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SHARIAH AUDIT: SHARIAH PERSPECTIVE

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About This Document



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ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ
لَا يَعْلَمُونَ ﴿١٨﴾

“Then We put you, [O Muhammad], on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know.”

(Surah al-Jathiyah: Ayat 18)

إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ حَسِيبًا ﴿٨٦﴾

“...surely Allah takes account of all things”

(Surah al-Nisa’: Ayat 82)



AGENDA

- Shariah Audit
- Shariah Perspective on Shariah Audit



What is Shariah Audit?

BNM's Shariah Governance Framework

- Periodical assessment conducted from time to time, to provide an independent assessment and objective assurance designed to add value and improve the degree of compliance in relation to the IFI's business operations, with the main objective of ensuring a sound and effective internal control system for Shariah compliance.

AAOIFI's Governance Standard (GSIFI 3)

- Internal Shariah review is independent department or part of internal audit examining and evaluating extent of compliance with Shariah rule, fatwas, instructions etc issued by the IFI's Fatwa and Shariah Supervisory Board.

Dr Samir Mazhar Kantakji

- ان التدقيق الشرعي هي شكل من اشكال الرقابة الادارية, فالادارة تعمل بنظرية الوكالة, لذلك هي وكيلة عن المساهمين الذين يرغبون بالعمل وفقا لاحكام الشريعة الاسلامية

Why Shariah Compliance?

- **Original basis** for having the Islamic financial system.
- **Distinguishes** Islamic financial system from conventional financial system
- **Ensures acceptance, validity and enforceability of contracts** from Shariah point of view.
- Perception of the stakeholders – **public confidence**.

Implications Of Shariah Non-Compliances

Non Financial Impacts

- Against the commands of Allah.
- Impediment from Allah's blessing or *barakah*
- Contravention of the provision of Islamic Banking Act 1983 (Section 3(5)(a) & Section 4) - *in the case of Islamic banking*
- Jeopardize the reputation as an IFI

Financial Impacts

- Invalidation of contract ('*aqad*)
- Non-halal income
- Capital adequacy ratio (CAR)
Impact - *as per IFSB, subject to regulatory decision*

Responsibility and Need for Shariah Audit

SHARIAH COMMITTEE

- ❖ *Responsible for forming and expressing an opinion on the extent of IFI compliance with the Shariah.*
- ❖ *SC to assist the management in complying with the Shariah rules and principles by providing guidance, advice and training on Shariah.*

BOARD AND MANAGEMENT

- ❖ *Responsibility for compliance to the Shariah therewith rests with the management of IFI.*
- ❖ *Responsible to provide to SC all information relating to IFI compliance to the Shariah.*

AUDIT IN NORMAL PRACTICE

- ❖ *Ensure assertions about economic actions are conform with standards.*
- ❖ *True and fair.*

AUDIT IN ISLAMIC PRACTICE

- ❖ *Matters are audited to ensure compliance with Shariah rules and principles as decided by the Shariah regulatory councils.*

Shariah audit report (and Shariah review observations) will be the basis of which SC to prepare the final report address to the Board of Directors and shareholders (as well as other stakeholders).



AGENDA

- Shariah Audit
- Shariah Perspective on Shariah Audit



Hisbah – The Foundation of Shariah Auditing



- The term Shariah audit (التدقيق الشرعي) is relatively a new term in Shariah.
- Islamic tradition introduced hisbah which is lies with the concept of “الامر بالمعروف والنهي عن المنكر” (enjoining the good and forbidding the evil).
- Hisbah was institutionalized in the early days of Islam, but not focusing on economic and commercial activities only. Instead it was an integral part of a just economy in a just society.
- Objective: To assist human-being in worshipping Allah (ibadat):
 - ✓ Those relates to the right of Allah
 - ✓ Those relates to the right other human beings - **including Islamic financial transactions.**

Hisbah in Islamic Civilization



- The first *muhtasib* is Rasulullah SAW e.g. he passed by a pile of food and then put his hand in it until his fingers wetted, he said: "What is this, O owner of the food?" He said: "It was wetted by rain, O Messenger of Allah." He said: "Would not you put it on top of the food so people can see it. The one who cheats is not of me."
- First *muhtasib* appointed after the conquest of Makkah on Makkah markets - Sa'id bin Sa'id bin Al-'As.
- Rasulullah SAW appointed a woman, Samra' binti Nuhaik Al-Asadiyyah as a *muhtasib*, and Khalifah Umar kept her in the position during his tenure.
- Khalifah 'Umar himself performed the role of *muhtasib* and he used to tour the market carrying a stick with him warning those who sold goods at exorbitant prices and cheaters.



