Comparative Analysis on AAOIFI, IFSB and BNM Shari'ah Governance Guidelines

NawalKasim

Accounting Research Institute Faculty of Accountancy UniversitiTeknologi MARA Shah Alam, Malaysia

Sheila Nu NuHtay

Institute of Islamic Banking and Finance International Islamic University Malaysia Gombak, Malaysia

Syed Ahmed Salman

Institute of Islamic Banking and Finance International Islamic University Malaysia Gombak, Malaysia

Abstract

Issue of the corporate governance has emerged with the birth of the corporation. However, it became an attractive issue due to the financial crisis. Similarly, the issue of Shari'ah compliance in Islamic finance is given the attention when the Islamic finance industry arose. Therefore, renowned international organizations such as Accounting, Auditing Organization for Islamic Financial Institutions (AAOIFI) and Islamic Financial Services Board (IFSB) and Bank Negara Malaysia (BNM) have provided the Shari'ah governance guidelines. However, to our knowledge, there is no research has been conducted in comparing these guidelines. In our opinion, it is necessary to compare them in order to find out whether there is any variation among the suggestions given by the guidelines. Therefore, the purpose of this paper is to make a comparison among these Shari'ah governance guidelines. It has been found that Shari'ah governance framework provided by AAOIFI has seven sections. In the case of IFSB, the framework includes scope and approach of Shari'ah governance system and the qualitative characteristics of Shari'ah Supervisory Committee. BNM provides the general requirements of the framework, qualitative characteristics and provide the guidelines on Shari'ah review and Shari'ah audit. BNM further provides the guideline on the functions of Shari'ah risk management and Shari'ah research in Islamic finance.

Key words: Shari'ahgovernance, AAOIFI, IFSB and BNM

1. Introduction

The history of corporate governance can be traced back to the emergence of the corporation, whereby the owners are separated from the management. However, it becomes an attractive issue due to the financial crisis. Many developed countries such as The United States of America and United Kingdom and developing countries such as Malaysia and Indonesia as well as the international organizations such as OECD and Common Wealth Association have provided the guidelines and the codes for the best practices of corporate governance. Similarly, due the emergence of the Islamic finance industry, there is a need for the Shari'ahgovernance guidelines to mold the Islamic financing practices. It has been well known that conventional financial system is based on the interest, uncertainty and gambling which are prohibited in Islam. As an alternative, Islamic financing system has been proposed by the Muslim scholars and its growth is tremendous since it hasfirst been introduced. Islamic finance industry has been widely penetrating not only in Muslim countries such as Malaysia, Indonesia and GCC countries but also in non-Muslim countries such as Sri Lanka and Singapore. Since the emergence of the Islamic finance industry is to implement Shari'ahcompliant financing practices, the role of Shari'ahgovernance guidelines play asignificant role in the industry to ensure that it meets the objective of the Islamic financial industry.

The prevailing Shari'ahgovernance guidelines are issued by AAOIFI, IFSB and BNM. We believe that the Shari'ahgovernance guidelines are the tools used to meet the unique needs of the Islamic financial industry. Therefore, it is necessary to compare the prevailing Shari'ahgovernance guidelines in order to examine whether there is any significant difference among them. The second section presents AAOIFI Shari'ahgovernance guidelines. The third section elaborates on IFSB guidelines and the fourth section mentions BNM guidelines. The fifth section concludes and provides the recommendation.

2.0 AAOIFI Shari'ah Governance Standard

Basically, there are 7 standards under governance standards for Islamic Financial Institution which issued by AAOIFI. There are, (1) Shari'ahSupervisory Board: Appointment, Composition and Report, (2) Shari'ahReview, (3) Internal Shari'ahReview, (4) Audit & Governance Committee for Islamic Financial Institutions, (5) Independence of Shari'ahSupervisory Boards, (6) Statement on Governance Principles for Islamic Financial Institutions, (7) Corporate Social Responsibility Conduct and Disclosure for Islamic Financial Institutions.

2.1Shari'ah Supervisory Board: Appointment, Composition and Report

According to AAOIFI, Shari'ahsupervisory board is defined as "an independent body of specialized jurist in figh al mu'amalat(Islamic commercial jurisprudence). However, the Shari'ahsupervisory board may include a member other than those specialized in fighmua'malat, but should be an expert in the field of Islamic financial institutions (IFIs) with the knowledge of fiqhmua'malat." Their main responsibility is to provide direction, guidance, supervision related to the activities of the Islamic financial institution. The purpose is to ensure IFIsare in compliance with Shari'ahrules and principles.

