear its fruits in the required manner unless it is completely independent from the bank and far from its management in such a way that it affects and is not affected, led and not led so that it acts as the central bank in terms of its work and its influence in Islamic banks, and for this I see that there should be an independent Sharia supervisory body. It is a single umbrella for all Islamic banks without exception, and it has the right to grant a license to establish an Islamic bank, and the right to revoke dealing with any bank that does not adhere to the decisions and provisions of Sharia supervision, and this requirement may be far-fetched at the present time, but - according to my estimation - it is more secure methods to ensure the impact of the work of Sharia supervision on the behavior of banks and control them as required.

3.3 Weakness of the accounting side of those in charge of controlling the matter

Those who perform Sharia supervision tend to lack the accounting tools that enable them to review and control Islamic banking work. Most of those who work in them are graduates of Sharia colleges and do not have commercial accounting qualifications that enable them to audit and review behind the accounting committees, which results in their lack of awareness of some accounting aspects. The minute that affects the profit percentage.

And the most appropriate solution to overcome this challenge is for most of the members of Sharia supervision to have accounting specializations that enable them to perform this task.

3.4 The opinions of the Sharia board are not compulsory in some banks

Some banks suffer from the lack of obligation to act on the opinions of their Sharia board, meaning that they “specialize in providing legal fatwas on contracts and financial transactions without oversight. This general trend has prevailed even after many Islamic financial institutions - within the decisions of the articles of association - have approved the role of Sharia bodies in supervising them. (Al-Khulaifi 2003, p. 44).

The decisions of the Sharia boards indicated that “some studies indicated that 56.6% of the selected sample of Islamic banks state that the decisions of the Sharia Board are binding, and about 20% of its decisions are advisory, while the percentage of 23.4% is unknown. These numbers are undoubtedly negative. Because the value of the decisions of the Sharia boards are binding (Al-Ayashi, 2009, p.19).

The principle of mandatoryness means ensuring that banks are not tampered with from the eyes of Sharia supervision, and it gives them greater transparency and clarity, which in turn leads to an increase in the element of trust in Islamic banks among clients.

In order to achieve the principle of the compulsion of the decisions of the Sharia bodies, “the conferences devoted to the issues of the Sharia bodies recommended that the decisions of the Sharia bodies be binding. Departments” (Final Statement of Financial Institutions 2001). Because the fatwas issued by the commission are Sharia rulings and must be followed. We may find guidance for this in his letter, Umar bin Al-Khattab to Abu Musa Al-Ash'ari, alerting him to this matter by saying: “Judgment is a tight obligation and an established Sunnah.

Ibn al-Qayyim explained the phrase of the Commander of the Faithful: “It does not benefit, he spoke with a right that is not enforceable by saying: “If it is not implemented, it is to isolate him from his mandate, then he is like a justice governor who in his assuming the interests of the servants in their livelihood and hostility. 1991 C.E. 1/70).

Accordingly, the obligation of the fatwa of the control committees is the most appropriate solution to achieve the greatest degree of transparency, to ensure that there is no tampering, and to increase the customer's confidence in the bank.

3.5 Different and conflicting fatwas between one bank and another

Legal supervision fatwas face the problem of inconsistency between fatwas in banks with some of them at times, and with other fatwas issued outside the scope of the Sharia bodies in banks by some scholars at other times.

This situation resulted in (the multiplicity of fatwas in one case), the breach of the rules of governance (the administrative guidance CORPORATE

GOVERNANCE), as this led to the emergence of problems related to the management of banking business, and how Islamic banks deal with the multiple opinions of jurists and Sharia bodies, most notably:

- a. The benefit of some financial institutions from fatwas issued by the Sharia bodies, which were characterized by taking into account a certain reality and special circumstances, and they employed that for their own benefit and the owners of property rights in them.
- b. The absence of full transparency between Islamic financial institutions and their clients: the client does not allow him in the rules of work in the bank to view other jurisprudential options that are not recommended by the Commission. The bank's argument for that is that the matter is up to the Sharia Board, and it is indicated in the contracts signed by the customer. It is known intuitively that not every client can read the contract and get acquainted with the legal and legitimate details in it, and the expert in these contracts realizes that they are often formulated that make the conditions always in the interest of the institution, and that the customer is under the authority of need and automatically agrees to what is presented to him.
- c. The existence of fatwas that rely on licenses and tricks-based graduations, which led to the formation of a jurisprudential trend that pervades the entire Islamic banking business. The weakness of the banking business and its deviation from its true framework and mission. The application of such fatwas in some Islamic banks whose Sharia bodies permit these products, but not others whose bodies prohibit the same products gives the former a competitive advantage (Mishaal, 2010).

