

## Shari'aa

### Shari'aa Boards in Islamic Banks: An Overview and a Vision for the Future

Chapter 2 gave a historic overview of how interest was prohibited in the Judeo-Christian-Islamic faiths. During the early medieval period, the Islamic RF models were used by caravan traders conducting business between Arabia and the rest of the world, and in particular in trading through the Silk Road. As commercial and business activities increased, and with the growth of international trade and the creation of money, a sophisticated riba-based banking system emerged and developed in Europe. The prohibition of ribit/riba was relaxed by the rabbinical teachings, the Roman Catholic Church, and the Protestant churches, as detailed in Chapter 2. This chapter is designed to introduce the reader to the tedious, meticulous, and detailed processes used by qualified religious scholars in the faith to come up with legal religious rulings (edicts or *fatwa*) that would comply with the teaching of God and His prophets to offer solutions to everyday challenges experienced by the believer.

Muslims are required by Islamic Law (Shari'aa) not to deal in riba. Religious leaders and scholars at all levels of the Muslim Ummah, from the small village to the largest cities, are taught that dealing in riba is a major sin. With the growth of commerce, trading, and industrial development in Europe, more sophisticated riba-based banking operations and trade financing tools were developed to give credit and to help grow businesses. When Europeans began expanding their trade routes into the Turkish Ottoman Empire and colonizing many of their former member states, they brought this new riba-based banking system with them. The riba-based banking system was only used to serve the needs of most of the European business people and their local representatives. The local Muslim business community did not use it, because they believed that banking with interest was not

accepted by the Muslims and their leaders. This produced, among the local Muslim population, a subculture of avoiding taking a loan altogether. Many may ask how the Muslims have managed their capital needs all these years. It was done as microlending between friends and family members on the local levels or between businessmen on the commercial level in an informal way; it is still being done now, in the 21st century. On the local community level, a group of, say, 10 friends might agree to start an informal small cooperative union, in which each of them places \$10 with a trusted member of the group. They then agree, among themselves, as to the schedule of who gets paid in the first month, the second month, and so on. In this way, each member gets a sum of \$100 in a certain month. There was no interest charged. The banking needs of the Muslim world, as in all developing countries, have been underserved, especially on the retail level. As these primitive societies began making contact with the world, they woke up to a big surprise. They found that they are at least 600 years behind. A sophisticated and far-reaching international banking system was installed, and banking with interest became part of normal business transactions in many of these countries. Dissent and concern were expressed constantly by the religious leaders, but no one responded, because the religious leaders in the early to middle part of the 20th century did not have enough stature and were ignored.

With the first oil price jump in 1973 came huge amounts of dollars to the oil-producing Gulf countries. The main concern at that time was the absorptive capacity of the local economies of the countries involved. Armies of commercial bankers and investment bankers landed in these oil-producing countries to expand the existing small *riba*-based banking operations and to link them efficiently with the international banking system. Many of the business and community leaders went along, but a few were very troubled at the sinful act of participating in *riba*.

One of them was the late King Faisal of Saudi Arabia. He pledged in 1974 to start a banking system that follows Islamic Law (*Shari'aa*). The major problem was the lack of a detailed code in *Shari'aa* that dealt with the existing and sophisticated needs of the customers of the banks and the varied products and services offered by these banks, which were all based on the prohibited *riba*. This marked the beginning of a brand-new field of scholarly research to develop codes of *Shari'aa* that pertain to modern RF business dealings and banking. Pioneering practitioners of Islamic banking in Egypt, Dubai, Saudi Arabia, and Kuwait began by contacting scholars in the highest placed Islamic theological seminary, Al Azhar Seminary in Cairo, Egypt. Because the idea was new, the task was very difficult; and because it involved bridging 600 years of a *riba*-based banking system in special banking-based English, which had not yet been mastered by the

scholars, a solution was offered. The few leaders of the newly emerging Islamic banking industry formed a board of scholars that would start the difficult task of developing the RF banking and finance codes of shari'aa. That was the beginning of the creation of what is now known as Shari'aa Boards of Islamic Banks.

The religious scholars on the Shari'aa Board soon discovered that they did not know much about finance, banking, and monetary issues; they even did not know about the intricacies of bank operations and the riba-based aspects of it. All that was known then were two major rules: Interest cannot be charged; and the parties in a commercial transaction must share the profit and loss. In an effort to bridge the knowledge gap, the Islamic banking practitioners supplied the Shari'aa Boards with riba-based banking practitioners to teach and explain in a crash course format how modern riba-based banks operated and the features of each riba-based banking product and service. Because English was an international banking medium of communication, there was a new demand for scholars who understood and spoke English. Most of these English-speaking scholars did not come from the Arabic-speaking countries; they came from the Asian Muslim countries, such as Pakistan, Malaysia, India, and Bangladesh. Many of these Asian scholars who had mastered English had also mastered Arabic, because it is a prerequisite for Shari'aa scholarship. This cross-breeding of talents and diversified cultural and educational backgrounds created a rich body of qualified scholars at the Shari'aa Board level. However, because of the diversity in local cultural and educational backgrounds, there were a variety of opinions on what was considered compliant with Shari'aa and what was not. Two major directions were charted. In Egypt and Malaysia (most of the Malaysian scholars had been educated at Al Azhar seminary), Shari'aa opinions were more progressive and understanding. Scholars from India, Pakistan, and the Arab Gulf countries believed in a more strict approach toward interpreting what was halal (allowed) and what was haram (not allowed). As time went by, new leaders in the field of Islamic/Shari'aa-based finance law came from Pakistan, India, Egypt, Sudan, the Arab Gulf countries, Malaysia, Syria, Jordan, Lebanon, Europe, and the United States.