Regarding the appointment of Shari'ah supervisory members, it should be appointed by the shareholders in the annual general meeting upon the recommendation of the board of directors. Shareholders may also authorize the board of directors to fix the remuneration of Shari'ahsupervisory board. The appointment letter should have an evidence of the agreement of engagement of Shari'ahsupervisory board by IFIs. It is suggested that at there should be at least three members in the board. The board is allowed to seek the service of consultants who have the expertise in business, economics, law, accounting and etc. To maintain the independency of the board, the members should not be the directors and hold any significant shares. For the dismissal of the member, it shall require a recommendation from the board of directors and subjected to the approval of the shareholders in a general meeting.

Shari'ah board members need to provide the report which should include at least seven elements and they are: information.

- Title, the report should have appropriate title
- Addressee, the report must be appropriately addressed as required by the circumstances and local laws and regulations
- Opening or Introductory Paragraph, it should identify the purpose of the engagement, for example "In compliance with the letter of appointment, we are required to submit the following report"
- Scope paragraph describing the nature of the work performed
- Opinion paragraph containing and expression of opinion on the compliance of the Islamic financial institution with Shari'ah rules and principles
- Date of report and
- Signature of the members.

2.2 Shari'ahReview

AAOIFI defines Shari'ahreview as"an examination of the extent of an IFI's compliance in all its activities. The examination includes the contracts, agreements, policies, products, transactions, memorandum and articles of association, financial statements, reports (especially internal audit and central bank inspection), circulars, etc." The aim of this review is to ensure that the activities carried out by an IFI do not contravene the Shari'ah. Shari'ah board members are responsible for forming and expressing an opinion on the extent of an IFI's compliance with the Shari'ah. However, the responsibility for compliance is stillon the shoulders of the management. Shari'ahreview does not relieve management to undertake all transactions in accordance with the Shari'ah.

AAOIFI further lists down *Shari'ah* review procedures and stages. They are:

- Planning review procedures, the Shari'ahreview procedures should be planned so that it is completed in an effective and efficient manner. The plan must also be properly documented including the sample selection criteria and sizes, taking into consideration of its complexity, and frequency of transactions.
- Executing Shari'ahreview procedures and preparation and review of working papers, it can be done by (1) obtaining an understanding of the management's awareness and commitment, (2) reviewing contracts, agreement and etc. (3) ascertaining whether transactions entered during the year arefor products authorized by the Shari'ah supervisor board, (4) reviewing other information's and reports in detail, (5) discussing the findings with an IFI's management.
- The Shari'ah supervisor board should implement adequate quality control policies and procedures to ensure the review is conducted in accordance with this standard. Quality control procedures may include in reviewing all work papers.

2.3 Internal Shari'ah Review

In addition to the Shari'ah review, AAOIFI suggest for practicing internal Shari'ah review. The objective of this review is to ensure that the management of IFIs is doing their responsibilities in relation to the implementation of the Shari'ahrules and principles as determined by the IFIs'Shari'ah supervisory board. The culture of implementing the internal Shari'ah review is necessary because it is an integral part of the organs of governance of the IFIs. The internal Shari'ahreview can be carried out by the internal audit department or internal control department.

In the case of independence and objectivity of the internal Shari'ah review, AAOIFI suggests that the status of the internal Shari'ahreview shall not be lower than the internal audit department or internal control department. At the same time, they must have full and continuous support from the management and the board of directors. No scope limitation and restriction of access to documents report and etc. In addition, the head of internal Shari'ahreview is responsible and answerable to the board of directors.

From the aspect of professional proficiency, the staff of internal Shari'ahreview must be proficient and have adequate educational background and training relevant to internal Shari'ahreview. A supervision of internal Shari'ahreview is a continuous process, beginning with the planning and ending with the conclusion. Compliance with the code of ethics, the internal Shari'ahreview shall comply with the Code of Ethics for accountants and auditors of Islamic Financial Institution issued by AAOIFI. Moreover, continuing education and training shall maintain their technical competence through continuing education.

