Shari’ah Governance of Islamic Banks in Bangladesh
Issues and Challenges

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Abstract

This study examines the shari’ah governance structure of Islamic banks in Bangladesh, analyses associated issues and challenges, and provides some suggestions for improvements. Primary data for this study were gathered through semi-structured interviews conducted with Islamic banking practitioners and shari’ah scholars. The study found that the shari’ah governance system in Bangladesh is largely based on voluntary initiatives by Islamic banks. Every Islamic bank in Bangladesh, including fully-fledged Islamic banks and Islamic banking windows, have a shari’ah supervisory committee, even though this is not mandated by the central bank. Every Islamic bank conducts shari’ah audits for its shari’ah supervisory committee. Nevertheless, the boards of directors are ultimately responsible for ensuring the shari’ah compliance of their banks, as required by the central bank. There is a central shari’ah board for Islamic banks in Bangladesh, the Central Shari’ah Board for Islamic Banks of Bangladesh (CSBIB), although it is not formally recognized by the country’s central bank. It is thus not mandatory for Islamic banks to heed the CSBIB. Nevertheless, Islamic banks generally do not contravene shari’ah resolutions issued by the CSBIB, due to risks to their reputation. In order to improve the shari’ah governance system, Bangladesh’s government should enact a law for the operation of Islamic banks. Moreover, the central bank should improve its guidelines for Islamic banking operations and should recognize the CSBIB so that the latter can supervise and oversee shari’ah supervision and audits of Islamic banks in Bangladesh.

Keywords: Islamic banking, shari’ah governance, shari’ah scholar, regulation, Bangladesh.

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1. Introduction

Bangladesh is a prominent centre of Islamic banking in South Asia. It initiated Islamic banking in 1983 and Islamic banks currently hold approximately one fifth of the market share of its banking industry. However, little is known about its shari’ah governance system. There is no separate law for the operation of Islamic banking in Bangladesh. Bangladesh Bank (BB), the central bank of Bangladesh, regulates both Islamic and conventional banks. Recently, BB issued a set of guidelines on the operation of Islamic banking in Bangladesh which have gained the attention of researchers and the global Islamic banking community (BMB Islamic, 2011). This is because, according to these guidelines, it is not mandatory for an Islamic bank to have a shari’ah supervisory committee. Therefore, this study examines the shari’ah governance system for Islamic banking in Bangladesh, analyses its issues and challenges, and makes specific recommendations for further development. This paper first provides a definition of shari’ah governance, its research methodology, and an overview of the development of Islamic banking in Bangladesh. It then discusses the shari’ah governance system and associated issues and challenges, followed by suggestions for improvement.

2. Definition of Shari’ah Governance

Although the term “shari’ah governance” is used in numerous studies, few provide a concise definition of it (Hasan, 2011). Ginena and Hamid (2015) define shari’ah governance as the overall system that manages how the activities and transactions of Islamic banks and financial institutions conform to the precepts of shari’ah. According to the Islamic Financial Services Board (2009), a shari’ah governance system refers to “…the set of institutional and organisational arrangements through which an Islamic financial institution ensures that there is effective independent oversight of Sharī`ah compliance over each of the following structures and processes.” These structures and processes are: (a) issuance of relevant shari`ah pronouncements and resolutions; (b) dissemination of information on shari`ah pronouncements and resolutions to the operative personnel of the Islamic financial institution (IFI) who monitor day-to-day compliance with shari`ah pronouncements and resolutions; (c) an internal shari`ah compliance review or audit; and (d) an annual shari`ah compliance review and audit to verify that internal shari`ah compliance reviews and audits have been appropriately performed and their findings duly noted by the shari`ah board (Islamic Financial Services Board, 2009).

The main objective of shari’ah governance is to promote the adoption of all shari’ah requirements by all IFIs. The adoption of sound shari’ah requirements ensures that the business of an IFI is managed prudently and soundly and, where shari’ah compliance
aspects of the business are appropriately upheld, to protect the interests of shareholders, depositors, customers and all relevant stakeholders of the IFI. Therefore, it is crucial to have guidelines for shari’ah requirements in a standard form so that all IFIs can follow them and be monitored by the shari’ah committee and the regulatory body. A jurisdiction that has a shari’ah governance framework is Malaysia, spelled out in its Islamic Financial Services Act 2013 (IFSA). Some sections of IFSA lay out shari’ah requirements to be followed by IFIs in Malaysia. Shari’ah committees must be appointed by the IFIs to supervise the shari’ah aspects of their business. The responsibilities of shari’ah committees include the endorsement of the IFI’s products, zakah matters, and post-product implementation. These responsibilities should be performed by shari’ah scholars with appropriate expertise, including usul al-fiqh and fiqh al-muamalat.

