

## The Role of Islamic Law Scholars (*Sharī'Ah* Advisors) in the Development of Islamic Commercial Institutions in Pakistan (Perspective of Islamic Commercial Law)

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\*Ali Sajjad

\*\*Lutfullah Saqib

### Abstract

*Shari'ah* (Islamic law) acts as the backbone of the Islamic Financial system. To comply with the basic *Sharī'ah* principles, Islamic commercial Institutions have formed the *Sharī'ah* Supervisory Board (SSB). The SSB, therefore, has the duty to regulate and monitor the ongoing business activities of Islamic Financial Institutions in accordance with the principles of Islamic law. This study discusses the positive and negative role of such *Sharī'ah* Advisory Board in the development of Islamic Financial Institutions. Qualitative inductive approach, specifically, the Interpretivist research paradigm has been used. Semi structured interview have been conducted from seven prominent *Sharī'ah* advisors. The rich thick dataset, so obtained through in-depth interviews, has been analyzed thematically with the help of NVIVO 11. The findings reveal that there exist both positive and negative rule of *Sharī'ah* Advisory Board in the development of Islamic Financial Institutions. However, the negative role has been found to be the predominant in this regard. The authors believe that the negative aspects of SSB can be overcome through targeted training sessions, reviewing/revising criteria for hiring, setting and following universal standards regarding their performance, and designing specific curriculum for qualifying *Sharī'ah* scholars etc.

**Keywords:** *Sharī'ah* Board, Governance, Islamic Financial Institutions, Commercial Institutions *Sharī'ah* Advisors, Islamic Law, Islamic Commercial Law

### Introduction:

Economic development and the financial sector are, indeed, deeply interconnected. An Efficient financial sector plays a crucial role in the growth of economy: which inter alia results in providing better living standard for people.<sup>1</sup> Islamic Banks, an integral part of the financial sector, offers various types of products and services and performs multiple functions in different segments of the economy. Islamic banks started their business in 1977-78, offering interest free banking in compliance with the principles of Islamic commercial law. Pakistan has been trying to implement the interest free banking system at national level. While following this, the State bank of Pakistan initiated working for the setting up of Islamic banking practices in 2000. It registered, for instance, the Meezan Islamic bank with full-fledged Islamic bank operations in 2002.<sup>2</sup>

Islamic financial institutions' products and services are primarily introduced to fulfill customers' needs; while complying with the principles of Islamic law (*Sharī'ah*). These institutions claim that all Islamic commercial law's transactions, used by them, like

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\*Lecturer, Superior University, Lahore.

\*\*Assistant Professor, Department of Law and Shariah, University of Swat, Khyber Pakhtun Khwa.

<sup>1</sup> Hussain, Ishrat. "Education, employment and economic development in Pakistan." *Education Reform in Pakistan: Building for the Future* (2005), 33-45.

<sup>2</sup> Ahmad, Ashfaq, Kashif ur Rehman, and Muhammad Iqbal Saif. "Islamic banking experience of Pakistan: comparison between Islamic and conventional banks." *International Journal of Business and management* 5, no. 2 (2010), 137.

*Murābahah, Salam, Istisnā', Mushārakah, Ijārah* and etc., are free from interest (*Ribā*).<sup>3</sup> However, some of the customers have negative perception regarding these transactions. This is true, predominantly, in case of those customers who are not clear about the processes and operations of Islamic financial institutions. Owing to this fact, new generations of customers, particularly, those who have complete knowledge of Islam (Islamic commercial law) and are well-educated too, demand superior and innovative products and services in accordance with *Sharī'ah*.<sup>4</sup>

Of course, Islamic commercial institutions have grown consistently over the recent past years. In order to develop Islamic banking industry, the State Bank of Pakistan has set up a full-fledged Islamic Banking Department and *Sharī'ah* Advisory Board, too, to promote Islamic financial institutions' in the country.<sup>5</sup> The Board is comprised of three *Sharī'ah* scholars and one technical member. The key role of *Sharī'ah* Board is to ensure that all Islamic financial institutions' products and services, related structure, procedure, operation, product manual, advertisement, contract, agreement, sales flow and etc. are in conformity with the rules and principles of Islamic commercial law. It shall also specify, at the same time, the process, procedures for changing, modification or fatwa revisiting guidelines and ruling which are already issued by *Sharī'ah* Board.<sup>6</sup> It is mandatory for the management of all financial institutions to ensure applicability of *Sharī'ah* Board's principles. In addition, every Islamic financial institution is required to appoint its *Sharī'ah* Advisor, subject to the approval of State Bank of Pakistan. Moreover, *Sharī'ah* board has to perform such other functions as assigned by the State Bank from time to time.<sup>7</sup>

Some issues persist concerning *Sharī'ah* Advisory Board, primarily, its hiring a *Sharī'ah* advisors are, for instance, typically appointed by the management, therefore, they cannot, by default, remain independent or neutral.<sup>8</sup> The literature indicates, in addition to this, the shortage of qualified *Sharī'ah*'s scholars; emphasizing that the small numbers of scholars has dominated the whole industry of Islamic financial institutions.<sup>9</sup> These scholars are specialized in "*Fiqh*" (Islamic Law), having little or no knowledge, at all, regarding the modern concepts of finance and accounting. Competency issue, therefore, arises because of the small number of scholars, and that too, with limited practical knowledge of the field.<sup>10</sup> Owing to this fact, they can be cleverly cheated; while giving a verdict regarding a transaction. The *Sharī'ah*'s scholars also face difficulty in

<sup>3</sup> Fahim, F., Wajidi, F. A., Abid, S., & Rehan, E. W. *POTENTIAL OF ISLAMIC FINANCE IN GROWTH OF PAKISTAN ECONOMY*.

<sup>4</sup> Zainol, Zairani, Rohaya Shaari, and Hafizi Muhamad Ali. "A comparative analysis on bankers' perceptions on islamic banking." *International Journal of Business and Management* 3, no. 4 (2009), 157.

<sup>5</sup> Husain, Ishrat. "Banking sector reforms in Pakistan." *Governor of the State Bank of Pakistan, reproduced from Blue Chip—The Business People's Magazine* (2005).

<sup>6</sup> *Sharī'ah Governance Framework for Islamic Banking Institutions*, Islamic Banking Department State Bank of Pakistan, 2008, <http://www.sbp.org.pk/ibd/2014/C3-Annex.pdf> (accessed August 17, 2013).

