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By

Mohammad Saiful Islam

PhD Candidate

Department of Islamic Jurisprudence

International Islamic University Malaysia

Mail: saiful.netbd@yahoo.com HP: 0169086520

The Role of *Sharīʿah* Observer (Murāqīb) in the Process of Review and Analysis of Current *Sharīʿah* Compliant: A Case of Islami Bank Bangladesh Limited

Mohammad Saiful Islam

Abstract: *The first Islamic bank was established in Bangladesh in 1983 which is currently a leading Islamic Bank among the Islamic banks in Bangladesh and one of the efficient financial institutions in the globe based on sharīʿah compliance. There is no doubt, Islamic banking in modern world aims to promote and develop the application of Islamic principles, law and traditions to the transactions of financial, banking and related business affairs that are acceptable and consistent with the sharīʿah guidelines comprehensively. However, Islamic banking system safeguards the Islamic communities as well as societies from all activities that are forbidden in Islam. So therefore, this study will discuss the role of sharīʿah observer (murāqīb) in monitoring the process of review and analysis system in Islamic banking operation. It will also explain the sharīʿah guidelines that have been applied by the Islami Bank Bangladesh Limited since its commencement. Finally, the researcher will come up with some suggestions and recommendations for further improvement.*

Keywords: Islami Bank Bangladesh Limited. *Sharīʿah* Observer, *Sharīʿah* Compliant.

1.0 Introduction:

Islamic banking as a new paradigm started in Bangladesh in 1983 with the establishment of the first Islamic bank "Islami Bank Bangladesh Limited". After that, 7 more banks have been established up to 2013 in the country to reach the outcome of this welfare banking to the doorsteps of the people. In the past two decades, it has shown its great robustness in achieving the goal of Islamic *sharīʿah*. Observing the success, many conventional banks have been allured to open their own Islamic branches with the traditional ones. Based on the interest of Muslim people, there is a need to ensure that proper systems and procedures are in place at IBF institutions to preserve and promote such core ethical and value-based characteristics for ensuring the practice of Islamic ideals. As a result of that, *sharīʿah* supervision is an essential component of Islamic finance that ensures the validity of financial products and transactions of these institutions. *sharīʿah* supervisory committee in Islamic financial institutions is entrusted with the task of supervision including purpose, duties and responsibilities and applicable laws. Because the *sharīʿah* boards and audit activities, as one of the key principles of corporate governance at IBF, ensure the constant surveillance and check-and-balance over IBF operations.

There is no doubt, Islamic banks and banking institutions that offer Islamic banking products and services are required to establish *sharīʿah* advisory committees/consultants to advise them and to ensure that the operations and activities of the bank comply with *sharīʿah* principles. So that Ahmad and Hassan (2007) concluded that Islamic banks in Bangladesh should recognize the fact that their success in abolishing interest has been only partial and they have a long way to go in their search for a satisfactory alternative to interest. While Hanif & Iqbal (2010) categorized Islamic modes of financing objectively in two heads; *sharīʿah* compliant and *sharīʿah* based. Later, Hanif (2011) discussed these terms used for modes of financing briefly. He explained Sharia compliant products as the modes of financing where return of financier is predetermined and fixed but within *sharīʿah* constraints. Yahya and Mahzan (2012) pointed out that *shari'ah* auditing practices still needs a lot of improvements such as in terms of improving understanding, of *shari'ah supervision and the* implementation of *shari'ah* auditing process, fulfilling resources and expertise requirement and support from management. Finally, Mahal & Rahman (2013) made a comparative analysis between conventional and Islamic banks of Bangladesh. They discussed the distinctions of product or service and the distinctions in terms of business efficiency between Islamic Banks and Conventional Banks.

Having above discussion, it is clear to the scholars that there were no much materials on the said matter in IBBL. So therefore, the adaptation of *sharīʿah* and its supervision is necessary to be worthy representatives of Islam. The *sharīʿah* may be adopted gradually in accordance with priorities. Chapra (2000) emphasized that some elements of *sharīʿah* may be implemented immediately while others may be postponed until circumstances are favorable. In this paper, we will discuss on the process of review of *sharīʿah* supervision in the Islamic banking sector in Bangladesh in particularly Islami Bank Bangladesh limited.

2.0 Objective of Study:

The overall purpose of this research is to high light the issue of *sharīʿah* supervision and the responsibility of *sharīʿah* observer in IBBL and to add to the body of knowledge and develop a better understanding about the concept of compliance to the Islamic law and principles of *shari'ah* compliance in Islamic bank Bangladesh.