3. Islamic Banking in Bangladesh: an Overview

The first Islamic bank in Bangladesh, Islami Bank Bangladesh Ltd, was launched in 1983 as a private commercial bank through the initiative of some Muslim business entrepreneurs with the assistance of the government of Bangladesh and some international Islamic financial institutions. From its inception, Islamic banking in Bangladesh has steadily developed due to the overwhelming response of the Muslim public in Bangladesh. Following the success of the Islami Bank Bangladesh, the second Islamic bank in Bangladesh—Al-Baraka Bank Bangladesh Ltd—was founded in 1987. This bank was recently renamed ICB Islamic Bank Ltd. A number of conventional banks started to open Islamic banking “windows” from 1995. Prime Bank Ltd was the first conventional bank to do so (Islam, 2010; Mohon, 2011; Mannan, 2010; Sarker, 2005; BMB Islamic, 2011). In 2017, out of the 47 banks in Bangladesh, eight are fully-fledged Islamic banks with more than 750 branches throughout the country. In addition, 16 conventional banks provide Islamic banking branches (Yousuf et al., 2014; Khan, 2014; Akbar, 2014).

The takaful industry was introduced in Bangladesh in 1999. Islami Insurance Bangladesh Ltd was the first general takaful operator in Bangladesh. From this beginning, takaful companies have expanded rapidly in Bangladesh. In 2004, they had US$24 million in assets, 7% of the total assets of the insurance sector in Bangladesh. Bangladesh in 2010 had six fully-fledged takaful operators and 13 window operations for takaful from conventional insurers (Ali, 2010; Islami Insurance Bangladesh Limited, 2015). However, Bangladesh still lacks an Islamic capital market. Until now, only two notable sukuk were issued. IBBL issued a BDT 3000 million mudarabah perpetual bond, and the Bangladeshi government issued Islamic investment bonds based on mudarabah
Currently, the introduction of an Islamic capital market is under discussion among academics and policy makers (Islamic Financial Services Board, 2015; BMB Islamic, 2011; Azad et al., 2013).

Islamic banks in Bangladesh offer various forms of deposit and investment products and services. Notable deposit products are the al-wadi’ah current account, mudarabah savings account, mudarabah term deposit account, mudarabah hajj savings account, mudarabah special savings (pension) account, mudarabah waqf cash deposit account, mudarabah foreign currency deposit account, and mudarabah savings bond. The financing products are the car investment scheme, construction and housing investment, small business investment scheme, agricultural investment scheme, women-entrepreneurs’ investment scheme, non-resident Bangladeshi entrepreneurs’ investment scheme, export financing, and import financing. The underlying contracts in these products are typically bay’-murabahah, bay’-istijrar, bay’-mu’ajjal, bay’-salam, istisna‘, musharakah and hire-purchase under shirkat al-milk. Other significant services are foreign exchange business, trade financing, remittance cards, micro-financing, SME service, locker service, Islamic debit cards, Islamic credit cards, and ATM services (Islami Bank Bangladesh Limited, 2013; Social Islami Bank Limited, 2013; Rahman, 2010; Mohon, 2011).

A recent notable infrastructure development in Bangladesh is the launch of the Islamic Interbank Money Market (IIMM). After a long period of waiting, Islamic banks in Bangladesh can now manage funding through IIMM. However, Bangladesh still lacks a sukuk market. The government is expected to make necessary amendments to sukuk regulation to develop a sukuk market in Bangladesh (Vizcaino and Quadir, 2012). Apart from that, Bangladesh is mostly known for microfinance. Revising the Grameen Bank’s interest-based model, a number of Islamic microfinance institutions have already started operating in rural Bangladesh (BMB Islamic, 2011).

According to BB’s financial stability report, basic financial indicators indicate a strong financial position and great possibility for Islamic banks in Bangladesh. In 2012, Islamic banks managed to achieve higher profits than conventional banks. The profit income to total asset ratio of Islamic banks was 9.74%, greater than the industry average of 8.14%. The return on asset (ROA) of Islamic banks was 1.13, compared to 0.84 for the banking industry as a whole. The return on equity (ROE) for Islamic banks reached 16.81%, which was higher than the ROE of the total banking sector, 10.56%. On the other hand, the non-performing proportion of the total investment of Islamic banks was only 3.9%, while for the conventional banks it was 10% (Bangladesh Bank, 2013).
4. Research Methodology

Qualitative semi-structured interviews were conducted with Islamic banking practitioners, the shari’ah officers of Islamic banks, and shari’ah committee members of IFIs to acquire first-hand information on shari’ah governance practices. Table (1) below details the interviewees for this study.