<sup>7</sup> Grais, Wafik, and Matteo Pellegrini. *Corporate governance in institutions offering Islamic financial services: issues and options*. The World Bank, 2006.

<sup>8</sup> KhaleeJ Times . "Islamic banks enjoys double digit growth." *KhaleeJ Times* (2008).

<sup>9</sup> Khan, Tahreem Noor. "Enhancing Islamic Financial Brand: Sharī'ah Board Theoretical Conceptual Framework." *Journal of Islamic Banking and Finance* 3, no. 1 (2015), 62-72.

<sup>10</sup> Iqbal, Munawar, and Philip Molyneux. *Thirty years of Islamic banking: History, performance and prospects*. Springer, 2016.

other areas too. For instance, in the view of Khalid & Amjad, the legal and regulatory framework is still un-standardized and complex due to the uniqueness of an Islamic financial institution.<sup>11</sup> The SBP and Board of Directors do not ensure, even until now, that *Sharī'ah* Advisors are not subjected to any undue influence, pressure and conflicting interests of the management. There are other issues that act as an obstacle, such as, legal right or status of the Board, authority for appointment of its members, its role and scope, decision making power, composition of its members, and so on.<sup>12</sup> A huge research gap exists in this area in Pakistan. Although a vast majority of the population is typically Muslims, yet very few rely on the Islamic Financial Institutions. Furthermore, customers are not clear about the role of *Sharī'ah* Advisory Board in the development of Islamic Financial Institutions and this aspect, too, is clarified in the present work- though not exhaustively.,

The present study, in the first instance, is related to the role of *Sharī'ah* Advisory Board in the development of Islamic financial institutions in Pakistan and, having such character, the results and findings cannot be extended to other countries. However, some help can be taken from the findings herein, owing to the existing commonalities among the *Sharī'ah* Advisory Boards of various states, i.e. composition of the Board, powers, functions and etc.

#### **Literature Review:**

The positive role of the *Sharī'ah* Advisory Board has been confirmed by many scholars in their work.<sup>13</sup> However, there are many prominent scholars, above all, those related to the field of Islamic banking and finance, who advocate the negative role of *Sharī'ah* Advisory Board. The list of these scholars include Zubair Farook and Mohammad Omar Farooq,<sup>14</sup> Saleh Md Arman<sup>15</sup>, Lutfullah Saqib, Mueen Aizaz Zafar, Khurram Khan, Kellie W. Roberts, and Aliya Mueen Zafar<sup>16</sup> and etc.

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<sup>11</sup> Khalid, S., & Amjad, S.. Risk management practices in Islamic banks of Pakistan. *The Journal of Risk Finance*, 13(2), 2012, 148-159.

<sup>12</sup> Bakar, Mohd Daud. "The Shari'a supervisory board and issues of Shari'a rulings and their harmonisation in Islamic banking and finance." *Islamic Finance: Innovation and Growth, London: Euromoney Books and Accounting and Auditing Association for Islamic Finance Institutions* (2002), 3-17.

<sup>13</sup> See for example the work of ..Qureshi, Asif Ahmed. "Analyzing the Sharia'ah compliant issues currently faced by Islamic insurance." *Interdisciplinary Journal of Contemporary Research in Business* 3, no. 5 (2011): 279-295; Abdullah Nadwi, Mohammad. "Analysing the Role of Shariah Supervisory Boards in Islamic Financial Institutions." (2012).

<sup>14</sup> Farook, Sayd Zubair, and Mohammad Omar Farooq. "Shariah governance for Islamic finance: Challenges and pragmatic solutions." *Electronic copy available at: <http://ssrn.com/abstract=1813483>* (2011).

<sup>15</sup> Arman, Saleh Md. "Shariah compliance features of Islamic financial institutions and its challenges." *Arabian Journal of Business and Management Review (OMAN Chapter)* 3, no. 4 (2013), 91.

<sup>16</sup> Saqib, Lutfullah, Mueen Aizaz Zafar, Khurram Khan, Kellie W. Roberts, and Aliya Mueen Zafar. "Local agricultural financing and Islamic banks: is Qard-al-Hassan a possible solution?." *Journal of Islamic Accounting and Business Research* 6, no. 1 (2015), 122-147.

**Positive Role of Islamic Law Scholars (*Sharī'ah* Advisory Board):**

Qureshi indicated, with solid arguments, the three stages related to the supervision and assessment of *Sharī'ah* Advisory Board in Islamic banking.<sup>17</sup> All these stages are vital in nature and, therefore, should be followed by the board.

State Bank of Pakistan, on the other hand, explained the role of *Sharī'ah* Supervisory Board, i.e. to ensure that all products and services, related policies and agreements, trainings and seminars etc. are in compliance with the *Sharī'ah*'s rules and principles.<sup>18</sup> Moreover, *Sharī'ah* Advisors are responsible, too, to check all the sources; principally those related to documents and information. Management, on the other hand, is made responsible to comply all related information as per *Sharī'ah*'s rules. Furthermore, *Sharī'ah* Advisor is required to review the operation of Islamic Financial Institutions, periodically, in coordination with officials for *Sharī'ah*'s injunctions.

Abdullah Nadwi examined the Board's duties like reviewing, directing and supervising activities, predominantly, those related to Islamic finance; guaranteeing their compliance with *Sharī'ah*.<sup>19</sup>

The major role of the board, in the view of some scholars, is to meticulously supervise various operations of the Islamic Financial Institutions. By keeping this close look, may put confidence in typical Muslim customers; compelling them to think that all financial products of Islamic banks are in compliance with the principles of Islamic commercial law.<sup>20</sup> In the view of Abdullah Nadwi, *Sharī'ah* Board has to ensure that the money, invested by the Islamic Financial Institutions, is in compliance with *Sharī'ah*.<sup>21</sup> Lahsasna had the same opinion regarding the function of the board.<sup>22</sup>

**Negative Role of Islamic Law Scholars (*Sharī'ah* Advisory Board):**

Abbas Mirakhor explains that Islamic Financial Institutions appoint their own *Sharī'ah* Advisors and, as a result, there is a lack of independence or neutrality that may ensure compliance of *Sharī'ah* principles in their true spirit.<sup>23</sup> In addition, such *Sharī'ah* Advisors may approve products and services, on face value, without much investigation in the light of Islamic commercial law. Owing to this, the financial products, offered by

<sup>17</sup> Qureshi, Asif Ahmed. "Analyzing the Sharia'ah compliant issues currently faced by Islamic insurance." *Interdisciplinary Journal of Contemporary Research in Business* 3, no. 5 (2011), 279-295.