3.0 Method of Study:

Basically, the qualitative method of research and descriptive approach to research were applied in this study as they were appropriate in looking into the research issue understudied. On the other word, this is a secondary data based report. Information has been collected from various secondary sources like journal articles, annual reports of different banks, books and different websites.

4.0 Commencement of Islami Bank Bangladesh Limited.

Bangladesh is the third largest Muslim country in the world with around 160 million populations of which 90 percent are Muslim. The hope and aspiration of the people to run banking system on the basis of Islamic principle came into reality after the OIC recommendation at its Foreign Ministers meeting in 1978 at Senegal to develop separate banking system of their own. After 5 years of that declaration in 1983, Bangladesh established first Islamic bank namely Islami Bank Bangladesh limited. At present, in Bangladesh, out of 48 banks, 8 full-fledged Islamic Banks and 21 Islamic Banking branches of 10 conventional banks, have been working in the private sector on the basis of Islamic *sharīʿah*. As (Hanif,2011) mentioned that the conventional banking systems follow the philosophy of capitalism and interest which is forbidden according to Islamic *sharīʿah*, the Muslims made the first move toward the Islamic financial system was observed in the second half of 20th century when the Muslim world got liberation from colonial powers.

5.0 The Role of Bangladesh Bank with Islamic Bank

Bangladesh Bank issued license in 1983 for establishment of first Islamic bank in Bangladesh "Islami Bank Bangladesh Limited". The Bangladesh Government also participated in establishing first Islami Bank by taking 5% share in the paid up capital. From the very beginning, considering lack of Islamic financial markets and instruments in the country, Bangladesh Bank granted some preferential provisions for smooth development of Islamic banking in Bangladesh. The role of Bangladesh Bank in controlling, guiding and supervising the Islamic Banks in Bangladesh in accordance with Islamic *Sharīʿah* is very minimal in observing the *sharīʿah* implementation status of the Islamic banks; Bangladesh Bank examines only the report of the respective banks' *sharīʿah* Councils. However, the inspectors and supervisors of Bangladesh Bank are not equally familiar with the technicalities of the different operational methodologies of the Islamic banking. This is because of the fact that there is no separate Department to look into this important matter and any concerted effort to devise separate inspection and supervision guidelines for the Islamic banks.

5.1 Guidelines Adopted by Bangladesh Bank

The suggestions and recommendations were put forwarded by the study report of the IMF, Bangladesh Bank has already been complying with the following guidelines:

a. Some legal provisions have been incorporated in the amended Bank Companies Act, 1991.
b. For analysis of the operational risks of the Islamic banks, CAMEL rating framework is being used by the concerned Department of Bangladesh Bank.
c. Information is being disclosed by the Islamic banks as per the same format designed for the conventional banks. A workshop was held in Bangladesh Bank in 1995 on "Islamic Banking Inspection Methodology" to devise separate inspection methodology for the Islamic banks. However, follow-up research work is going on this issue in the Bangladesh Bank.
d. In licensing procedures, Bangladesh Bank is pursuing some prudential techniques. But, this will be sounder if she follows the guidelines recently submitted by the Islamic Banking Focus Group.

6.0 Sharī´ah Compliance, Supervision and Process of Review at IBBL:

Sharīʿah supervision plays an essential role in the governance of Islamic financial institution and forms part of the principal component of the *sharīʿah* governance framework (Hamza, 2013). In Islami Bank Bangladesh, there is a *sharīʿah* supervisory committee who ensures that the activities of the bank are being conducted on the principle of Islam. 12 member *sharīʿah* supervisory committee consists of prominent *sharīʿah* scholars, reputed Bankers, renowned lawyers and eminent Economists. Ideally, *sharīʿah* supervision will be a part of an Islamic product or service from the time of its development. At the stage of research and development, or of drafting contracts or offering memorandums, *sharīʿah* supervision, in one form or another, should be an active participant. Moreover, once a product is launched, *sharīʿah* supervision may take the form of ongoing monitoring through periodic audits. Such audits may be undertaken by means of site visits, document reviews, or consultation with management at regular intervals.