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<td>A. Q. M. Safiullah Arif</td>
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<td>Mohammad Sadequl Islam</td>
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<td>Md. Farid Uddin</td>
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<td>Nurul Kabir</td>
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<td>Sheikh Mahmudur Rahman</td>
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Documentary analysis was also conducted to understand the legal and regulatory arrangements of shari’ah governance. Secondary data were collected through reviewing articles, books and publications of and about IFIs.

5. Shari’ah Governance in Bangladesh

The discussion in this section is divided into two parts. The first provides an overview of the regulatory system of Islamic banks in Bangladesh and the second discusses the shari’ah governance framework.

5.1 An overview of regulation

Several statutes govern banks and financial institutions in Bangladesh: the Bank Companies Act 1991, the Bangladesh Bank Order 1972, the Securities and Exchange Commission Act 1993, and the Income Tax Ordinance 1984. However, there is no separate legislation for the operation of Islamic banks and financial institutions.
Therefore, all Islamic banks in Bangladesh must adhere to the acts that govern conventional banks and financial institutions. When Islamic banking was introduced in Bangladesh, no new legislated was enacted, but some clauses were incorporated into the Bank Companies Act and some amendments were made to the Income Tax Ordinance (Ahmad and Hassan, 2007).

The Bangladesh Bank (BB) is the nation’s central bank which monitors, regulates and supervises both Islamic and conventional banks. BB generally provides equal treatment to both Islamic and conventional banks. However, it does have some special provisions for Islamic banks. Among these is that Islamic banks are permitted to keep their statutory liquidity requirement (SLR) with BB at the rate of 10% of their total deposit liabilities, whereas conventional banks are required to maintain 20%. Islamic banks may independently fix their profit and loss ratio as well as their mark-up rates, based on their own policy and banking situation. BB does not have a separate section to monitor Islamic banking but it does have an Islamic economics division under the department of research to analyse the state of the Islamic finance industry in Bangladesh (Ahmad and Hassan, 2007; BMB Islamic, 2011).

5.2 Shari’ah governance

In 2009, BB issued guidelines on the operation and management of Islamic banks. These guidelines are considered the first attempt by BB to provide an operational framework for Islamic banking. The guidelines include the mechanism of shari’ah and corporate governance, product definition and operational framework, alternative investment modes, and conversion procedures for a conventional bank to an Islamic bank. However, these guidelines have shortcomings. A major issue is that, under these guidelines, it is optional for an Islamic bank to have a shari’ah board, which contradicts global practice (BMB Islamic, 2011). The guidelines state that:

It will be the responsibility of the board of directors of the respective banks to ensure that the activities of the banks and their products are Shariah compliant. The Board of the Islamic banks/ Subsidiary company/Conventional commercial banks having Islamic branches, therefore, be constituted with directors having requisite knowledge and expertise in Islamic Jurisprudence. The Board may form an independent Shariah Supervisory Committee with experienced and knowledgeable persons in Islamic Jurisprudence. However, the Board shall be responsible for any lapses/irregularities on the part of the Shariah Supervisory Committee (Bangladesh Bank, 2009).

Based on this guideline, the boards of Islamic banks, or conventional commercial
banks with Islamic branches, must ensure that their banks’ activities are based on the principles of shari’ah. In this regard, board members are expected to be knowledgeable in shari’ah. However, the board members may establish a shari’ah supervisory committee to assist them.

Furthermore, these guidelines establish stringent criteria for the qualities and competencies of a member of a shari’ah supervisory council. Notable among criteria are that a candidate should have (Bangladesh Bank, 2009):

- *a postgraduate qualification in a relevant field—Islamic studies, Arabic studies, Islamic law, Islamic economics or Islamic banking—and have good knowledge of the Arabic language;*

- *a minimum of three (3) years’ experience in teaching or conducting research in the field of Islamic jurisprudence or Islamic finance;*

- *three (3) years’ experience as a member of any board issuing shari’ah resolutions for Islamic financial matters; or*

- *published either three (3) articles in recognized journals or three (3) books in the field of Islamic jurisprudence or Islamic finance.*

The above criteria are not considered very stringent in the global perspective; however, in the context of Bangladesh, it is quite difficult to find a candidate with these qualities.