The scope of work of internal Shari'ahreview shall encompass the system of internal Shari'ahcontrol and the quality of performance in carrying out assigned responsibilities. The purpose of the examination of the adequacy of the system of internal Shari'ahcontrol is to ascertain whether the established system provides reasonable assurance of the IFI objectives of compliance with the Shari'ahrules and principles that will be met effectively and efficiently. For the internal Shari'ahreview work, the planning documentation should include minimum of the following sources and references.

- Background information about the activities to be reviewed, such as locations, products, services, branches andetc.
- Shari'ah supervisory board's fatwas, guidelines, instructions, prior year internal and external Shari'ahreview result. This should communicate to all level of people who requires knowing about the internal Shari'ahreview.
- Approval documents from the concerned authorities including Shari'ah supervisor boards of the IFIs.

Examining and evaluating internal Shari'ahreview information, they should collect, analyze, interpret and document information to support internal review reports. The collected information must include the examination of documentation, analytical reviews, inquiries, discussion with management, and observations. At the same time, the information has to be reliable, sufficient, relevant, and useful to provide a sound basis for internal Shari'ahreview. However, the report should be followed up to ascertain that appropriate action is taken on their report's finding. The management is also responsible for rectification of non-compliance, prevention of nonrecurrence of no-compliance.

2.4 Audit & Governance Committee (AGC) for IFIs

This committee is also known as the Audit Committee) and it plays a significant role to achieve the fundamental objectives of the IFIs, enhance greater transparency and disclosure in financial report and to gain the public's confidence of the IFIs regarding the application of Shari'ahrules and principles. The functions of this committee should consist of:

- Preserving the integrity of the financial reporting process
- Safeguarding the interest of shareholders, investors and other corporate stakeholders.
- Providing additional assurance on the reliability of financial information presented to the board of directors
- Acting as an independent link between the IFIs' management and its stakeholders.

The role of AGC with regard to the internal control is to ensure the IFI has the appropriate control in place, as well as to monitor the implementation of management's strategy. However AGC should have sufficient understanding of the IFI's business and its control environment to make pertinent inquiries concerning the system of internal control. The specific responsibilities associated with review of internal control include:

- Comprehending the major risks to which the business is exposed
- Monitoring management's control consciousness as it relates to the significance attached to controlling the IFI's policies, procedures and methods.
- Reviewing resources and skills, scope of responsibilities, overall work program and reporting lines of internal audit.
- Reviewing the findings of central bank inspection and other regulatory bodies together with management responses and ensuring that appropriate actions have been taken to comply with the central banks inspector's requirements.
- Reviewing the IFI code of ethics and effectiveness with which it is implemented.

Review of accounting practices and audit plan includes examining the financial transactions and projects and the specific responsibilities associated with this function include:

- Understanding areas whichthe IFIsareexposed to high degrees of risk and uncertainty, with particular reference to judgment areas involving estimates, contingent liabilities and significant claims.
- Ensuring the coordination between the internal and external auditors and ensuring the independence and professional integrity of auditors is not compromised.
- Considering any issues related to the appointment, resignation or dismissal of members of Shari'ah supervisory board and chief internal auditor.
- Reviewing proposal to appoint new members of the Shari'ah supervisory board, as well as external or internal auditor.

In the case of reviewing the interim and annual accounts and financial reports (inclusive of matters arising from the audit), the committee should review all the mentioned reports to ensure its completeness, fairness and accuracy. The committee must also review those reports (interim and annual accounts and financial reports) before their submission to the IFIs' board of directors. The specific responsibilities associated with this function include:

- Ensuring compliance with the *Shari'ah*, legal as well as regulatory requirements
- Reviewing the treatment of significant areas of judgment, accounting estimates
- Reviewing significant adjustment arising from the audit
- Presenting balanced and comprehensible assessment of the company's position that relates to the responsibilities of the committee

From the ethical perspective, the committee should adhere to ethical values and conducts and at the same time, they will ensure the whole IFIs comply with ethical code of conduct. This includes faith-driven conduct, professional competence and diligence, trustworthiness, religious legitimacy, objectivity and professional conduct The committee is responsible to review the reports produced by the internal and technical standards. Shari'ahreview and the use of both restricted and unrestricted investment account's fund. The purpose of reviewing these accounts is to ensure that the funds are invested in accordance with the terms of the agreement and that profits are allocated according to the agreed terms between the Islamic banks and investment account holders and to comply with Shari'ahrules and principles.