It resulted from the fatwa approach to its bodies and not from its innovation and grandfather. Some researchers have reflected the negative effects of this approach when he coined the title of his article in the form of the famous Gresham law on "good and bad criticism", saying: "A bad fatwa expels a good fatwa from the market" (Shahat, 2013).

And the most appropriate solution to overcome the problem of multiple fatwas is to consider the following:

- a. Adopting all jurisprudence schools, choosing fatwas and rulings based on the strength of the evidence, and what achieves the objectives of Islamic law.
- b. Adopting a specific doctrine for local or country implementation and choosing the most correct of its opinions according to the dictates of the legal evidence according to the doctrine in force in those countries.
- c. Emphasis on adopting the objectives of Shari'a and the outcome of actions when issuing the fatwa, and the basis of the lesson for the purposes and meanings not of words and constructions, in a way that prevents the

emergence of transactions based on mere exchange of money with an increase and formal contracts in contracts.

- d. Emphasis on the need to adhere to the collegial and collective fatwas such as the fatwas and decisions of the International Islamic Fiqh Academy in Jeddah, the decisions of the Islamic Fiqh Academy in Makkah, the Sharia standards issued by the Sharia Board of the Accounting and Auditing Authority, the decisions of the Sharia Board of Supervision and Classification and the fatwas issued by the gathering of scholars in seminars or conferences.
- e. Establishing a system for financial fatwa in Islamic financial institutions that clarifies the principles and principles adopted for issuing fatwas, specifies means of coordination in controversial issues, and establishes mechanisms for referring issues to collective jurisprudence.
- f. The necessity of agreeing and adhering to a specific methodology and formula for issuing fatwas and decisions by Sharia bodies. And work to differentiate between individual and group fatwas, as well as interim and permanent fatwas, and other differences. It is also worth working to ensure that fatwas include evidence and explanation in a way that helps spread, understand and absorb fatwas from workers and dealers with industry.
- g. The necessity of disclosing in the bodies 'annual report the fatwas in which they violated the collective and collective decisions, and working for a specific body to collect all the fatwas and decisions, coordinate between the different parties, and organize an annual symposium to discuss issues in which the collegial fatwas are violated. This body may also undertake the periodic evaluation of fatwas and activate their discussion within a specific mechanism with specialists.
- h. Not to over-use the jurisprudential licenses (doctrinal) and exits when issuing the fatwa, and not to expand the justification of reality and exaggerate the jurisprudence of facilitation, and to look at the interest of industry and customers in addition to the interest of Islamic financial institutions. And the activation of the right to stop fatwas related to questionable topics, and the setting of determinants for them.
- i. The necessity of having a future vision and a phased plan to reach it in the future regarding the transformation of financial transactions into Islamic transactions, the work of fatwa and Sharia supervision, and taking appropriate positions in front of developments in the field of the legal system of the industry, including defining the role of consulting firms that provide fatwa and Sharia audit work, And other related services. (Ali, 2001. p. 146).

4. Results

Ahmed Abdullah, Opportunities for Developing Unified Standards for Sharia Supervision, Journal of Islamic Economic Studies, Islamic Institute for Research and Training, Volume IX, Issue 1, 2

- a. Accuracy in appointing the members of the Sharia supervisory committees is an urgent necessity in order to preserve the reputation of the Islamic investment industry.
- b. The duplication of work between legal work and accounting work in banks resulted in a major defect in clients' confidence in banks - and lack of transparency.
- c. Excessive introduction of licenses has led to the formation of a jurisprudential trend that prevails in Islamic banking in its entirety, far from the objectives of Islamic law, which basically aim at achieving comprehensive development and achieving a level of economic well-being for the nation, and has resulted in the weakness of the banking business and its deviation from its real framework and mission.
- d. The lack of independence of Islamic banks from central banks has resulted in complete independence of these banks entering the work of banks and restricting their freedom to invest, which resulted in weakness in their growth as required, and the most appropriate is the existence of a global central Sharia control that has control over Islamic banks.

5. Recommendations

- a. The researcher recommends taking into account the subtle specialization in appointing members of the Sharia watch in Islamic banks and not duplicating work.
- b. The researcher recommends the presence of a sufficient number of accountants with the members of the Sharia committee.
- c. The researcher recommends that the decisions of fatwa committees be compulsory in all Islamic banks and that the fatwa be made collectively, not individual, with the existence of an Islamic global supervisory body that supervises the scrutiny of the global Islamic investment industry.

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