BB does not have a shari’ah board to supervise Islamic banks in Bangladesh. However, there is a private non-corporate body called the Central Shari’a Board for Islamic Banks of Bangladesh (CSBIB). Almost all Islamic banks in Bangladesh are members of the CSBIB. It consists of a number of prominent scholars from Bangladesh and arranges regular meetings to discuss shari’ah issues related to the country’s Islamic banking industry. It also conducts research and publishes books and journals to serve its members (BMB Islamic, 2011). However, shari’ah resolutions issued by CSBIB are not mandatory for IFIs: it only provides advisory services. Nevertheless, no Islamic bank in Bangladesh contravenes the resolutions of the CSBIB due to reputational risks (Uddin, 2014).

Every Islamic bank in Bangladesh has a shari’ah supervisory committee which consists of shari’ah scholars. Likewise, every conventional bank with an Islamic banking window also has a shari’ah supervisory committee. Shari’ah scholars hold monthly meetings where they discuss issues raised about the operation of Islamic banks. If an Islamic bank wants to introduce a new product, it brings the matter to the shari’ah supervisory committee for their opinion on the product’s shari’ah status. The shari’ah
supervisory committee consists of a chairman, vice-chairman, member secretary and a few ordinary members. Banks publish the shari’ah advisory committee’s resolutions in their annual reports. Islamic banks in Bangladesh usually appoint some prominent shari’ah scholars in the country as members of shari’ah advisory committees.

Under a shari’ah supervisory committee is a shari’ah secretariat in every fully-fledged Islamic bank. However, some Islamic banks name it a Shari’ah Inspection and Compliance Division. Under this section are a number of shari’ah officers who mostly conduct the shari’ah audits. These officers are called muraqib in some Islamic banks. Other than shari’ah audits, some shari’ah officers liaise with shari’ah advisory committees. There are a few Islamic banks where some of the shari’ah officers conduct research for the bank. Apart from the fully-fledged Islamic banks, conventional banks which operate Islamic banking windows have an Islamic banking section where a few officers are engaged in shari’ah auditing. Shari’ah auditors in fully-fledged Islamic banks are required to report to the shari’ah supervisory committee through the shari’ah secretariat. However, shari’ah auditors in Islamic banking windows are required to report to the shari’ah supervisory committee as well as to the board audit committee. Figure (1) below summarizes the shari’ah governance structure of Islamic banks in Bangladesh.

**Figure (1): Shari’ah governance structure of Islamic banks in Bangladesh**
6. Issues and Challenges

From the discussion above, it is evident that the main challenge for shari’ah governance in Bangladesh is that there are no mandatory guidelines from BB requiring compliance with the resolutions of shari’ah supervisory committees whereas shari’ah board is the most important part of shari’ah governance system (Hasan, 2014). Moreover, there is no formal recognition of the CSBIB by BB. Therefore, Islamic banks are not formally obliged to follow resolutions issued by CSBIB. Furthermore, it is quite difficult to find qualified shari’ah scholars to serve as members of shari’ah supervisory committees, based on the criteria set by BB. Rahman (2014) cites that shari’ah scholars in Bangladesh have limited knowledge of Islamic finance and banking. There is a lack of people who know Arabic and English well enough to conduct research in Islamic finance. Those who have knowledge in shari’ah have little knowledge of banking and finance, or of the practice of Islamic banking.

There is insufficient support from the government for the development of a strong shari’ah governance system. Huq (2014) argues that government rules and regulations are flexible for conventional banking but quite strict for Islamic banking. For example, in 1997 PBL secured a license to open five Islamic banking branches but until now, it has not received a license to open any more such branches; at the same time, it has received permission to open more than 100 conventional banking branches. Since 2005, the Arab Bangladesh Bank Limited (ABBL) has not received any license to open an Islamic banking branch. Similarly, more than 23 conventional banks did not get permission to open further Islamic banking branches after they started with a few. At present, six conventional banks are waiting for licenses from BB to convert into an Islamic bank. We can conclude that the regulator intends to confine Islamic banking. However, Islamic banking could be the mainstream form of banking in Bangladesh if licenses were regularly issued.

Rafiq (2014) argues that the government should be more sincere in spreading Islamic banking in Bangladesh. Islamic banking is growing due to an overwhelming response from the public. As they spontaneously choose Islamic banking options and turn from conventional banking, BB seems forced to permit Islamic banking. However, the government does not support it like in Malaysia, where the government directly patronises Islamic banking. In Bangladesh, Islamic banking is moving forward due to public support, despite the government’s lack of responsiveness.