<sup>18</sup> *Sharī'ah Governance Framework for Islamic Banking Institutions*, Islamic Banking Department State Bank of Pakistan, 2008, [http:// www.sbp.org.pk/ibd/2014/C3-Annex.pdf](http://www.sbp.org.pk/ibd/2014/C3-Annex.pdf)(accessed August 17, 2013).

<sup>19</sup> Abdullah Nadwi, Mohammad. "Analysing the Role of Shariah Supervisory Boards in Islamic Financial Institutions." (2012).

<sup>20</sup> Gomel, Giorgio, Angelo Cicogna, Domenico De Falco, Marco Valerio Della Penna, Lorenzo Di Bona De Sarzana, Angela Di Maria, Patrizia Di Natale et al. "Islamic Finance and Conventional Financial Systems-Market Trends, Supervisory Perspectives and Implications for Central Banking Activity." (2010).

<sup>21</sup> Abdullah Nadwi, Mohammad. "Analysing the Role of Shariah Supervisory Boards in Islamic Financial Institutions." (2012).

<sup>22</sup> Lahsasna, Ahcene. *Introduction to fatwa, Shariah supervision & governance in Islamic finance*. CERT Publications Sdn. Bhd., 2010.

<sup>23</sup> Abbas, Mirakhor. "Shortage of scholars troubles Islamic banking." *New York Times Business* (2008).

such institutions, are doubtful from *Sharī'ah*'s perspective. Arman Saleh Md<sup>24</sup> indicate, with solid arguments, the independence of *Sharī'ah* Board, and suggest an immediate need for proper regulations towards this – primarily from the State Bank of Pakistan. Sayd Zubair Farook and Mohammad Omar Farooq have examined the challenges faced by the Islamic Financial Industry like the shortage of *Sharī'ah* Advisors, their qualification issues, more importantly, high concentration on few top *Sharī'ah* scholars; serving the industry for the past two decades.<sup>25</sup> They also point out other ancillary issues i.e. their trainings, effective and efficient dealing in transactions, and linking up *Sharī'ah* practices with the modern economy on priority basis. Likewise, the issue regarding the composition of board must be co-opted through some effective mechanism by the management and shareholders of Islamic banks. Their research can be, indeed, used as a guideline for the development of Islamic banks and other Islamic financial institutions. Saleh Md Arman determine, on the other hand, the *Sharī'ah* compliance features of Islamic Financial Institutions and the various challenges.<sup>26</sup> He highlighted different issues related to the functioning of *Sharī'ah* Supervisory Board i.e. independence, competence, consistency, confidentiality and disclosure. He adds, at the same time, that *Sharī'ah* Advisory Board only watches *Harām* (prohibited ) transactions, rather than evaluating and monitoring minutely the performance of Islamic banks. He emphasizes that the lack of global uniformity in *Sharī'ah* practices, is, undeniably, a major drawback within Islamic Financial Institutions.

The shortage of scholars and qualified managers, locally and internationally, shows a lack of adequate manpower to run the Islamic Financial Institutions. Muhammad Iqbal and Lutfullah highlight the negative role of *Sharī'ah* Advisory board.<sup>27</sup> In their view,, every Islamic bank has a myriad of transactions of different nature, and, it is, of course, a daunting task for *Sharī'ah* Advisors to review all transactions in the light of *Sharī'ah*'s principles. The time factor is also involved herein. In addition, as indicated earlier, it is also a challenging task for *Sharī'ah* Advisors to understand closely the system of accounting and finance, owing to the fact that they have no proper specialization in these fields.

#### **Role of Islamic Law Scholars (*Sharī'ah* Advisory Board):**

The concept of Islamic *Sharī'ah* advisors is not a new phenomenon. It is started at the very early stage of Islam i.e. the period of the Holy Prophet (SAW). He (the Holy Prophet SAW) has issued instructions to the people for managing their dealings in trade in accordance with the principles of Islamic commercial Law. Keeping Following this guidance,, Islamic financial institutions operate as per *Sharī'ah*'s principles. However,

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<sup>24</sup> Arman, Saleh Md. "Shariah compliance features of Islamic financial institutions and its challenges." *Arabian Journal of Business and Management Review (OMAN Chapter)* 3, no. 4 (2013), 91.

<sup>25</sup> Farook, Sayd Zubair, and Mohammad Omar Farooq. "Shariah governance for Islamic finance: Challenges and pragmatic solutions." *Electronic copy available at: <http://ssrn.com/abstract=1813483>* (2011).

<sup>26</sup> Arman, Saleh Md. "Shariah compliance features of Islamic financial institutions and its challenges." *Arabian Journal of Business and Management Review (OMAN Chapter)* 3, no. 4 (2013), 91.

<sup>27</sup> Muhammad Iqbal and Lutfullah Saqib, *Malyeati Idari awar Shariah Advisory Board (Zaroorat Zabti Awar Tanqedi Jayeza)*, (Center for Excellence in Islamic Finance (CEIF), Institute of Management Sciences, Peshawar), 2017. ISBN No. 978-969-7653-00-3

the pointation of such guidelines (in the contemporary world) is provided by *Sharī'ah* advisors

### **Emergence of a Islamic Law Scholars (*Sharī'ah* Advisory Board) in Contemporary Financial Institutions:**

Islamic Financial Institutions have taken the world by storm. This commercial storm has extended its flow to almost sixty (60) countries; moving from the Islamic world to the non-Islamic. UK, for instance in this regard, has adopted Islamic banking (particularly for its Muslim citizens), followed by Singapore. Day by day Islamic Financial Institutions achieve a milestone; expanding their boundaries beyond imaginations. The Islamic Banks, by seeing the mirror from the other side, have speedily enhanced their network from home bases to globally. Some of the Middle East banks are now entering, too, in this industry.<sup>28</sup>