## **THE LAW: SHARI'AA**

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The word *Shari'aa* has been translated by most as *jurisprudence*. However, it is believed that the word *jurisprudence* does not fully describe what Shari'aa is. It is preferred to translate Shari'aa as “the Law.” This approach follows the same tradition as the revelations to Moses (pp), which were

translated as “the Law,” and to Jesus (pp) as “the Gospel” (implying “the Law”). The use of the terminology “the Law,” also confirms the Judeo-Christian-Islamic nature of the religion of Islam.

The word *Shari’aa* is derived from<sup>1</sup> the root Arabic word *Shara’aa’*, which means “to introduce,” “to enact,” and “to prescribe.” It is comprised of and embodies spiritual beliefs and rules of the religion that includes ethics, morality, and behavioral admonitions. It is the divine, immutable Law. It details the set of rules a Muslim should live, judge, and govern by, and it includes the moral and legal rulings and mandates of Islam. In other words, it is the integration of all the laws sent by God through His prophets.

### Sources of Shari’aa

The principles and sources of Shari’aa<sup>2</sup> are: the Qur’aan, which is the unchangeable and the proven inculcation of all God’s messages to all His prophets, including the Torah and the Gospel; and the way of life and example of living (Sunnah) and sayings (Hadeeth) of Prophet Muhammad (pp).

**The Qur’aan** Being a Muslim is a description of the state of a person who has chosen to submit his/her will to that of God. Based on this foundation, the Qur’aan teaches that Noah (pp), Abraham (pp), Ishmael (pp), Isaac (pp), and their descendants, as well as Moses (pp), Jesus (pp), and Muhammad (pp) are all Muslims, as they all submitted their will, their way of life, and their style of living to the will of God. It is believed that to open up our hearts, our spirits, and our minds here in the United States and in the world, God’s messages to His last three brothers in the faith—Moses (pp), Jesus (pp), and Muhammad (pp)—it is preferred and strongly recommended that we should popularize Islam, not as a standalone religion, but as a manifestation of the Judeo-Christian-Islamic integration of recorded human religious and spiritual experiences, as taught by God through His revelations to all His peoples and prophets (pp).

The Qur’aan<sup>3</sup> charts out the sequence of truths and its revelation throughout history:

*3:84 Say: “We believe in God, and in that which has been bestowed from on high upon us, and that which has been bestowed upon Abraham and Ishmael and Isaac and Jacob and their descendants, and that which has been vouchsafed by their Sustainer unto Moses and Jesus and all the [other] prophets: we make no distinction between any of them. [68] And unto Him do we surrender ourselves.*

3:3 *It is He Who sent down to thee [step by step], in truth, the Book [the Qur'aan], confirming what went before it; and He sent down the Law [of Moses] and the Gospel [of Jesus] before this, as a guide to mankind, and He sent down the [Qur'aan] criterion [of judgment between right and wrong].*

The Qur'aan also confirms the sequence of revelation from the Torah (the Jewish Bible) to the Christian Bible. The Qur'aan uses the word *Injeel*, which means the Gospel or the teachings of Jesus Christ, based on the Old Testament and the New Testament. (Christian Arabs also use the word *Injeel* for the Bible).

5:46 *And in their footsteps We sent Jesus the son of Mary, confirming the Law [of Moses] that had come before him: We sent him the Gospel: therein was guidance and light, and confirmation of the Law that had come before him: a guidance and an admonition to those who revere God.*

46:12 *And before this, was the Book of Moses as a guide and a mercy: And this Book [The Qur'aan] confirms [it] in the Arabic tongue; to admonish the unjust, and as Glad Tidings to those who do right.*

Furthermore, the Qur'aan instructs the believers in an effort to tie together all of God's messages, messengers, and prophets in the chain of life and human development;

2:136 *Say: "We believe in God, and in that which has been bestowed from on high upon us, and that which has been bestowed upon Abraham and Ishmael and Isaac and Jacob and their descendants, and that which has been vouchsafed to Moses and Jesus; and that which has been vouchsafed to all the [other] prophets by their Sustainer: we make no distinction between any of them. And it is unto Him that we surrender ourselves.*

And referring to Prophet Abraham's offspring, the Qur'aan reveals;

6:84 *And We bestowed upon him Isaac and Jacob; and We guided each of them as We had guided Noah aforetime. And out of his offspring, [We bestowed prophethood upon] David, and Solomon, and Job, and Joseph, and Moses, and Aaron: for thus do We reward the doers of good.*

As to Prophet Moses (pp), the Qur'aan reveals clearly that he indeed spoke to God, and it details his history in a way very similar to what we read in the Old Testament:

*2:53 And [remember the time] when We vouchsafed unto Moses the divine writ - and [thus] a standard by which to discern the true from the false - so that you might be guided aright.*

In our efforts as believers in Moses (pp), Jesus (pp), and Muhammad (pp), or the Judeo-Christian-Islamic foundation for building a decent and wonderful society, we are advised by God in the Qur'aan:

*42:13 In matters of faith, He has ordained for you that which He had enjoined upon Noah—and into which We gave thee [O Muhammad] insight through revelation as well as that which We had enjoined upon Abraham, and Moses, and Jesus: Steadfastly uphold the [true] faith, and do not break up your unity therein. [And even though] that [unity of faith] to which thou callest them appears oppressive to those who are wont to ascribe to other beings or forces a share in His divinity, God draws unto Himself everyone who is willing, and guides unto Himself everyone who turns unto Him.*

That is, the application of the Law of God (the Torah and Prophet Moses [pp], the Gospel and Jesus [pp]) is confirmed, complimented, and expanded on by the Qur'aan; it is the responsibility of all people of all faiths, and especially Muslims. It is not the intent here to make this chapter a detailed study of the Judeo-Christian-Islamic promise of the future; however, it is hoped that this new approach will be researched and expanded upon in future books.