Hisbah – The Foundation of Shariah Auditing



- ‘True accountability’ - accountability to man to man as well as accountability to Allah are the best solution to attain good corporate governance

HISBAH

- General purpose (*al-amr bil-ma'ruf wal nahyu an al-munkar*)
- Against government and public
- Wider scope (+ non economic/ financial)
- + Shariah compliance
- Municipal function.

SHARIAH AUDIT (IFI)

- True and fair implementation of Shariah rules and principles
- Against IFI
- Financial statement (reflect the operation)
- Established Shariah decisions
- Regulatory function

“Audit” in Al-Quran



➤ Numerous Quranic verses and Hadiths indicating “audit” process:

✓ **Audit - Presentation and Discussion During the Reckoning (Hisab):**

فَأَمَّا مَنْ أُوتِيَ كِتَابَهُ بِيَمِينِهِ ۖ ﴿٧﴾ فَسَوْفَ يُحَاسَبُ حِسَابًا يَسِيرًا ﴿٨﴾
وَيَنْقَلِبُ إِلَىٰ أَهْلِهِ مَسْرُورًا ﴿٩﴾

“Then as for he who is given his record in his right hand, He will be judged with an easy account, And return to his people in happiness.”

(Surah al-Insyiqaq: Verses 6-9)

✓ **Raqib and ‘Atid are the best auditors**

وَإِنَّ عَلَيْكُمْ لَحَافِظِينَ ﴿١٠﴾ كِرَامًا كَتِبِينَ ﴿١١﴾ يَعْلَمُونَ مَا تَفْعَلُونَ ﴿١٢﴾

“And indeed, [appointed] over you are keepers, Noble and recording; They know whatever you do.”

(Surah Al-Infithar: Verses 10-12)

“Audit” in Al-Quran



- ✓ Prophet Sulaiman AS (King Solomon): Leading audit exercise

وَتَفَقَّدَ الطَّيْرَ فَقَالَ مَا لِيَ لَا أَرَى الْهُدْهُدَ أَمْ كَانَ مِنَ
الْغَائِبِينَ ﴿٢٠﴾ لَأُعَذِّبَنَّهُ عَذَابًا شَدِيدًا أَوْ لَأَأْذِجَنَّهُ
أَوْلِيَاءِيَّ بِسُلْطَنٍ مُّبِينٍ ﴿٢١﴾

“And he took attendance of the birds and said, "Why do I not see the hoopoe - or is he among the absent? I will surely punish him with a severe punishment or slaughter him unless he brings me clear authorization."

(Surah al-Naml: Verses 20-21)

Shariah Rule on Hisbah and Shariah Auditing



- Two major views on the Shariah rule on hisbah which is based on the discussion of *al-amr bil'ma'ruf wal-nahyu 'an al-munkar*:



1. **Fardh kifayah**, but if everyone is ignorant of it, it is fardh 'ayn upon the capable - Views of the majority (Shafi'yyah, Hanabilah and Hanafiyyah). They include Qadi Abu Bakr al-Jassas and Al-Alusi (Hanafiyyah), Imam al-Ghazzali and Imam Juwayni (Shafi'iyyah) and Syekhul Islam Ibnu Taimiyyah (Hanabilah)
2. The duty is **wajib** on everybody - Malikiyyah e.g. Imam Ibn Abi Zayd al Qayrawani

- Many Quranic verses and ahadith supported the first view.
- Hence, Shariah auditing **should not be accorded as worldly corporate governance practices** only, but a **religious obligation** on the Islamic financial institutions and Shariah auditors (*muhtasib/ mudaqqiq syar'ie*).

Shariah Rule on Muhtasib (Shariah Auditors)



- Abdul Rahman al-Shizri (نهاية الرتبة في طلب الحسبة) and Ibrahim al-Dasuqi (الحسبة في الإسلام) wrote that fuqaha' agree the prerequisites of *muhtasib* as follows:
1. Must be a Muslim adult, of sound mind and just.
 2. Must be of the opinion and strict in religion, knowledge-able of the provisions and purposes of the law.
 3. Must be of good standing of the Sunnah
 4. Sincere in his intention for the sake of Allah and is not flawless hypocrisy.
 5. Known that what he says are not contrary to what he did.
 6. To be innocent of people's money and refuse to accept gift from employers and industries (auditees).



Q & A SESSION



شُكْرًا جَزِيلًا

"The word 'impossible' is not in leaders' dictionaries. No matter how big the challenges, strong faith, determination and resolve will overcome them."

*H.H Shaikh Mohammed bin Rashid Al Maktoum
Maktoum World Economic Forum 2004
(16 May 2004)*