Over the past several decades, the growth of Islamic Financial Institutions has rapidly increased and garnered, by the same way, close attention all over the world. The concept of Islamic Financial Institutions, introduced in mid 1960s, now has a worldwide presence- though at marginal level.. Although, it has a remarkable growth both in Muslims and Non-Muslims countries, these institutions, unfortunately, face many barriers in an economic framework. Islamic Financial Institutions operate in different countries under different laws and schools of thoughts; meaning thereby the regulatory and supervisory frameworks vary considerably between countries. The example of Pakistan, Malaysia, Bahrain and UK cab cited as examples in this connection.. Except UK, all these countries have a majority Muslim population but, ironically, Islamic Finance have practiced differently in each case; owing to the fact of different regulatory and supervisory frameworks. The role of Malaysia, comparatively to other Muslim countries, in the development of Islamic Banking has been remarkable; highlighting many issues, such as the requirement of capital, information disclosure, risk management, the role of *Sharī'ah* supervisory boards, legal frameworks for IFIs and etc..<sup>29</sup>In Pakistan, on the other hand, efforts towards the formation of Islamic Financial Institutions have started in 1948, particularly, when the father of the nation, Mr. Muhammad Ali Jinnah, has emphasized the virtues of Islamic principles in commercial activities. In his historic address, at the inauguration of the State Bank of Pakistan, confirms the same:

*"I shall watch with keenness the work of your Organization in evolving banking practices compatible with Islamic ideas of social and economic life. We must work our destiny in our own way and present to the world an economic system based on the true Islamic concept of equality of manhood and social justice."*<sup>30</sup>

In Pakistan the period from 1980 to 1990 is very crucial for Islamic banking- after having a historic perspective. State Bank of Pakistan, for instance, has made an effort to herald a true and fair system in Islamic Financial Institutions by introducing three mechanisms. Firstly, setting up a *Sharī'ah* Board (which approves the guidelines and policies for IFIs); secondly, appointment of *Sharī'ah* advisors in all banks to provide

<sup>28</sup> Akhtar, Shamshad. "Building an effective Islamic financial system." *BIS Review* 38 (2007), 1-7.

<sup>29</sup> Laldin, Mohamad Akram, and Hafas Furqani. "Maqāsid Al-Sharī 'ah and Stipulation of Conditions (Shurūt) in Contracts." *ISRA International Journal of Islamic Finance* 195, no. 2632 (2014), 1-12.

<sup>30</sup> Khan, Zamir Akhtar. "Iqbal and Quaid's Vision of Pakistan." *The Dialogue* 5 (2010), 144.

guidance for products and services; satisfying the customers; and thirdly, incorporation of a *Sharī'ah* audit system.<sup>31</sup>

### **Critical Analysis of Islamic Law Scholars (*Sharī'ah* Advisory Board) in Islamic Financial Institutions:**

Islamic financial institutions follow *Sharī'ah*, particularly its commercial law, as a guideline in all commercial activities. *Sharī'ah* not only provides foundation and principles upon which the financial system rests but also offers, at the same time, direction to the industry. The role of *Sharī'ah* advisors as interpreters of *Sharī'ah*, while factually speaking, set the wheel (of Islamic financial system) in motion. Their main role is to imbue integrity and credibility to the Islamic Financial transactions – through the issuance of commercial verdicts. Their true and fair guidance, indeed, provides a big impetus to the industry's development. Moreover, they ensure public confidence over Islamic banking operation and procedures; by putting these according to *Sharī'ah* compliance.

### **Positive Role of Islamic Law Scholars (*Sharī'ah* Advisory Board) in the Development of Islamic Financial Institutions:**

*Sharī'ah* Board, primarily, is responsible to check the implementation of *Sharī'ah* aspects of commercial transactions offered by the Islamic Financial Institutions. Their products and services are certified by the *Sharī'ah* Board, too. In addition, *Sharī'ah* Board is also responsible to check *Sharī'ah* aspects of such commercial transactions at ground level. As the industry has grown up, predominantly, in the last two decades, *Sharī'ah* board roles have expanded too, and are, therefore, not just limited to advice. It is also responsible to issue certification for the innovative products. The ideal role of *Sharī'ah* Board is to have an eagle eyes on *Sharī'ah* governance; including supervision (*raqabah*), review (*mutāba'ah*), and pronouncements (*fatāwās*).<sup>32</sup>

*Sharī'ah* advisors face some challenges, particularly, after the development and growth of Islamic banks and other Islamic financial institutions. They need, for instance, to interact more with people and stakeholders for understanding their roles more efficiently. Their duties and responsibilities include, not exhaustively, advising Islamic financial institutions on *Sharī'ah* related issues, monitoring the activities, procedures, products and services, giving guidelines for framework designing, provision of training and etc. The above discussion shows the role *Sharī'ah* advisors at a wider level. There are some considerations, besides these, which are critical and, therefore, need to be observing red.<sup>33</sup> The following discussion may clarify the point with minute details.

Firstly, *Shari'ah* advisors need to ensure that all products are according to *Shari'ah*'s principles and standards. Additionally, it has to ensure applicability of various standards of different bodies like the Islamic Financial Services Board (IFSB), AAOIFI

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<sup>31</sup> Akhtar, Shamshad. "Islamic finance: Emerging challenges of supervision." *4th Islamic Services Board Summit held at Dubai, United Arab Emirates on May 15 (2007)*.

<sup>32</sup> Hasan, Zulkifli. "A survey on Shari'ah governance practices in Malaysia, GCC countries and the UK: Critical appraisal." *International Journal of Islamic and Middle Eastern Finance and Management* 4, no. 1 (2011), 30-51.

<sup>33</sup> Laldin, Mohamad Akram, and Hafas Furqani. "Maqāsid Al-Sharī 'ah and Stipulation of Conditions (Shurūt) in Contracts." *ISRA International Journal of Islamic Finance* 195, no. 2632 (2014), 1-12.