**The Way of Life (*Sunnah*) of the Prophet** *Sunnah* means a system, a path, or an example, referring to the example as practiced by the Prophet Muhammad (pp). It is the detailed description of how Prophet Muhammad (pp) put life in the Qur'aan by living according to its teachings and God's inspiration. The details are included in the meticulously researched, documented, and recorded body of the Prophet's (pp) sayings, comments, and actions done with his approval, which is called the *Hadeeth*.<sup>4</sup> The Hadeeth provides information about the Sunnah (the examples provided by Prophet Muhammad of how to live by applying the rules of God revealed in the Qur'aan); it was recorded in the two centuries after Prophet Muhammad's (pp) death, in authenticated Hadeeth collections.

## Application of Shari'aa

**The Science and Foundation of Scholarly Research, or *Usul Ul Fiqh*** Applications of the Shari'aa produce a whole body of scholarly research by a class of scholars called learned scholars (*fuqahaa*; the singular is *faqih*, scholar) in Islamic research circles and institutions all over the world, regardless of the local language. Shari'aa embodies the whole discipline of scholarly research and the detailed authentication of the codes, references, and rulings. It is called *The Science of Origins and Foundation of Scholarly Work* (known in Islamic circles as *Usul Ul Fiqh*). Scholarly research, or the science of Fiqh, is based on the best efforts of the scholars and the scholarly institutions involved in the research.

The opinions and edicts issued by the learned scholars may differ between countries, depending on local circumstances, roots, culture, and intellect. In the United States, one can experience an American federal law that covers the whole country; but at the same time, there are state laws that are specific to each state. That is why Fiqh opinions may vary or change with time and place of implementation, based on new scholarly research examining the applicability of what was ruled earlier in relation to the current needs of the specific situation at hand in a certain particular community or state.

Fiqh, for example, classifies human activities into the following five categories:

- *Divinely required duty or obligation (fard or wajib)*: Every Muslim is required at a minimum to perform these specific rituals, obligations, and actions (such as prayers, fasting during the month of Ramadan, paying zakah, and performing the hajj, for those who can afford it). Failing to do so is classified as divinely disallowed and forbidden (*haram*); further, it is considered an offense against the faith, because it violates the established limits of what is acceptable (*hudood*).
- *Recommended and encouraged with pleasure, but not mandatory (mandoob or musta'habb)*: A Muslim is only expected to perform these duties as an extra effort over and above the minimum required discussed above. Those who choose to do it are interested in excelling in the faith, the service of God, and in spirituality. The performance of these actions is rewarded, but there is not considered a violation if not done.
- *Allowed (mubah)*: The origin of all Shari'aa rules is that all is allowed, except what has been clearly prohibited. The acceptability of these actions is analyzed by a process of deduction because there was no mention of these activities in the body of the scholarly Law (Fiqh), and the books of Law (Shari'aa and Fiqh) were silent about such actions.

- *Hated, disliked, disappointing, and frowned upon with disappointment, but not disallowed* (makruh): Although these actions are frowned upon, doing these activities is not punishable. It is an accepted fact that devout Muslims do not perform makruh.
- *Divinely unlawful* (haram): These actions are prohibited by Shari'aa and are punishable by penalties specified in the Qur'aan.

The branches of Fiqh (literally, Fiqh means “in-depth understanding”) include but are not limited to worship rules, family law, inheritance law, commerce and trade transactions law, property law, civil law, criminal law, and laws and regulation covering administration, taxation, constitution, international relations, defense, peace and war ethics, and other categories.

Some of the scholarly scientific approaches used to arrive at a ruling and conclusions reached after comprehensive research, deliberation, and documentation are:

- *The consensus approach* (ijma): This includes rulings or edicts that have been agreed upon by the majority of the fuquahaa (scholars; plural of faqih) in Shari'aa. Consensus (*ijma*) applies to a situation where no clear conclusion can be made from the Qur'aan and the Sunnah. In this situation, the knowledgeable and well-versed and learned scholars (fuquahaa), in the form of a *Fatwa Board* (a board that specializes in, and is entrusted by the local government with the task of receiving inquiries and issuing edicts or fatwa), will confer and agree on a satisfactory solution to the particular problem,
- *The analogy approach* (qiyas): This approach uses reference or comparison of similar circumstances (*qiyas*), in which the fuquahaa use analogies and make comparisons that will allow them to interpolate and/or extrapolate the existing rules of Shari'aa and the body of scholarly research (Fiqh). The concept of qiyas, or analogy, is applied in circumstances where guidance from the Qur'aan and the Sunnah is not directly available. A problem is solved by a process of deduction, comparing the current situation to the ruling passed on a similar situation that occurred earlier.

A number of great Muslim scholars and leaders (*imams*)<sup>5</sup> devoted themselves to the collection, compilation, understanding, and application of the scholarly research (Fiqh) and the source and procedures of the Law (Shari'aa) and its practices.

**Performing Scholarly Research to Develop and Pass Religious Edicts and Rulings: The Process of Issuing a Fatwa<sup>6</sup>** Shari'aa describes how Muslims should behave in every aspect of life, from private matters between the

individual and God to relationships with others in the family and the wider community. Shari'aa is developed based on Fiqh, the detailed research work conducted by fuquahaa, the highly accomplished scholars who have a tested, proven, and recognized track record and body of accomplishments over many years. The body of detailed laws developed by these fuquahaa is called the Fiqh. Shari'aa is hence the referenced legal and canonical bar used by accomplished and recognized religious fuquahaa in developing detailed legal codes for different societies in different times, depending on local needs, problems, and circumstances, as well as on the time these needs arise.

It is also important to note that Shari'aa is only applicable to people who believe in the Islamic faith. Those who choose to not be believers are not required to abide by Shari'aa. That is why, for example, zakah, or alms-giving, an Islamic ritual ordained by Shari'aa, is replaced by the act of tax collection from non-Muslims who live in a Muslim country; this tax is called *jizyah*, which means taxes.