6.1 Need for Sharīʿah Compliance:

The compliance with *sharīʿah* principles is an integral feature in the Islamic banking and finance. An effective and conducive *sharīʿah* framework is imperative in assuring such compliance. It will underpin a comprehensive and wholesome development of this sector. An effective *sharīʿah* framework will harmonize the *sharīʿah* interpretations, strengthen the regulatory and supervisory oversight of the industry and will also foster and nurture a pool of competent *sharīʿah* advisers. Islamic institutions need to have some kind of regulatory supervision in day-to-day operations in order to protect their depositors and clients. In order to ensure compliance with Islamic principles, most Islamic institutions or conventional banks actively engaged in Islamic finance businesses, have a *sharīʿah* board. The *sharīʿah* boards are comprised of Islamic scholars who review proposed transactions and issue an opinion (fatwa), which is a condition to the transaction proceeding. The boards have a function similar to that of credit committees in conventional banks (although the existence of the Sharia board does not replace a credit committee required under banking regulation). There are only a limited number of qualified scholars who have both religious standing and financial services experience in complicated financial structures. However, due to the substantial increase in *sharīʿah* -compliant investments, scholars have gained significant practical experience in a range of complex financial and commercial transactions.

Rahmān (2008) has classified the *shari'ah* compliance types in two categories: (i) ex-ante compliance, and (ii) ex-post compliance. The ex-ante *shari'ah* compliance is basically the SSCs supervision, monitoring and control tasks that take place upon and during implementation of the bank's dealings. These activities include making sure that the banks and financial institutions comply with the *shari'ah* rules and guidelines during the designing of the contracts and agreements, during the process of transactions, during the conclusion and execution of the contract, and up to the implementation of the terms of contract and liquidation.

6.2 Concept of Sharīʹah Supervision:

Sharīʿah supervision by a qualified *sharīʿah* advisory board is an essential component of the Islamic financial structure. The board consists of prominent scholars who are well versed in Islamic law that relates to transactions and business dealings. The board is supposed to be independent and screens investment strategies, implementation, monitoring and reporting (Zaher and Hassan, 2001). *Sharīʿah* supervision is the single most important element that distinguishes between a conventional and an IFI. It is the only way of certifying that its services, products, and operations are actually *sharīʿah* -compliant. In the emerging Islamic financial sector, therefore, *sharīʿah* supervision is not a matter to be taken lightly. So it is essential for these institutions to innovate and operate within the ambits of *sharīʿah*. Hence, need of the supervision is an integral part of any financial institution that deals in the name of Islamic finance. While it may be convenient to explain *sharīʿah* supervision as an Islamic audit but its scope is far more comprehensive. In essence, *sharīʿah* supervision is the process of ensuring that a financial product or service complies with Islamic legal precepts and principles.

6.3 The Purpose of Sharīʹah Supervision:

The most obvious and immediate purpose of *sharīʿah* supervision is to certify for practicing Muslim consumers and clients that the financial product or service being offered to them is acceptable from an Islamic legal perspective and is therefore lawful to them. The other beneficiary of *sharīʿah* supervision will be Muslim consumers or investors who may not have necessary skills or knowledge to evaluate the Islamic banking products in the light of *sharīʿah* teachings. It also supplies form of guarantee and advocacy that money being invested in the IFIs is duly used in compliance with *sharīʿah* rulings and haram elements are eliminated. Hossain (2012) also stated that the Islamic banks are to abide by more rules and regulations than conventional banks.

6.4 Nature of Sharīʿah Supervision:

There are at least three types and levels of *sharīʿah* supervisory officers as classified in banking sector in Bangladesh: These are:

1. *Sharīʿah* Observer (Muraqib)
2. *Sharīʿah* Supervisory Committee
3. Central *Sharīʿah* Board for Islamic Banks Bangladesh

In Bangladesh, the Islamic banks would normally have permanent qualified *sharīʿah* staff working with them to help manage *sharīʿah* issues and to assume the role as the coordinator between the management of the companies with the SSC. Individual companies may also engage a *sharīʿah* consultant for any matters regarding *sharīʿah*. The consultant is a person or an entity having expertise in *sharīʿah*.

Sharīʿah Supervisory Committee (SSC) is a mandatory requirement for Islamic Banks in Bangladesh regulated by Bangladesh bank. Islamic Financial Institutions also follow the rules and regulations of AAOIFI which have issued Governance Standards for Islamic Financial Institutions (GSIFI). GSIFI No 1 defines SSC as an independent body of specialized jurists in *fiqh mua'malat,* who mainly specialize in the field itself or with the knowledge of Islamic finance. The jurists are specialists from different backgrounds such as academicians, Islamic studies expert, economists, lawyers and bankers with expertise or some knowledge of *fiqh mua'malat*.

According to AAOIFI, GSIFI No 1 members of SSC are responsible to ensure the agreements and contracts in IFIs' comply with *sharīʿah* requirements. The members are also responsible to analyze, resolve and advice (via fatwas and rulings) on any *sharīʿah* issues and concerns as presented to the SSC by the IFIs' staff and board of directors from time to time. The members of SSC are also expected to supervise and monitor the IFIs' activities and dealings are in accordance to *sharīʿah* by reviewing samples of the bank's activities and dealings.