(Accounting and Auditing Organization for Islamic Financial Institutions)<sup>34</sup>, *Shari'ah* council of central banks and etc. Secondly, *Shari'ah* advisors need to ensure that decisions of *Shari'ah* Board are understood by the practitioners for the appropriate and timely implementation. Moreover, *Shari'ah* Board is also responsible to educate the practitioners on *Shari'ah* principles so that both sides work properly towards *Shari'ah* compliance at operational and procedural levels.. There is also a dire need to conduct training of *Shari'ah* advisors and engage them, on the same way, in close relationship with the employees of IFIs. This may, indeed, enhance employees' understanding of *Shari'ah* and *fiqh*. This approach would, certainly, increase the quality of various financial products offered by the Islamic banks and other Islamic financial institutions. Thirdly, *Shari'ah* advisors need to be competent in the analysis of different documents, predominant, those related to the transactions and products; as any mis-understanding or negligence, in this connection, can result on compliance with *Shari'ah*. In addition, *Shari'ah* advisors must have sufficient knowledge of *Shari'ah*'s operations and procedures. They are also supposed to be in each transaction- ideally from the early stage to its conclusion. They need to ensure clarity in the application of *Shari'ah*'s principles as applied in documents and that the contract, too, at the same time, is fair and just for both the parties. However, due to the shortage of *Shari'ah* advisors and the burden of work, it is not really so.<sup>35</sup> Fourthly, they have to ensure that products are used with a positive intent by all potential customers. Moreover, they must be firm and strict so as not to allow any prohibited or doubtful activity, or one that involves legal deception (*hiyal*).<sup>36</sup> In addition *Shari'ah* scholars are supposed to work for the development and strengthening IFI's governance. Their duty also includes *audit* of IFIs, protecting the shareholders' rights and ensuring the accountability of the financial institutions.

#### **Negative Role of Islamic Law Scholars (*Shari'ah* Advisory Board) in the Development of Islamic Financial Institutions:**

Generally, *Shari'ah* advisors are only concerned with the approval of products and services, offered by the Islamic financial institutions. They are not supposed, under any stretch of explanation, to evaluate the profitability of the banks and their performance with the same approach, they are also not concerned about the social and economic objectives, such as, minimizing the level of unemployment, poverty alleviation, economic development, ethics, moral values, price stability, increase in economic growth and etc.. They, on the other hand, only monitor the means of transaction not the ends – and this is their real job description. Their job description, in the real sense, minimizes their

<sup>34</sup> The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is an Islamic international autonomous non-for-profit corporate body that prepares accounting, auditing, governance, ethics and Shari'a standards for Islamic financial institutions and the industry. Professional qualification programs (notably CIPA, the Shari'a Adviser and Auditor "CSAA", and the corporate compliance program) are presented now by AAOIFI in its efforts to enhance the industry's human resources base and governance structures. This institution was established in accordance with the Agreement of Association which was signed by Islamic financial institutions on 1 Safar, 1410H corresponding to 26 February, 1990 in Algiers. Then, it was registered on 11 Ramadan 1411 corresponding to 27 March, 1991 in the State of Bahrain. <http://www.aaofi.com> (accessed: December 25, 2011).

<sup>35</sup> Laldin, Mohamad Akram, and Hafas Furqani. "Maqāsid Al-Sharī 'ah and Stipulation of Conditions (Shurūt) in Contracts." *ISRA International Journal of Islamic Finance* 195, no. 2632 (2014), 1-12.

<sup>36</sup> Shaharuddin, Amir. "Harmonizing Shari'ah Rulings in Islamic Finance: Strategies and Challenges." *The Journal of Muamalat and Islamic Finance Research* 204, no. 3959 (2015), 1-9.



interference in many commercial activities of Islamic banks and other Islamic financial institutions. Similarly, there are no specific standards which are globally acceptable for Islamic Financial Institutions; and owing to this fact *Sharī'ah* advisors do not have appropriate guideline for checking a transaction in the perspective of Islamic commercial law. Besides, there are inbuilt issues in terms of qualifications and training of existing scholars. They, for instance, not familiar with the contemporary complex knowledge of finance and accounting.<sup>37</sup> Just as there is a shortage of *Sharī'ah* scholars, likewise there is a paucity of qualified *Sharī'ah* advisor locally and internationally.. *Sharī'ah* advisor do not follow the *Maqāsid-al- Sharī'ah* (objectives of *Sharī'ah*) while checking compliance of various transactions. Such objectives are clearly elaborated by the classical Muslim jurists in their work. These jurists include Imām al-Shawkānī<sup>38</sup>, Imām al-Kāsānī<sup>39</sup>, Ibn Qudāmah al-Maqdisī<sup>40</sup>, Abū al-Walīd Muhammad ibn Ahmad ibn Rushd<sup>41</sup>, Imām Muhammad ibn Ahmad ibn Abī Sahal al-Sarkhasī<sup>42</sup>, and Ibn 'Ābidīn<sup>43</sup>. These objectives, primarily, includes *ta'āwun* (mutual help), *Ihsān* (benevolence), *'adl* (fairness and justice), *amānah* (trust), *ukhuwwah* (brotherhood) and etc.<sup>44</sup> All these objectives, as per Islamic commercial law, should be inculcated in all commercial transactions i.e. *Murābahah* (sale with cost plus profit), *Musāwamah* (bargaining contract), *Salam* (advance payment sale), *Mushārahah* (partnership)<sup>45</sup>, *Diminishing Mushārahah* (partnership that comes to an end at sale), *Musāqah* (watering contract), and *Muzārah* (share cropping), *Ijarah* ( hiring)<sup>46</sup> and etc.

<sup>37</sup> Muhammad Iqbal and Lutfullah Saqib, *Malyeati Idari awar Shariah Advisory Board (Zaroorat Zabti Awar Tanqedi Jayeza)*, (Center for Excellence in Islamic Finance (CEIF), Institute of Management Sciences, Peshawar), 2017. ISBN No.978-969-7653-00-3.

<sup>38</sup>Shawkānī, *Nayl al-Awtār*, (Dār Ehiā al-Tourath al-'Arabī, 1<sup>st</sup> Edition.2001).

<sup>39</sup>Abū Bakr ibn Mas'ūd al-Kāsānī, *Bādā'i' al-Sanā'i'*, 1<sup>st</sup> Edition, (Beirut: Dār al-Fikr Labnan, 1996), Kitāb-al Sharikah.

<sup>40</sup>Ibn Qudāmah al-Maqdisī, *Al-Kaḥf*, 5<sup>th</sup> Edition, (Beirut: Al-Maktab al-Islāmī, 1988).

<sup>41</sup> Abū al-Walīd Muhammad ibn Ahmad ibn Rushd, *Bidāyāt al-Mujtahid wa Nihāyāt al-Muqtasid*, Vol. 2, 1st Edition. (Beirut: Dār al-Fikr Labnan, 2003).

<sup>42</sup>Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, *Al-Mabsūt*, (Beirut: Dar-Ehyā al-Turāth al-Arabī, Edition.2002).

<sup>43</sup>Ibn 'Ābidīn, *Radd al-Muhtār*, vol. 6, (Beirut: Dār al-Fikr, 2005).