**The Ultimate Intent and Goals of Shari'aa: *Maqasid Al Shari'aa***<sup>7</sup> Accomplished and recognized fuquahaa have researched and developed over the years a set of goals that they use to guide believers on how to live comfortably while abiding by Shari'aa. They developed detailed sets of moral and legal rulings to guide those who are asked to issue an edict (*fatwa*) and those who are asking the religious legal opinion. These rulings are all assembled in the books of Fiqh, which are similar to books of legal codes.

To develop a legal canonical system of laws based on the Fiqh that leads to developing the Law (Shari'aa) about what is halal (divinely allowed) and what is haram (divinely prohibited), the following fundamental rules must be followed:

1. Whatever is not prohibited by the Qur'aan and Sunnah is usually acceptable and is considered halal.
2. The main objective of Shari'aa is to push away what is harmful to all aspects of life, family, assets, and the faith, and to bring what is good and beneficial to all (in Arabic, the rule is: *Dafu'l Dharar Wa Jalbul Manfaa*<sup>8</sup>). Based on this important and basic rule, one cannot hurt himself, his family, his wealth, or his faith while attempting to apply Shari'aa.
3. If a person cannot live by Shari'aa in its entirety, he or she cannot be excused for not trying, in a step-by-step approach, until the goal is achieved. The rule states literally that if one cannot achieve the perfect goal of reaching perfect adherence to Shari'aa because of conditions that are difficult to meet, that would not give that person an excuse for not trying to achieve a part of that goal (in Arabic, the rule is: *Mala Yudraku Kulluhu La Yutraku Julluhu*).

As explained earlier, the legalistic expression of Shari'aa in a canonical fashion is called the Fiqh. Fiqh is changeable, depending on circumstances of places, people, specific experiences, and the accepted custom, which is known in the Islamic research and scholarly circles as *urf*. The science that organizes the process of generating edicts (fatwa) is called Usul Al Fiqh, or foundations of Fiqh. In general, Fiqh rulings that would lead to a set of canonical Laws (Shari'aa) are concerned with achieving five basic goals. These goals are, in order of priority, concerned with the maintenance of:

1. Religion, faith, and the Islamic way of life called *deen* (meaning religion or a way of life)
2. Life
3. Family and offspring, including children, grandchildren, and relations of kin
4. Intellect
5. Wealth

By applying these goals in sequence, one would conclude that:

1. Wealth should be spent and invested in gaining knowledge
2. Knowledge and advances in the field of intellectual accomplishment lead to better knowledge and intellect advancement
3. Knowledge and intellect are used to serve the family
4. The family is provided with a better, healthy, and honorable life
5. The ultimate achievement will be a faith-based capable community that upholds the faith and lives by Shari'aa. As a result, faith will be held in highest regard, will be made attractive to many, and will be accepted and followed by the community as a preferred religion, system, and a way of life.

For example, an edict or a question for an opinion of Shari'aa regarding wealth takes a second priority behind the benefits to the intellect, knowledge, and life. That is why the fuquahaa (learned scholars) permitted the use of alcohol-based antiseptics in surgical procedures to preserve and protect life, despite the fact that alcohol is haram. The reason it is allowed in surgical situations is that preserving life has a higher priority (priority 2) than preserving the capability of the mind and intellect (priority 4), which is needed by the faithful to know God and to exercise good judgment.

Scholars indicated that they must not only classify and prioritize the aim of Shari'aa based on the different levels of importance, but they must also consider another dimension of prioritization, and that is levels of urgency of the matter in the following three levels:

1. Basic requirements and needs (*dharuririyat*) of those who need a ruling on a certain matter
2. Complementary additions to further refine the basic requirements in priority (1) above, based on the need of the inquirer (*hajjiyat*)
3. Improvements, modifications, and further refinements of the complementary requirements (*tahsinaat*)

Working in this two-dimensional domain, and combining the five levels of goals with the three levels of urgencies, one gets at least 15 combinations of priorities. In other words, the faqih, in his or her pursuit of an edict (fatwa or opinion), should meticulously consider the fifteen possibilities and carefully analyze the situation at hand before reaching an edict. When competing rulings occur, the ruling that belongs to a higher block in the table in Exhibit 4.1 takes precedent over a ruling from the lower block. In other words any ruling that is classified as a refinement gives way to another which is classified as complimentary and so on. On the other hand, it would be very useful to think in other dimensions and to develop algorithms that can be beneficial to all people. This is where a new generation of sophisticated, computer-oriented, and analytical scholars will contribute in the future. It is important to ponder on this approach when making a ruling or developing a model for RF finance in a certain country or region of the world, especially where Muslims are minorities.

Dr. Adhami included in his article the table of priorities shown in Exhibit 4.1 that would be used by the qualified scholars (the issuer of the fatwa called *Mufti*) in making an edict (a religiously binding edict called *fatwa*). The table illustrates the concept of prioritization<sup>9</sup> discussed above.

For example, ablution (*wudu*, washing before prayers) is a prerequisite for prayers. However, if the person is ill and cannot use water on the body because it would hurt the health of his skin, the edict would call for allowing the person to do ablution (washing to prepare for the prayers) symbolically (in a dry way) by applying what is known as *atayammum* procedure (instead of using the hands to carry the water to wash with, wipe the hands on a dry clean object). In this case, ablution (*wudu*) is considered a refinement level in the category of maintaining the faith/religion (priority level B) while health and life are on the top row and are classified as required (priority level A). The same approach can be used when calling a stream of rent in an RF finance scheme by the name “implied interest” or using the word “interest” to satisfy the local laws in a non-Muslim land in order to uphold the laws of that land.