Depending on the IFIs' policy and the countries' regulation, the structure of the committee may vary. However, all the committee members must be non-executive and the committee will be formally established by the board of directors. The committee's report must be submitted to the board of directors and chief executive officer.

2.5 Independence of Shari'ah Supervisory Boards

Independence in this case is an attitude of mind which does not allow the viewpoints and conclusions of its possessor to become reliant on or subordinate to the influences and pressures of conflicting interests. It is achieved through organizational status and objectivity. The independence of Shari'ah supervisory committee is important to enhance the public confidence in the IFIs in terms of compliance with Shari'ahrules and principles and to achieve the fundamental objectives of IFIs, i.e. Shari'ah compliance. In order to maintain the independence of Shari'ah supervisory board, the members are not to subordinate their judgment on Shari'ah supervision matters to that of others, should not be the employees of the same IFI and should not be involved in any matter with regard to managerial decisions and operational responsibilities of the IFIs.

In addition, the relationship between members and their IFIs should be continuously assessed to identify any situations that may impair independence and if there is any issue, it should be resolved. When one of the Shari'ah board members has issue regarding independence impairment, members should follow the following to resolve the issue:

- Document the issue.
- Review the issue internally within the Shari'ah board members
- If the issue still exists after the internal review by the Shari'ah board members, the member with the issue of independence impairment must resign and the General Assembly of the IFI must be notified.
- If any resolution is required to be done, the consideration must be given to local laws and regulations.

3.0 IFSB Shari'ah Governance Guidelines

IFSB defines Shari'ah governance system as a set of institutional and organizational arrangement through which an Islamic financial institution ensures that there is effective independent oversight of Shari'ah compliance over each of the following structures and process:

- a) Issuance of relevant Shari'ah pronouncement or resolution. This refers to a juristic opinion on any matter pertaining to Shari'ah issues in Islamic finance given by the appropriately mandated Shari'ah board.
- b) Dissemination of information on such Shari'ah pronouncement or resolutions to the operative personnel of the IFIs who monitor the day-to-day compliance with the Shari'ahresolutions vis-à-vis every level of operations and each transaction. However, this task would normally be done by the internal Shari'ah compliance department.
- c) An internal Shari'ah compliance review or audit reports that if there is any incident of non-compliance, it should be recorded and addressed and rectified. With regard to this, IFSB-3 sets out that Shari'ah resolution issued by the Shari'ah boards should be strictly adhered to.
- d) An annual Shari'ah compliance review or audit for verifying that internal Shari'ah compliance review or audit has been appropriately carried out and its findings have been duly noted by the Shari'ah boards.

IFSB further explains how the Shari'ah governance system complements the existing governance, control and compliance functions within IFIS. From the governance aspect, IFIs should have Shari'ah board in addition to the board of directors. Regarding the control mechanism, IFIs should have both internal and external Shari'ah review unit in addition to the conventional internal and external auditors. In terms of compliance, IFIs should comply with Shari'ah in addition to compliance with the conventional regulatory and financial requirements. However, in reality the detailed scope may vary from one jurisdiction to another, depending on the types of structures adopted by the IFIs as permitted by the relevant authorities.IFSB further provides guiding principles in five sections. It covers the general approach to Shari'ah governance system, competency, independency, confidentiality and consistency.

3.1 General approach to Shari'ah governance system

The general approach to Shari'ah governance system mentions that both ex-ante and ex-post processes are essential parts of good governance practices. The relevant ex-ante processes include issuance of Shari'ah resolutions and compliance checks before the product is being offered to the customers.

After the products has been offered, IFIs would do ex-post process namely, internal Shari'ah review and Shari'ah governance reporting to follow up and monitor the consistency of its Shari'ah compliance and effectively manage any Shari'ah compliance risk that may arise over time. Apart from that, each IFI must ensure that the Shari'ah board has clear terms of reference regarding its mandate and responsibility, well-defined operating procedures and lines of reporting and good understanding of and familiarity with, professional ethics and conduct.