<sup>44</sup> Yūsuf al-Qardāwī adds social welfare, and support, freedom, human dignity, and human fraternity to the classical list of *Maqāsid-al- Sharī'ah*.....Mohammad Hashim Kamali,*Maqasid al Shariah: The Objectives of Islamic Law*, <http://www.sunniforum.com/forum/showthread.php?6176-Maqasid-al-Shariah-The-Objectives-of-Islamic-Law>(accessed: 25th August, 2014).

<sup>45</sup> *Sharikāt* is an Arabic word literally meaning mixing or *Ikhtilāt*. "Most of the partners are transgressing on each other. (*Al-Qur'ān, Saad:24*). *Sharikāt*, in Islamic jurisprudence, is used for describing a contract of partnership. It is defined as, "a contract between two or more persons for participation in capital and its profit". (Ibn 'Ābidīn, *Raddul al-Muhtār*, Beirut: Dār al-Fikr, 2005, vol.6, p-208.)The *Sharikāt* can be divided into three classes i.e. *Sharikat-ul-Ibāha* (common sharing of things), *Sharikat-ul-Milk* (co-ownership) and *Sharikat-ul-'Aqd* (partnership through contract).

<sup>46</sup> The word "*Ijarah*" is an Arabic word, equivalent of the English word "lease" and means "to give something on rent" (Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, Editon August 2008 p.157) Here the word "something" denotes benefits and services. As for as the technical meaning is concerned, the jurists have different understanding of the transaction. According to Ibn Qudāmah al- Maqdisī "it is the sale of usufructs". Ibn Qudāmah al-Maqdisī, *Al-Kaḥf*, 5<sup>th</sup> Edition, (Beirut: Al-Maktab al-Islāmī, 1988). Kitāb-al- *Ijarah*, vol.2, p.300) In view of Imām al-Kāsānī, "it is a contract on usufructs for a known consideration" Abū Bakr ibn Mas'ūd al-Kāsānī, *Bādā'i' al-Sanā'i'*, 1<sup>st</sup> Edition, (Beirut: Dār al-Fikr Labnan, 1996), vol.4, 256.

### Methodology:

Qualitative approach has been adopted in the present work for explaining the role of *Sharī'ah* Advisory board in the development of Islamic Financial Institutions, followed by convenience sampling techniques. Interpretive paradigm and induction research process has been used for the investigation of the issue under discussion.. A convenience sampling technique, of course, is appropriate for the selection of sample of population.<sup>47</sup> *Sharī'ah* Advisors are selected form the list offered by the Securities and Exchange Commission of Pakistan (SECP). Such list contains SECP *Sharī'ah* regulations list contains twenty seven (27) males *Sharī'ah* Advisors. However, list indicates that there is no female *Sharī'ah* Advisor – an ironical fact therein. Data has been collected through one-on-one, face to face, interviews, whereby seven (7) *Sharī'ah* Advisors have been asked semi structured questions and probing questions; based on their responses regarding the issue under discussion.

Interview sessions are held at *Sharī'ah* Advisors' offices, followed by audio recording and subsequently transcribed. Moreover, semi structured interviews have been used in this study. In other words, each participant is asked through the same research questions and information has further explored through follow up questions, primarily, on the basis of their responses. Moreover, this approach is focused on the respondent's point of view rather than making generalizations. Interview questions are, principally, related to the positive and negative role of *Sharī'ah* Advisor in the development of Islamic Financial Institutions. The English language is used for the collection of data.. In addition, data analysis is established through an inductive approach; as guided by available literature. One of the most commonly used form of analysis is thematic analysis; generally defined as a method of analyzing, identifying and recording the data from participants, culminating into codes, and finally themes.<sup>48</sup> The data obtained from in-depth interviews is, then, analyzed using NVIVO 11.

### Results and Discussion:

**Table: Demographics<sup>49</sup>**

Sr No	Respondents	Length of service	Gender	Age	Institutes	Location
1	R1	6	M	40	A1	Lahore
2	R2	4	M	35	B2	Lahore
3	R3	2	M	40	C3	Lahore
4	R4	4	M	34	D4	Lahore
5	R5	10	M	40	E5	Lahore
6	R6	14	M	41	F6	Lahore
7	R7	5	M	34	G7	Lahore

<sup>47</sup> Marshall, Martin N. "Sampling for qualitative research." *Family practice* 13, no. 6 (1996): 522-526.

<sup>48</sup> Braun, Virginia, and Victoria Clarke. "Using thematic analysis in psychology." *Qualitative research in psychology* 3, no. 2 (2006), 77-101.

<sup>49</sup> While preparing the table, help has been taken from the work of Y. Hummaira Qudsia (Yousaf Hummaira Qudsia) , M. Rehman (Muqaddas Rehman)...see for for further details Y. Hummaira Qudsia (Yousaf Hummaira Qudsia)1 , M. Rehman (Muqaddas Rehman), Explore the Factors Affecting Behavioral and Psychological Changes On Obstetricians/Gynecologists in Maternal Health Care Center, *Clinical Social Work and Health Intervention* Volume: 9 Issue: 3: 24–35.

**Table:**

Sr No	Themes	Positive	Negative
1	Independence	R4	R7,R1,R3,R5
2	Shortage of <i>Sharī'ah</i> supervisors		R4,R2,R6
3	Competence		R1,R3,R4,R5,R6
4	Consistency		R3, R7
5	Confidentiality & Disclosure	R6	R2,R4,R5,
6	Supervision	R4,R2,R6	R5

During interviews, *Sharī'ah* advisors are asked to openly share their views, experiences regarding the role of a *Sharī'ah* supervisor in the development of Islamic banks and other Islamic financial institutions. Their answer contains both aspects of their role i.e. positive role and negative role.