There has been a religious renaissance worldwide. Many people of all faiths are trying to discover the best way to live. They are searching deep within their faiths to find solutions to the many modern problems that they

**EXHIBIT 4.1** Table of priorities

Priority	1 Faith/Religion	2 Life	3 Family	4 Intellect and Knowledge	5 Wealth
<b>A Required</b>	1. Required to Maintain the Faith/Religion	2. Required to Maintain Life	3. Required to Maintain Family	4. Required to Maintain Intellect and Knowledge	5. Required to Maintain Wealth
<b>B Complementary</b>	6. Complementary to Maintain the Faith/Religion	7. Complementary to Maintain Life	8. Complementary to Maintain Family	9. Complementary to Maintain Intellect and Knowledge	10. Complementary to Maintain Wealth
<b>C Refined Further</b>	11. Further Refinement in the Maintenance of Faith/Religion	12. Further Refinement in the Maintenance of Life	13. Further Refinement in the Maintenance of Family	14. Further Refinement in the Maintenance of Intellect and Knowledge	15. Further Refinement in the Maintenance of Wealth

face in the 21st century and to achieve spiritual fulfillment. The believers who are not well-educated in the faith and its rules or in Shari'aa want to live in a puritan way, conducting a true exemplary life as ordained by God in His books and according to Shari'aa. These puritans face many challenges that require a religious edict or ruling, but the resolution to challenges become a religious opinion first in the public domain. With the advent of efficient means of communication and mass media outlets in the form of hundreds of satellite TV channels, many programs have been devoted to answering questions about lifestyles, behavior, interpersonal relations, marital problems, financial and business dealings, and the like. This has generated a very high demand for religious leaders who are qualified to issue a religious opinion or edict, called a *fatwa*. The person who issues these *fatwa* is called a *mufti*.

The private *fatwa* issued by a local scholar or *imam* (religious leader) becomes, later on, a binding, legal fatwa once it has stood the test of scholarly, legal, and public scrutiny. Al-Azhar Seminary in Cairo, Egypt, the oldest university in the world, is the only Islamic seminary in the Sunni Muslim domain that teaches the Fiqh according to the five schools listed earlier, including the *Sunni* and *Shi'i* schools of thought (*madh'hab*). The seminary graduates students in different disciplines. One discipline is Shari'aa and Usul Ul Fiqh (the foundations of Fiqh). These graduates develop their skills as faqih through a continual process of supervised research and a long-term track record of interaction with leading and accomplished scholars.

In Egypt, at Al-Azhar Seminary, there is only one final and highest authority in authorizing a public religious edict, or *fatwa*. This highest authority has the title of the *Grand Mufti*, or the highest scholar in charge of legislation of fatwas. He presides over a committee of accomplished scholars who are classified as distinguished *fuquahaa*. This committee holds hearings, conducts and critiques research, and makes recommendations for fatwas, which are then submitted for the approval of the *Fatwa* Committee of Al Azhar Seminary and, eventually, of the Grand Mufti. Essentially the same process is followed in the Islamic republic of Iran (at the *Hawza* in Qum), in Iraq (at the *Hawza* in Najaf), and in Pakistan and India. In Pakistan and India, the elderly scholars, in an effort to train a new generation of Shari'aa legislators, started many colleges that graduate young scholars who carry the title of Mufti. It is important to warn the reader here to not being misled by the title Mufti as used by many of these Indo-Pakistani graduates, because their achievements in their fields after graduation must be demonstrated. It is preferred to call them junior Mufti, or Mufti in residence training.

Obviously, people are free to choose whose opinions to follow, but it is important to share with the reader the parameters that should be used in recruiting and evaluating for assignment candidates to serve as advisors on

Shari'aa in their institutions. The following is an abbreviated list of the basic qualifications that must be met before a person is qualified to issue a fatwa and act as a scholar in Shari'aa:

- Mastery of the Qur'aanic language, Arabic, as demonstrated by a certificate of graduation from an accredited seminary or university
- Mastery in the knowledge, meanings, and historic reasons of revelation of the verses of the Qur'aan, as demonstrated by graduation from a recognized institute
- Formal education in the Law (Shari'aa) from a recognized theological seminary or a university that has a reputable department of religion
- Knowledge of the Jewish Bible and the Christian Bible; this is highly preferred but not necessarily required
- Proven analytical abilities, as witnessed by the guiding scholars, professors, and supervisors who were in charge of teaching; this includes the ability to methodically and scientifically analyze difficult issues and legal problems and to debate different opinions in recognized forums and in public
- Knowledge of computers, word processing, and the Microsoft Office suite (or the like) and of using the Internet
- Published research in respected media and trade magazines and other outlets, and documented research leading to the development of new legal codes
- Strong written, verbal, and communication skills, and the ability to speak in public
- Proven reputation in the community for public service, knowledge, caring, piety, and generosity
- Knowledge of family matters, which requires in most cases that the candidate is happily married and that his/her family presents a successful role model for the community
- Proven track record of issuing fatwa that have been recognized and agreed to by a learned body of scholars and seminary researchers, such as Al Azhar University (Egypt), specialized universities and seminaries in Al Madinah and Makkah (Saudi Arabia), Qum (Iran), Al Najaf (Iraq), and universities (such as the International Islamic University) in Pakistan, Malaysia, Kuwait, and the United States (like Princeton, Harvard, and Claremont) and Canada (like McGill).
- Proven expertise in one of the aspects of living (examples include advanced studies leading to a degree in business administration, economics, and/or finance, for a scholar who wants to practice in the field of RF banking and finance; or expertise in humanities, family law, and

psychology, for a scholar who wants to concentrate on matters pertaining to family law)

Obviously, the above list of stringent requirements is what can be called the ideal. It will take time to achieve all these requirements. All students who aspire to become scholars are strongly urged to work hard to achieve a high level of qualification as scholars. This approach is believed to produce a new generation of scholars for the 21st century who will be positioned to pave the way toward a happier lifestyle in all aspects of life for all people of all faiths, including the ribit/riba-free life style advocated in this book.