3.2 Competence

In the area of competency, various measures are recommended to ensure reasonable expertise and skill-sets in Shari'ah boards and to evaluate their performance and professional development. Shari'ah board members should fulfill the acceptable and proper criteria set by IFIs to become the members. The IFIs shall facilitate continuous professional development of persons serving on its Shari'ah boards. Moreover, there should be a formal assessment of the effectiveness of the Shari'ah boards as a whole and of the contribution by each member to the effectiveness of the Shari'ah boards.

3.3 Independence

This part aims at safeguarding the independence of Shari'ah boards, particularly from the management of IIFS, by highlighting various issues arising from potential conflicts of interest and recommending how they should be managed. According to IFSB, the Shari'ah board should pay a strong and independent oversight role, with adequate capability to exercise objective judgment on Shari'ah-related matters. No individual or group of individuals shall be allowed to dominate the Shari'ah board's decision making. In order to fulfill their responsibilities, the Shari'ah board should be provided with the complete, adequate and timely information prior to all meetings and ongoing basis.

3.4 Confidentiality

It is important for IFIs to gain the confidence from the public and thus, IFIs need to emphasize on observing and preserving confidentiality by the key organs of Shari'ah governance. In addition, Shari'ah board members should ensure that all internal information obtained in the course of their duties is kept confidential.

3.5 Consistency

Consistency in compliance is important to avoid any dispute. IFIs should focus on improving consistency in terms of the professionalism of the Shari'ah board members to enhance their credibility and confirming their integrity through a set of best practices. The IFIs should fully understand the legal and regulatory framework for issuance of Shari'ah pronouncement or resolutions in the jurisdiction where it operates. It should ensure that its Shari'ah board strictly observes the said framework and, wherever possible, promotes convergence of the Shari'ah governance standards.

4.0 Bank Negara Malaysia (BNM) Shari'ah Governance Framework

The objectives of Shari'ah governance framework issued by Bank Negara Malaysia (BNM) are to set out the expectations of the bank on an IFI's Shari'ah governance structures, processes and arrangements to ensure that all its operations and business activities are in accordance with Shari'ah, to provide a comprehensive guidance to the board, Shari'ah committee and management of the IFI in discharging its duties in matters relating to Shari'ah and outline the functions relating to Shari'ah review, Shari'ah audit, Shari'ah risk management and Shari'ah research. Generally the framework is discussed in six sections related to the general requirement, oversight, accountability and responsibility, independence, competency, confidentiality and Shari'ah compliance and research function.

According to the general requirement of Shari'ah governance framework, the essential key functions of key organs in Shari'ah governance framework are the board, Shari'ah committee, management and Shari'ah compliance and research functions. According to BNM Shari'ah governance framework, IFIs are responsible to establish a sound and robust Shari'ah governance framework with an emphasis placed on the roles of key functionalities in ensuring effective implementation of the Shari'ah governance framework. Regarding to the oversight, accountability and responsibility, IFIs shall set out the accountability and responsibility of every key functionary involved in the implementation of Shari'ah governance framework. To safeguard the independence of the Shari'ah committee, IFIS shall ensure the sound Shari'ah decision-making and emphasis on the role of the board of directors in recognizing the independence of the Shari'ah committee.

Furthermore, independence of the *Shari'ah* committee shall observe at all times in exercising their duties to make an objective and informed judgment. Any person bearing responsibilities outlined in the *Shari'ah* governance framework for an IFI shall possess the necessary competency and continuously enhance their knowledge and understanding on the *Shari'ah* as well as keep breast on the latest developments in Islamic finance. Internal and privileged information obtained by the *Shari'ah* committee members in the course of their duties shall be kept confidential at all times and shall not be misused. Professional ethics, judgment and consistency shall be maintained in ensuring *Shari'ah* compliance.

In the case of Shari'ah compliance and research function, the framework suggests having a robust *Shari'ah* compliance function, comprising review and audit functions, supported by risk management control process and internal research capacity. The function of *Shari'ah* review is to make assessment regularly on *Shari'ah* compliance in the activities and operations of the IFIs by qualified *Shari'ah* officers. The review process shall cover the planning of the review program itself including the objectives, scope, reporting and follow-up actions. It also includes the documentation process involved in the review, communicating the outcome of review to *Shari'ah* committee and management. Lastly, rectifying any instances of non-compliance with the *Shari'ah* to prevent such events from recurring is a must.