7.0 The Function Sharīʿah Review and Observation:

The *sharīʿah* review function refers to regular assessment on *sharīʿah* compliance in the activities and operations of the IFI by qualified *sharīʿah* officer(s), with the objective of ensuring that the activities and operations carried out by the IFI do not contravene with the *sharīʿah. Sharīʿah* supervision refers to the 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 IFIs business operations, with the main objective of ensuring a sound and effective internal control system for *sharīʿah* compliance.

As for the Islamic banks selected, firstly, IBB establishes a *sharīʿah* Supervisory Department that has a duty ensuring that the *sharīʿah* requirements are achieved and undertakes periodic compliance reviews. Then *sharīʿah* h framework within their bank that requires the presence of a *sharīʿah* department head. *Sharīʿah* department head is to ensure compliance of day-to-day operations and has sub-unit which are *sharīʿah* compliance & review and *sharīʿah* advisory, department & secretariat.

There will be two samples of inspection and supervision done by *sharīʿah* observer from the central *sharīʿah* supervisory committee.

Table-1 ***Monthly Offsite Shariah Observation/Supervision Report***

From …01.01.2013……………… to …31.01.2013…. ……………….

Name of the Branch : Station Road ………………….. **Month …January……….**

SL No	Date of Offsite Observation/	Deal No.	Date of Investment	Amount of Investment	Total Deal	Total Amount of Investment	Whether transaction profile	Whether telephonic contact, if required, done or not (✓ or Ḥ)	Remarks
	12.02.2013	MPI			39 - Deals	78,956,417.00	Ḥ	Ḥ	The deal set of the said investments are not available in MIS. **So physical verification is necessary.**
		BM. RE 1413	02.01.2013	1,137,500	1 - Deal	1,137,500	✓	**Ḥ**	*Tk.200,000 was disbursed to the account no.2739 of local supplier which was transferred to Keranihat Branch. Rest investment was made into remote account which is not clear in MIS.*
		BM. RE			2 - Deals	411,500	✓	**Ḥ**	*Investments were made through Payment Orders whose details are not available in MIS.*
		HDS 1415	16.01.2013		1 - Deal	40,000	✓	**Ḥ**	*Investment was made through Payment Order whose detail is not available in MIS.*
		SHDS 1415	23.01.2013		1 - Deal	80,000	✓	**Ḥ**	*Investment was made through Remote Payment whose detail is not available in MIS.*
		MTR 1376	**06.01.2013**	**750,000**	**1 - Deal**	**750,000**	✓	**Ḥ**	***Investment of Tk.1,000,000 (including cash security of Tk.250,000) was transferred to Current Account no. 2026 of the local supplier. Next day the supplier transferred Tk.430,000 to the current account no.521 of the client. On 08.01.13 the supplier also transferred Tk.520,000 to the Current Account no.45. Details about CA 45 need to be verified in details.***

Table-2 **Sharia Inspection Report**

Date of Inspection: From 01.01.2013 to 09.06.2013 **Branch Name**: VIP Road Branch Mode of Investment: Bai-Murabaha

SL No	Client's Name & Investment Account No.	Amount of Investment / Outstanding	Date of Investment / Date of maturity	Charged Profit/Rent	Profit/Rent Realized in current year	Observation of Muraqibs	Reply of Branch	Remarks
1	MASAFI BREAD AND BISCUIT INDUSTRIES 20502234200099200	14,400,000 0	11/03/2013 08/06/2013	557458	0 113205	An amount of Tk.16,000,000 was transferred to supplier's current account no.552 for purchasing flour on 11.03.2013. The supplier transferred Tk.3,368,000 out of disbursed amount to clients current account no.306 on the same day through cheque no.IBG02909683. It is noted here that the supplier's said current account didn't contain considerable amount of money prior to this disbursement.	We do hereby confirm that we purchased 561 MT flour from M/S Masafi Flour Mills Ltd. at TK. 16.00 million and delivered the flour to the client ensuring buying selling to comply shariah. Then the supplier transferred Tk.33,68,000/- to M/S Masafi Bread & Biscuit Industries Ltd., against another business transactions as stated by the client. It may be mentionable here that the noted account had been adjusted fully on 06/06/2013.	*Major*
2	MASAFI BREAD AND BISCUIT INDUSTRIES 20502234900193707	5,200,000 5,401,304	29/04/2013 27/07/2013	201304	0 65861	An amount of Tk.5,200,000 was transferred to supplier's current account no.552 on 29.04.2013 for purchasing flour from local supplier M/s.Masafi Flour Mills LTD.On the next day the supplier issued transfer cheque no.IBG04857063 for amount of Tk.46,40,000 in the name of investment client which was transferred to client's current account no.306 from the disbursed investment money.	We do hereby confirm that we purchased 192 MT flour from M/S Masafi Flour Mills Ltd. at TK. 5.20 million and delivered the flour to the client ensuring buying and selling complying shariah. Then the supplier transferred TK 46,40,000/- to M/s Masafi Bread & Biscuit Industries Ltd., against another business transactions as stated by the client.	*Major*