### **THE SHARI'AA BOARD IN AN ISLAMIC BANK OR FINANCE COMPANY**

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Despite the fact that the first formal Islamic bank was started in Dubai by Sheikh Saeed bin Lutih in the mid-1960s, there was no record of a formal effort to institutionalize the process of developing a formal body that would research and develop the RF banking and finance legal code according to Shari'aa. Later, after the sudden increase in oil revenues in 1973, three leading financial institutions were started in the mid-1970s, in a formal and dedicated effort to start Islamic finance and banking. These were: (1) *Dar Al-Maal Al Islami*, which was started in Geneva, Switzerland by the son of the late King Faisal, Prince Muhammad Al-Faisal; (2) *Bayt al Tamweel Al Kuwaiti—Kuwait Finance House* in Kuwait, which was organized as a shareholders' Islamic finance company headed by a Kuwaiti of Iraqi origin, Sheikh Bazee Al Yaseen; and (3) *Dallah Al Baraka Group*, in Jeddah, Saudi Arabia, started by Sheikh Saleh Kamel, a former auditor in the Department of Defense in Saudi Arabia and later an important force with vision and entrepreneurship who was, in many cases, at least 25 years ahead of his time.

They all were faced with the challenge of developing, for the first time in modern history, a financial legal code based on Shari'aa. At that time, they resorted to the highest religious authority in the Arabic-speaking part of the Muslim world which happened to be Al Azhar Seminary in Cairo, Egypt.

Prince Al Faisal appointed Sheikh Muhammad Khater, the *Grand Mufti* of Egypt (a position appointed by the President of the Republic of Egypt), to be the head of a board responsible for developing financial tools and methods that were compliant with Shari'aa. The aim was to help with

investing—according to Shari’aa—some of the vast amounts of “petrodollars” that resulted from the windfall created by the sudden increase in oil price in 1973.

Sheikh Bazee Al Yaseen chose Sheikh Muhammad Badr Abdel Basset to be his Chief Scholar in the Law. He was a scholar from the faculty of *Daar-Ul Uloom*, the House of Knowledge, at *Ain Shams* University in Egypt, a prestigious college that graduates many high-caliber and recognized leaders of thought and research in the Arab and Muslim world. Many of this college’s graduates became effective imams and fuquahaa. Sheikh Basset helped develop the foundation of different models for RF financing for Kuwait Finance House.

Sheikh Saleh Kamel appointed a group of the highest religious authorities in many countries to develop an RF financing code based on Shari’aa. The group, which was later called—for the first time—the Shari’aa Board, was given the mandate to develop RF banking products and services that paralleled those available in the riba-based banking and financial services in the West. He appointed significant leaders from Egypt, Jordan, Syria, Sudan, and Saudi Arabia, and later from Malaysia, Pakistan, and India. He also organized annual seminars and symposia among these leaders and other financial and banking scholars to discuss and analyze different riba-based banking products and services available in the West and to develop ways and means to make them compliant with Shari’aa. He was very generous in his investments in the field of new scholarly research in this field. He started a pioneering library of Islamic banking and finance in Jordan, and departments of Islamic banking and finance at the University in Jeddah and at Al Azhar University in Cairo. In his efforts to develop Islamic banking and finance internationally, he opened a finance company in London and started Al Baraka Bank in London in the mid-1980s. He and his associates at Dallah Al Baraka laid the foundation for communications between some of the top bankers, financial experts, and business attorneys on one side and religious scholars on the other side for the first time in the modern history of Islam. Over the years, the group developed Islamic banking terminology, rules and regulations, operating standards, financing mechanisms, and products and services that comply with the Law and that offer an RF alternative to the conventional riba-based ones in the fields of trade financing, auto financing, home mortgages, and business financing, as well as investing in the stock markets.

### **The Role of the Shari’aa Board**

The Shari’aa Board in a typical Islamic bank is responsible for overseeing the application of different aspects of the Law (Shari’aa) in the RF bank

or the financial institution.<sup>10</sup> The Shari'aa Board (sometimes called Shari'aa Supervisory Committee), in general, certifies every product, finance model, and service provided by the RF financial institution. It also ensures that all the transactions are in strict compliance with the principles of Shari'aa.

The Shari'aa Board is comprised of experts in the research and development of religious rulings by applying Shari'aa to financial and banking products and operations. The Board also helps in devising, with the assistance of banking professionals, RF financing models that fit within and compete with modern-day *riba*-based banking. In some, but not all, Islamic banks, the Board is empowered with the right of issuing a contradicting religious edict—a *fatwa*—to the position of the bank's board of directors regarding any of the products, services, and/or procedures that violate Shari'aa, if such a violation were uncovered. Some banks' bylaws require that the board of directors be obligated to implement the *fatwa*(s) issued by the Shari'aa Board. In some banks, like the Dubai Islamic Bank, the *fatwa* is implemented irrespective of whether a unanimous or a majority of the Board of Directors consensus secures the decision (clause 78 of the Bank's Memorandum & Articles of Association).<sup>11</sup>

### **The Duties of the Shari'aa Board**

The Shari'aa Board (or Council) is looked upon by bank management, board of directors, and shareholders as an expert source on the Law and its application in financial and banking transactions. The board of directors of the bank often appoints one of the Shari'aa Board members as a voting member of the board of directors of the bank in charge of overseeing the implementation of Shari'aa in the Board. The board of directors of the bank may also appoint one of its members to be a member of the Shari'aa Board, to serve as a liaison between the two boards. The following is an abbreviated list of duties for a typical bank's Shari'aa Board:

- Detailed documentation of the recorded religious bases and foundations as extracted from Shari'aa, with a complete record of the Shari'aa Board's deliberations and the reasons for and against a specific *fatwa* ruling. These proceedings, ideally, should be made transparent.
- Help in the process of innovating, manufacturing, and devising new Shari'aa-based products and services with the banking professionals.
- Help in devising a detailed set of operating manuals and transactional procedures that will be competitive with existing *riba*-based banking services and products.