Shari'ahaudit refers to the periodical assessment conducted from time to time, to provide an independent assessment and objective assurance designed to assessits value and improves the degree of compliance in relation to the IFI's business operation. The scope of Shari'ah audit shall cover all aspects of the IFI's business operation and activities, including audit of financial statement of the IFIs, compliance audit on organizational structure, people, process and information technology application system, as well as review of adequacy of the Shari'ah governance process.

With regard to *Shari'ah* risk management, it is recommended to have a function to systematically identify, measure, monitor and control of *Shari'ah* non-compliance risks to mitigate any possible of non-compliance events. However, apart from the departments above, there shall be an internal unit comprising the qualified *Shari'ah* officers to conduct pre-product approval process, research, vetting of issues for submission and undertake administrative and secretarial matters relating to the *Shari'ah* committee.

5.0 Comparative Analysis among IFSB, BNM and AAOIFI Shari'ah Governance Guidelines

IFSB provides the definition of Shari'ah governance while AAOIFI and BNM are silent on this. Since the qualitative characteristics of Shari'ah board are important, all the guidelines discuss and emphasize on independence, competence, responsibility, accountability, confidentiality of *Shari'ah* board members. Moreover, the importance of Shari'ah review and audit functions is highlighted in all the guidelines although AAOIFI discussed in more detail. Shari'ah risk management and research function have been discussed only in BNM Shari'ah governance framework. Table 1 shows the comparative analysis among three guidelines issued by AAOIFI, IFSB and BNM.

No	Discussion	AAOIFI	IFSB	BNM
1.	Definition of Shari'ah	Not provided	Provided	Not
	governance			Provided
2.	Independence, competence,	Discussed	Discussed	Discussed
	responsibility of Shari'ah			
	Supervisory Board			
3.	Shari'ah review and	Discussed	Discussed	Discussed
	<i>Shari'ah</i> audit			
4.	Risk Management	Not discussed	Not discussed	Discussed
5.	Research function	Not discussed	Not discussed	Discussed

Table 1: Comparative analysis among Shari'ah governance guidelines

6.0 Conclusion and Recommendation

This paper discusses the important role of *Shari'ah* governance guidelines in the Islamic finance industry to ensure that the whole activities of financing activities are in line with the *Shari'ah*. Comparative analysis on the Shari'ah governance guidelines issued by AAOIFI, IFSB and BNM are provided and discussed.

All the guidelines are not comprehensive enough, for instance, while IFSB defines the Shari'ah governance, AAOIFI and BNM do not do and when BNM discusses on the Shari'ah risk management and research functions, the other two guidelines are silent. Thus, we would like to suggest that we should have one standardized and comprehensive guideline or framework so that it will be the easy reference for the industrial players, regulators, Shari'ah advisors and investors.

In addition, the comparative study on the guidelines is being elaborated. The guidelines should comprehensively cover the research function and emphasis on the Shari'ah non-compliance function of the financial institutions. Regarding the approach, in our opinion, the respective regulators should implement the prescriptive approach like the first approach taken by the United Kingdom while implementing the corporate governance code. We proposed this approach because Shari'ah governance is new, compared to the corporate governance and hence, itshould be a compulsory for the industrial players to adhere. Moreover, Shari'ah compliance is the ultimate objective of the Islamic finance industry and thus, strictly instructing the industrial players to follow the Shari'ah governance guidelines that will hopefully achieves the aim. It is expected that the highlights in this research will be the interests of regulators and industrial players for future development in the said guidelines.

References

AAOIFI. (2005). Governance Standards for IFIs, No 1-5. Bahrain AAOIFI

Accounting, Auditing And Governance Standards For Islamic Financial Institutions, (2010). Bahrain: Accounting and Auditing ORganization for Islamic Financial Institutions

Bank Negara Malaysia.(2010). Shari'ah Governance Framework for Islamic Financial Institutions. Kuala Lumpur. Bank Negara Malaysia

IFSB. (2009). Guiding Principles on Shari'ah Governance System in Institutions Offering Islamic Financial Services. Kuala Lumpur: IFSB.

Hasan, Z. (2010). Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries and the UK. Kyoto Bulletin of Islamic Area Studies, 82-85.

Islamic Financial System Principles & Operations. (2011). Kuala Lumpur: ISRA.