**Independence:**

Research indicates that the role of *Sharī'ah* advisors creates a dual relationship; owing to the fact that they supervise and operate as an assessor on the basis of remunerated services; creating a possible conflict of interest.<sup>50</sup> Respondents indicate;

*“Sharī'ah advisors are employed by Islamic Financial Institutions; therefore, they have financial interest with these institutions.” (R7)*

*“Sharī'ah advisors’ remuneration is proposed by the management and the Board. They are, therefore, liable for reporting to the Board of Director. This fact plays a negative role in the development of IFIs.”(R1)*

*“We (the Sharī'ah advisors) do not examine the operations independently. Being employee of the financial institutions, we should care, too, about their interest.t.”(R3)*

*“Islamic Financial Institutions appoint their own Sharī'ah Advisor and ,hence, there is a lack of independence or neutrality to encourage compliance with Sharī'ah principles.”(R5)*

*“I (as Sharī'ah advisors) ignore the financial interest and always try to work as a neutral person. (R4)*

**Shortage of Islamic Law Scholars:**

Sayd Zubair Farooq and Mohammad Omar Farooq have examined the challenges faced by the Islamic Financial Industry like the shortage of *Sharī'ah* Advisors, their qualification issues and high concentration of few top scholars; serving the

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<sup>50</sup> Arman, Saleh Md. "Shariah compliance features of Islamic financial institutions and its challenges." *Arabian Journal of Business and Management Review (OMAN Chapter)* 3, no. 4 (2013), 91.

industry.<sup>51</sup> When the Sharī'ah advisors are asked about the same, they have the following reply.

*"I think that there is shortage of Sharī'ah Advisors in Islamic Financial Industry. I would like to share a report herein, conducted in 2011 by Murat, founding that there are only 1141 Sharī'ah Advisory Boards in 28 countries; an average board size of 3.33 scholars per Board."*(R4)

*"Practically speaking, it's impossible for any Sharī'ah Advisor to physically check all transaction of his financial institutions.."*(R2)

*"I always take challenges, but due to shortage of time I cannot fully contribute in the development of IFIs."*(R6)

#### **Competence of Islamic Law Scholars:**

To a question about the competence of Sharī'ah advisors, including complete knowledge of (*Fiqh al- Muamālat*), Islamic Commercial laws and accounting practices, the respondents have the following remarks:

*"Sharī'ah advisor must be competent in monitoring all transactions from start to the end of transactions and should possess, at the same time, the capability to derive legal rulings."*(R1)

*"To be very frank over the issue, there is a lack of complete knowledge, skills and abilities in Sharī'ah advisors. They, for instance, don't know about the conventional products and services- sometime at all. Ironically, some of them don't have knowledge of Islamic commercial laws even."*(R5)

*"Mostly, Sharī'ah advisors only know about the Sharī'ah rules and regulations, however, they don't have the knowledge of accounting and finance. It is because of this reason that they sometime approve financial products without due investigation."*(R6)

*"in my humble opinion ( as a Sharī'ah advisors) , the State Bank of Pakistan must start awareness campaigns, start training sessions and introduce relevant courses in the curriculum for enhancing the competency level of Sharī'ah advisor. "*(R3)

*"Very few scholars are well- versed in various aspects of Sharī'ah like Fiqh al- Muamālat, and usul al- fiqh and etc"* (R4)

#### **Consistency:**

*"I observe that there is a lack of consistency among the Sharī'ah advisors of financial institutions regarding Sharī'ah compliance of a specific commercial transaction. In other words, they have different opinion regarding the Sharī'ah compliance of the same transaction. ."*(R3)

*"I experience, as a Sharī'ah advisor, that there are huge conflicting opinions on admissibility of specific financial instruments or transactions."*(R7)

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<sup>51</sup> Farook, Sayd Zubair, and Mohammad Omar Farooq. "Shariah governance for Islamic finance: Challenges and pragmatic solutions." *Electronic copy available at: <http://ssrn.com/abstract=1813483>* (2011).

### **Confidentiality & Disclosure:**

*Sharī'ah* advisors are bound to keep various information of Islamic financial institutions information secrets such as rules, regulations, financial data, reports resolutions and etc.<sup>52</sup> Upon asking the same question, *Sharī'ah* advisors give the following response:

*"Practically speaking, Sharī'ah advisors provide services, at a time, to many financial institutions. In such a situation, it would be hardly impossible for a Sharī'ah advisor to keep secrecy of a financial institution. ."*(R2)

*"As a Sharī'ah advisor, I suggest that, supreme authorities must maintain balance between transparency and confidentiality."*(R4)

*"in my humble opinion, as a Sharī'ah advisor, limited disclosure of Islamic financial institutions would not support building confidence in Shariah compliance."*(R5)

*"Shari'ah board must also make sure that confidential information, received in the course of their duties, remains confidential."*(R6)

### **Supervision and Islamic Law Scholars:**

*Sharī'ah* advisors are responsible for reviewing, directing and supervising activities, related to the Islamic finance for ensuring compliance with *Sharī'ah*.<sup>53</sup> While commenting on this role, *Sharī'ah* advisors have the following opinion.

*"Our role (as Shari'ah advisors) is to supervise and approve the transactions, financial instruments, products and services. This primarily role should not be compromised."*(R1)

*"I am (as a Shari'ah advisor) responsible to monitor and supervise my institute on new situations, reported by different departments, branches or customers for ensuring the Sharī'ah compliance before implementation."*(R3)

*In my humble opinion as a Shari'ah advisor, , my role in the process of supervision and monitoring starts from approving the transaction till end of the transaction. However, I am not able to perform this role effectively due to excessive burden of work."*(R5)

*"My role, as a Shari'ah advisor, is to certify all the documents, reports, contracts and administrative decisions."*(R6)

### **Institutional Implications of Research:**

The findings, herein, indicate that there are different issues related to the role of *Sharī'ah* advisors. All these issues contain both positive and negative aspects, however, the negative aspect is predominant in nature.. The later one creates a very negative impact on the development of Islamic Financial Institutions. This negative role, of course, is related to many issues i.e. Independence, trainings, education, shortage of *Sharī'ah*

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<sup>52</sup> Laldin, Mohamad Akram, and Hafas Furqani. "Maqāsid Al-Sharī 'ah and Stipulation of Conditions (Shurūt) in Contracts." *ISRA International Journal of Islamic Finance* 195, no. 2632 (2014), 1-12.