- Review and analysis of any contracts and/or agreements related to the services, operations, or outside vendors of the bank, to make certain that such agreements comply with Shari'aa.
- Participation in the design of the bank's training programs, including education about the foundations of the faith, the rules on compassion and honesty, the importance of fair and equal rights without discrimination, and the character of an RF banker who shuns misrepresentation of facts and the culture of pure selling at any cost to meet a sales goal and make a high commission.
- Participation in a hands-on training program on Shari'aa compliance, including the models used for financing and how they differ from those offered by the conventional riba-based banks.
- Supervision of the bank's day-to-day operations, interaction with the staff, and pursuit of the highest quality of work in processing customers' applications and communicating with the outside world regarding truthful representation of the products and services offered by the sales force. This includes random checking of incoming and outgoing mail, telephone conversations on help lines, incoming and outgoing e-mails, and faxes.
- Attention to developments pertaining to Shari'aa issues and new products and services at other competing banks, as well as riba-based banks.

The Shari'aa Board is required to submit a complete annual report to the board of directors of the bank, summarizing all the issues referred to the Board, as well as the Board's opinion on the bank's transactional procedures.

### **Approaches Used to Appoint Shari'aa Boards**

The role of the Shari'aa Board in a typical Islamic bank brings to mind the typical role played by a compliance committee within the board of directors of any conventional bank in the United States—but, of course, it is concerned only with issues that pertain to compliance with Shari'aa. It is important to note that two approaches have been used to implement Shari'aa in RF banking activities.

1. The first approach was implemented in Malaysia. In this approach, the Central Bank (Bank Negara Malaysia, BNM) has its own Central Bank Islamic Banking Division with its own books and regulations, as well as its own Shari'aa Board. The National Shari'aa Board of Islamic Banking in Malaysia issues edicts (fatwa) on different products, services, and operating standards. The opinions and rulings of the National Shari'aa

Board of Islamic Banking are binding to all RF banks in Malaysia. Then, at the individual bank level, each bank appoints its own Shari'aa Supervisory Committee to ascertain compliance of the bank operations with the rules set by the Central Bank's Shari'aa Board guidelines. This approach saves a lot of confusion and conflicts within different Shari'aa Boards. The involvement of the Central Bank adds credence and weight to the rulings. In addition, because the Shari'aa Board is operated and supervised by the Central Bank, there is no potential for conflict of interest, because the individual banks are not paying their own hand-picked scholars for their services.

2. The other approach is to allow each bank to appoint its own Shari'aa Board. The implementation of this approach has created a lot of confusion and conflicting opinions among the scholars in each of the Islamic banks. It also creates an implicit uneasy feeling of conflict of interest, because the bank pays the salaries of its Shari'aa Board members. This approach has also created a large demand for the limited supply of RF Shari'aa scholars available. The net result has been the appointment of some of the "superstar scholars" on the Shari'aa Boards of more than one bank. I know of scholars who serve on the Boards of more than 50 Islamic banks. This creates another conflict of interest situation, because these scholars are exposed to the inside information of many competing banks. This approach is used mostly by Islamic banks in the oil-rich Gulf countries and in some Asian countries (except Malaysia).

### **Concerns of Western Central Bankers and Bank Regulators Regarding Shari'aa Boards**

This important issue is very sensitive, and it created some serious concern in the many efforts invested in trying to implement RF banking and finance in the West. There are three reasons for the concerns:

1. In most Western societies, especially in the United States, the government and its departments operate with a firm belief in the separation of church and state. Operating a bank with a formal Board that has the mission of implementing the laws of a certain religion may be a bit sensitive, especially with consumers who subscribe to other religions, which may result in religious discrimination disputes that may lead to messy law suits.
2. The existence of two boards in one bank, with one board having apparent superiority of control over the other, may create a serious operating conflict that could have a negative impact on the bank's safety and

soundness. In addition, there can be further conflict if the Shari'aa Board is paid generously to issue edicts that can create serious conflict-of-interest issues.

3. Most, if not all, of the scholars represented on the Shari'aa Board do not have direct experience in banking and finance, and in most cases, they do not have a proven track record and knowledge of the banking regulations in the West. They may not even have experience in the local area in the West where the bank operates. In addition, because many of the scholars live in other countries, it is difficult for them to appreciate local needs and challenges, and the regulators may find it hard to exercise their regulatory powers on them.

### **THE DEVELOPMENT OF SHARI'AA SCHOLARS AND SHARI'AA COMPLIANCE COMMITTEES FOR RIBA-FREE BANKS AND FINANCE INSTITUTIONS IN THE 21ST CENTURY**

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It is the author's deep-seated belief that the public and businesses in the West will become greatly interested in the services and products of the new RF brand of banking. In addition, bankers will be drawn to the concept because it reduces overhead to a reasonable level and keeps loan and lease losses to a minimum, and because RF banks deal with those people who are well-known to the bankers who serve them in the local communities. Hence, the banker will be fulfilling the know-your-customer rule of banking and finance. All these and the trust of the community will expand the bank's business and increase its profitability. That is why it is important to prepare the groundwork, starting now, for this new brand of banking.

My vision of the 21st-century Shari'aa Board for an RF bank will be renamed as a *Shari'aa Advisory Committee*, which will not only include Muslim scholars but also scholars from the Jewish, Christian, and other faith-based communities. The idea of a united Judeo-Christian-Islamic approach to banking will make it very attractive and highly credible.