Signature of Muraqib **Source: IBBL(Central Shariah Office in Dhaka collected by mail)** **Signature of Manager/AVP/VP/SVP/EVP**

8.0 Responsibilities of Sharīʿah Observer with example at IBBL

According to the report by *sharīʿah* observer here it is notable the importance of *sharīʿah* supervision is derived from five different resources namely Islamic, social, economic, legal and governance. The Islamic position is derived from the ability of *sharīʿah* scholars in understanding and interpreting *sharīʿah* principles to others. The social power of the *sharīʿah* supervision provides confidence to the stakeholders about the legitimacy of the transactions and activities of the Islamic financial institutions. The economic power of the *sharīʿah* supervision can be seen from the fact that the profitability of an Islamic financial institution is dependent on the performance of *sharīʿah* scholars. As far as legal power is concerned it is derived from a variety of sources including regulators of the respective countries. The hierarchical position of *sharīʿah* supervision under the shareholders, clients of the Islamic financial institutions emphasizes it supremacy over other governance organs thus giving them authority to set their internal policy including task, responsibilities and relations with other governance organs in the Islamic financial institutions. (Garas and Pierce, 2010)

Based on the point before, we would say the role and responsibilities of *sharīʿah* observer shall be as follows:

a) Review and approve for *sharīʿah* compliance the products/instruments developed by Bangladesh Bank as well as IBBL.

b)

c) Proper criteria for appointment of *sharīʿah* advisors of institutions conducting Islamic banking activities.

d) Suggest the State Bank on the *sharīʿah* ruling in case of a conflict arising from the *sharīʿah* h audit of the Islamic banking activities of the banks under the supervisory control of State Bank.

e) To advise the Board on *sharīʿah* matters in its business operation and endorse *sharīʿah* Compliance Manuals.

f) To assist related parties on *sharīʿah* matters for advice upon request.

g) The *sharīʿah* Committee is required to record any opinion given. In particular, the Committee prepares written *sharīʿah* opinions in the circumstances.

h) To study the rulings of Islamic *sharīʿah* previously issued by the *sharīʿah* councils of the Islamic banks and financial institutions in an attempt to make decisions.

9.0 Concluding Remarks and Recommendations

Islamic banking and finance became a great hub of global economy for its monitoring and supervision system under the *sharīʿah* compliance. These regulatory and supervisory systems, undoubtedly helps to control their all-out operations with a view to reducing the possibility of their failure, promoting the public's confidence in the banking system and ensuring its stability. But, in case of Islamic banks, in addition to those, *sharīʿah* implementation in the activities of the banks must also be ensured by the regulators and supervisors. Lack of enforcement and supervision in line with Islamic *sharīʿah* may lead the Islamic banks into systemic *sharīʿah* distress. The growing integration of financial markets on the eve of financial globalization, especially with their sophisticated markets and their innovative instruments necessitates the development of new Islamic financial architecture to cope with the challenges posed by them. So it high demandable in this present time to recommend the following suggestion for the future development.

a) To supervise the activities of the Islamic banks and financial institutions to ensure conformity with the rulings of the Islamic *sharīʿah*. In addition, it has to draw the attention of the concerned parties and Board of Directors of BB to any potential violation of these activities;
b) To issue legal religious opinions on banking and financial questions;
c) To study matters related to financial and banking operations in response to requests for advice from the Islamic banks and financial institutions;
d) To conduct *sharīʿah* audit and inspection of specific branches/offices of the Islamic banks and financial institutions with the help of the officers.
e) To plan, design, conduct and manage different training courses, seminars, Symposia on *sharīʿah* and financial matters with the help of the Islami Bank Training and Research Academy which is known as (IBTRA).
f) To assess the present status of *sharīʿah* compliance by the Islamic banks and financial institutions, identify problems and suggest remedies.

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