<sup>53</sup> Lahsasna, Ahcene. *Introduction to fatwa, Shariah supervision & governance in Islamic finance*. CERT Publications Sdn. Bhd, 2010.

scholars, conflict between *Sharī'ah* scholars and institutional staff, competency, confidentiality, monitoring of SBP and etc.. These issues threaten the future growth opportunities of Islamic financial Institutions and, thus, have implications for policy makers. Based on the findings, the study recommends some practical solutions to help out the policy makers for overcoming these issues. The recommendations include, not exhaustively, enhancing *Sharī'ah* scholars' level of competency, investment in educational infrastructure, outsourcing the *Sharī'ah* audit and accounting, and prepare and etc. State Bank of Pakistan, as a regulatory body, must re-configure the criteria for hiring the *Sharī'ah* advisors. It must have to establish training institutions for the development of Islamic banks and other Islamic financial institutions. ,

#### **Future Research:**

The findings of this study have opened ways for future research, particularly, in those areas which are indispensable for the development of *Sharī'ah* advisory board of Islamic banks. It necessitates that kind of reach where *Sharī'ah* advisory board's role of various banks is critically analyzed and compared. This may enhance the governance system of *Sharī'ah* advisory boards – at different level and stages. An effective academic help, both at strategic and operational levels, can be taken from the Bank Negara – the central bank of Malaysia. The role of *Sharī'ah* advisory boards, therein, is more effective in the development of Islamic banks comparatively to other countries. The same help can be extracted from the central bank of Iran.

#### **Limitations:**

The study utilizes the small sample size of Seven *Sharī'ah* advisors from Pakistan. All these *Sharī'ah* advisors are registered with the Securities and Exchange Commission of Pakistan. This approach is intentionally made to keep the reliability and genuineness of the present work. The validity of the study, however, primarily, depends upon the interpretation of interviews; which are transcribed and showed to the respondents for their agreement. Study only used some themes to check positive and negative role of *Sharī'ah* advisors, however, many are left, at the same time, keeping in view the possible length of the paper. The main limitations of this research, besides above, are population size and sampling strategy. Despite having such limitations, the present work has the potential to contribute to the existing body of knowledge; by opening new dimensions to the potential researchers.

#### **Conclusion:**

*Sharī'ah advisors* are the intrinsic component of the financial institutions' industry; aiming to set out the directions for pure Islamic banking and finance.. *Sharī'ah* Board and *Sharī'ah* advisors are the key constituents to ensure *Sharī'ah* compliance – phenomena which is closely aligns to the integrity and credibility of the Islamic institutions. The purpose of this study is , therefore, to examine, primarily, the role of *Sharī'ah* advisors in the development of Islamic Financial Institutions in Pakistan. There are variety of responsibilities and tasks, too, which are performed by *Sharī'ah* advisors – by one way or another. The Islamic industry, indeed, looks to them for effective supervision and commitment; keeping their commercial activities as per guidance of Islamic commercial law.. The positive and negative role of *Sharī'ah* advisors have been highlighted, herein, in the present endeavor. The results reveal that the negative role of *Sharī'ah* advisor is predominant in nature comparatively to its positive role. There are many reasons responsible for this undesirable situation; have to be overcome both at strategic and operational levels. These reasons include, not exhaustively, independence,

trainings, education, shortage of *Sharī'ah* scholars, conflict between *Sharī'ah* scholars and institutional staff, competency and confidentiality and etc. *Sharī'ah* advisors are concerned only with the permissibility of the transaction; meaning there by that they hardly view other factors which are having indispensable character to be checked form *Sharī'ah*'s perspective. Due to the shortage of *Sharī'ah* advisors, they are, of course, not able to give complete awareness about the *Halāl* liquidity instruments like treasury bills and other market instruments. In a nutshell, this study reveals it clearly that the existing role of *Sharī'ah* advisor is very much negative in nature; leaving a substantive space for improvement. Furthermore, there is lack of achieving harmonization and uniform *Sharī'ah* interpretation of the same commercial transactions. It is the responsibility of the State Bank of Pakistan, as a regulatory body, to initiate concrete steps for dragging the positive role of *Sharī'ah* advisors from that of negative. These steps may include appointment criterion of *Sharī'ah* advisors, their proper training through the arrangement of seminars, workshops and conferences, their supervisor, provision of facilities and privileges and etc. All these, indeed, would pave a way for the positive role of *Sharī'ah* advisors in the development of Islamic banks and other Islamic financial institutions.

#### **APPENDIX:**

##### **Interview Protocol**

We, the authors, are very much thankful to you for your participation. We are conducting this research on “THE ROLE OF ISLAMIC LAW SCHOLARS (*SHARĪ'AH* ADVISORS) IN THE DEVELOPMENT OF ISLAMIC COMMERCIAL INSTITUTIONS IN PAKISTAN( PERSPECTIVE OF ISLAMIC COMMERCIAL LAW)”. This interview will take almost 30 to 40 minutes of your precious time. Information, collected in this interview, is to be used only for academic and research purposes. Moreover, all opinion, posted during the interview, is also supposed to be kept highly confidential. Your cooperation, in this endeavor, is to be highly appreciated.

##### **Interview Guide:**

###### **Personal Information:**

Age: ..... Institution: .....  
Length of service: ..... Residual: .....  
Gender: .....

###### **Supervision:**

- What role does the *sharī'ah* advisory board can play in the development of Islamic banks?
- What are the various requirements placed on the financial institutions in relation to the operations of *Shari'ah* advisors?
- What are the responsibilities of *Shari'ah* advisors in relation to a financial institution?
- Do you think that the *Shari'ah* advisors are independent?
- How does the State Bank monitor the working of *Shari'ah* advisors?

###### **Competence:**

- What are the settled criteria set out by the State Bank for the appointment of *Shari'ah* advisors?
- Is staff required to obtain training in Islamic financing?
- What type of training (financial or *Shari'ah* related) you have been undertaken since joining the organization?
- What are the minimum qualifications required for a *Shari'ah* advisors?

- What role do you think a competent *Shari'ah* advisors needs to play in the development of Islamic banking?

**Consistency:**

- What is the process in the Islamic financial institutions for the introduction of new Islamic products?
- What kind of role can be played by the regulatory bodies regarding the consistency of operations in Islamic banks?
- Is there consistency in the new commercial products?

**Shortage of Shari'ah advisors:**

- Do you think that *Shari'ah* advisors' numbers are less than the required?
- Do you think that One *Shari'ah* advisors can easily handle any critical situation regarding emerging issues?
- Do you feel that *Shari'ah* advisors have sufficient time to monitor all transactions of a financial institution?
- Do you feel *Shari'ah* advisors are facing burden in their work?

**Confidentiality & Disclosure:**

- In your opinion, what are the possible consequences for disclosing the confidential information?
- What steps can be taken to handle the confidentiality challenges

**Other Suggestions:**

Is there anything else that you would like to share?