The Muslim Shari'aa Compliance Officer, or the Shari'aa Advisory Committee Supervisor, will ideally be a scholar who is trained in formal scholarly sciences in an accredited Religious Studies Department at a major institution or seminary, such as Al Azhar in Cairo, the Hawzah in Qum (Iran), the Hawzah in Al Najaf (Iraq), the International Islamic University in Pakistan, and Aligarh University in India, The King Abdul Azeez University in Jeddah, McGill University in Canada, Princeton University in New

Jersey, or Claremont Graduate University in California. These graduates should not only be well-versed in Islamic Law (Shari'aa) but also in the Jewish Bible, rabbinical laws and traditions, and in the Christian Bible(s) and traditions. These graduates should also have obtained a degree in economics, finance, and/or banking from an accredited university, making them well-versed in finance as well as religious law. It is true that it will take many years to achieve this, but the rewards will be worth the investment of time, money, and effort. This process is reminiscent of preparing securities lawyers in the United States. Securities lawyers specialize in the laws of the Securities and Exchange Commission (SEC) in the United States. Many of them start as graduates from universities in the fields of economics, business, or even the sciences or history. They often work as financial consultants or brokers in an investment bank to gain hands-on experience for a few years, then return to college to study for another degree in law to qualify as a securities attorney.

In addition to the requirements listed above, an operating license in the fields of compliance with Shari'aa should be made necessary, as is done when licensing a stockbroker or a medical doctor in the United States. There are currently a number of pseudo-regulatory organizations like the Accounting and Auditing Organization for Islamic Financial Institutions, also known as AAOIFI, in Bahrain<sup>12</sup> and the Islamic Financial Services Board (IFSB) in Malaysia.<sup>13</sup> My vision for the process of producing the qualified scholar will be the same as that used to produce attorneys, medical doctors, and certified public accountants in the United States. It also involves annual or periodic renewal of licenses to keep all of them informed of the latest developments in the field.

### **The Central Bank and the Regulatory Shari'aa Compliance Committee**

To minimize confusion and conflicting opinions passed by different Shari'aa scholars and different Shari'aa Compliance Boards of different institutes, the Malaysian model of having one Shari'aa Board appointed, run, and supervised as an independent entity in the central bank of the country involved represents an attractive option to emulate. This central bank Shari'aa Compliance Board will issue legal opinions and will be in charge of examining compliance in the same way banks are examined for compliance by the central bank (or the Treasury Department's Office of the Comptroller of the Currency, OCC). However, in this case, testing for compliance will be about adherence to the edicts and legal opinions that comply with Shari'aa as stipulated in the charter of the bank.

## NOTES

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1. Huston Smith, "Introduction," *The Concise Encyclopedia of Islam*, Harper & Row Publishers, San Francisco 1989, pp. 361–363.
2. Riad Adhami, *Islamic Horizons Magazine*, January/February 2006, pp. 48–50, Maqasid Al Shari'aa.
3. Translations of the Qur'aan were obtained from www.Islamicity.com. Sources used are: (1) Abdullah Yusuf Ali, "*The Meaning of the Holy Qur'an*," Amanah Publication, Beltsville, Md. and (2) The Qur'an, a translation by Muhammad Asad, Andalus Press, Gibraltar 1980. The translation of the Holy Qur'aan by Yusuf Ali is one of the original, and in my opinion, the better translations, because it adds to the meanings a wealth of information on historic references and events and especially on links to Judeo-Christian traditions, making it a wonderful foundation for a Judeo-Christian-Islamic future.
4. The following collections of the Hadeeth are regarded as the most authentic:
 

Sahih Al Bukhari, which were collected, strictly and copiously checked, validated, and compiled by Muhammad Ibn Ismail Al Bukhari (from the City of Bukhara, now in Uzbekistan) (194–256 A.H., A.D. 809–870).

Sahih Muslim by Muslim Ibn Al Hajjaj (202–261 A.H., A.D. 817–876)

Sunan Abu Dawud by Sulaiman Ibn Ash'ath known as Abu Dawud (202–275 A.H., A.D. 817–888).

Sunan Ibn Majah by Muhammad Ibn Zaayid (209–303 A.H., A.D. 824–915).

In addition to these, Muwatta of Imam Malik (93–179 A.H., A.D. 715–795),

Mishkat Al Masabih of Abu Muhammad Al Husain Ibn Mas'ud (died 516 A.H., A.D. 1122) and Musnad of Ahmad Ibn Hanbal (164–241 A.H., A.D. 780–885) are all well-known authorities.
5. References are as follows:
  1. Imam Jafaar As-Sadiq, founder of the Jafaari or Shi'aa school of thought (madh'hab) in Arabic (80–148 A.H., A.D. 699–765).
  2. Imam Abu Hanifa Numan bin Thabit, founder of the Hanafi madh'hab (80–150 A.H., A.D. 699–767)
  3. Imam Malik bin Anas, founder of the Maliki madh'hab (93–179 A.H., A.D. 715–795).
  4. Imam Muhammad bin Idris Al Shafi'ee, founder of Al-Shaff'ee madh'hab (150–240 A.H., A.D. 767–820)
  5. Imam Ahmad bin Hanbal, founder of the Hanbali madh'hab (164–241 A.H., A.D. 780–855).
6. Riad Adhami, *Islamic Horizons Magazine*, January/February 2006, pp. 48–50 quoted here by permission, The Goals of Shari'ah.
7. Ibid.
8. As ruled by Imam Abu Hanifah.

9. Riad Adhami, *Islamic Horizons Magazine*, January/February 2006, pp. 48–50, Maqasid Al Shari'aa.
10. Please visit Dubai Islamic Bank Web site to read about the role of its Shari'aa Board ([www.alislami.ae/en/shariaboard\\_boardrules.htm](http://www.alislami.ae/en/shariaboard_boardrules.htm)); also, read about the Islamic Bank of Britain: [www.islamic-bank.com/islamicbanklive/RoleofCommittee/1/Home/1/Home.jsp](http://www.islamic-bank.com/islamicbanklive/RoleofCommittee/1/Home/1/Home.jsp).
11. Ibid.
12. Please visit their Web sites: [www.aaoifi.com](http://www.aaoifi.com) and [www.IslamicBankingNetwork.com](http://www.IslamicBankingNetwork.com).
13. Please visit their Web sites: [www.ifsb.org](http://www.ifsb.org) and [www.IslamicBankingNetwork.com](http://www.IslamicBankingNetwork.com).