Hassan et al (2017) examines the state of banking regulation around the world by conducting a global survey. Hassan et al (2017) also examines the state of shariah governance in Bangladesh.
The government of Bangladesh does not have confidence in Islamic banks. Its minister of finance recently stated that the Islamic banking system appeared fraudulent to him (The Financial Express, 2015). It is thus obvious that the government does not have confidence in the operation of Islamic banks. This may be due to the substantial number of shari’ah violations among Bangladesh’s Islamic banks. Knowledge of Islamic investment is still poor among its Islamic banks. Moreover, there is a lack of sincerity among these banks to comply with shari’ah and conduct proper shari’ah audits (Ullah, 2014).

It was observed earlier that there are no separate sections for shari’ah review and risk management in Islamic banks. Both of these tasks are partially performed by the shari’ah auditors, or muraqibs. In fact, there is scarcity of research on the shari’ah secretariat and on Islamic banking in Bangladesh in general. Bankers and shari’ah scholars in Bangladesh are unwilling to conduct such research. Arif (2014) asserts that the benefit of research is not clear to bankers, academics and shari’ah scholars in Bangladesh. This is due to their short-sightedness and is why the industry does not allocate funds to research, although they are generous in financing various big events. This major problem affects not only bankers but all of Bangladesh.

Rahman (2014) argues that many shari’ah violations occur due to this lack of research: the risk inherent in certain products cannot be minimised. Conversely, if comprehensive research was conducted, many types of risk could be minimised.

7. Recommendations

Considering the issues and challenges mentioned above, it is recommended that the government of Bangladesh enact separate and comprehensive legislation for the operation of Islamic banking. This would strengthen the shari’ah governance system among Islamic banks in Bangladesh and stop any fraudulent behaviour relating to their application of shari’ah principles. Moreover, the central bank should also provide more specific guidelines on the shari’ah governance system. There should be a separate section in BB to regulate, monitor and supervise the operations of Islamic banks.

Furthermore, there is a need for a central shari’ah board with the authority to monitor and oversee the shari’ah supervisory committees of all Islamic banks as well as their overall application of shari’ah principles. The central shari’ah board should promulgate resolutions regarding shari’ah matters which would be binding on all Islamic banks. BB should also recognize CSBIB by giving them the authority to monitor and supervise all Islamic banks in Bangladesh. BB should make the resolutions issued by CSBIB mandatory for all Islamic banks.
Furthermore, the government should patronize the development of Islamic banking operations in Bangladesh. The expansion of Islamic banking would encourage Muslims to actively participate in Islamic investment and would thus contribute to national economic development. Restricting Islamic banking may trigger public dissatisfaction in the government and reduce the participation of pious Muslims in economic activity. Therefore, the government should provide at least equal treatment for Islamic banking as that awarded to its conventional counterpart. Islamic banks also need to prove that they are sincerely complying with shari’ah principles in order to gain the trust of the government.

It is recommended that all Islamic banks in Bangladesh establish their own shari’ah research division, which would assist shari’ah advisors to identify issues with Islamic banking products. Moreover, it might help the development of innovative shari’ah-compliant financial products. Above all, this division would increase shari’ah knowledge for Islamic banks in Bangladesh. Moreover, it will contribute to develop human capital for the industry (Ahmad, 2016). Islamic banks should allocate sufficient funds to these divisions to conduct rigorous research. BB can play a strong role in developing research in Islamic banks. It can issue a guideline that every Islamic bank in Bangladesh should have a shari’ah research division.

Finally, Islamic banks in Bangladesh are advised to invest in creating qualified shari’ah scholars. Talent development programs can be developed to this end. Under such programs, banks may employ some shari’ah graduates for a certain period, within which banks would rotate participants through different departments of the bank to familiarise them with the different operations and functions of an Islamic bank. A generation of qualified shari’ah scholars could be created through such programs. Furthermore, all Islamic banks, as well as BB, should organise seminars and workshops to develop the banking knowledge of shari’ah scholars. Islamic banking institutions could offer short-term certificate courses for shari’ah advisors.

8. Conclusion

In conclusion, the shari’ah governance system in Bangladesh is generally based on voluntary initiatives by Islamic banks. The system can be further improved by the government passing laws for the operation of Islamic banks. Moreover, BB can play a significant role through empowering CSBIB as the authority that oversees and monitors shari’ah supervisory committees and audit operations in Islamic banks. The shari’ah secretariat section can be developed through enhancing shari’ah review, shari’ah risk management, and research activities. Finally, several mechanisms, as suggested above, can be implemented to provide qualified shari’ah scholars for Islamic banks.
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