

Criteria of *Sharī'ah* supervisory committee: A comparative study between guidelines of Bangladesh Bank and Bank Negara Malaysia

Muhammad Amanullah*

Abstract: Islamic banking and finance differs from conventional banking and finance in that it follows the rules of *Sharī'ah*. In order to ensure that Islamic banking and finance follows the *Sharī'ah* rulings, it is essential for it to have a *Sharī'ah* supervisory board. An important duty of this board is to determine that the products, services, policies, guidelines and all other activities performed by the Islamic bank, are in compliance with the *Sharī'ah* rulings. To perform their duty properly, the members of this board should possess certain criteria. Bangladesh Bank has spelled out some guidelines for these criteria briefly. Likewise, Bank Negara Malaysia has provided some guidelines. The main objectives of this research paper are to highlight the guidelines of these two banks on these criteria, compare them and evaluate them in light of *Sharī'ah* guidelines on these criteria spelled out by contemporary Muslim jurists.

Keywords: Bangladesh Bank; Bank Negara Malaysia; Islamic bank; *Sharī'ah*; *Sharī'ah* supervisory board.

Abstrak: Satu faktor penting yang membuatkan perbankan Islam dan kewangan berbeza daripada bank konvensional dan kewangan lain adalah bahawa perbankan Islam dan kewangan adalah mengikut undang-undang *Sharī'ah* manakala itu perbankan konvensional tidak melaksanakannya. Untuk memastikan bahawa perbankan Islam dan kewangan mengikuti perundangan *Sharī'ah* adalah perlu baginya memiliki satu lembaga penyeliaan *Sharī'ah*. Tugas penting lembaga ini adalah untuk menentukan bahawa produk,

* Muhammad Amanullah is a Professor in the Department of Fiqh and Usul al-Fiqh, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia (IIUM), Malaysia.
Email: amanullah@iium.edu.my.

perkhidmatan, polisi, garis panduan dan semua aktiviti yang dilaksanakan oleh bank Islam mengikut garis panduan Islam. Untuk melaksanakan tugasnya secara betul, ahli-ahli lembaga ini patut mempunyai kriteria yang tertentu. Bank Bangladesh telah menyatakan beberapa garis panduan dalam kriterianya secara ringkas. Begitu juga, Bank Negara Malaysia telah memberikan beberapa garis panduannya yang tertentu. Objektif utama kerta kerja ini adalah untuk mengutarakan garis panduan kedua-dua bank tersebut dalam kriterianya. Kertas kerja ini turut juga membandingkan dan menilai mereka berdasarkan garis panduan *Sharī'ah* berlandaskan kriteria yang telah diutarakan oleh pakar undang-undang Islam kontemporari.

Kata Kunci: Bank Bangladesh; Bank Negara Malaysia; bank Islam; *Sharī'ah*; lembaga penyeliaan *Sharī'ah*.

Many contemporary scholars have provided definition for *raqābah Shar'īyyah* (*Sharī'ah* supervision) or *hay'at al-raqābah al-Shar'īyyah* (*Sharī'ah* Supervisory Board). Although the wordings of their definitions may differ slightly, the intended meaning is almost the same. Among these definitions, the most appropriate one is the definition given by *Majma' al-Fiqh al-Islāmī* (Islamic *Fiqh* Academy) in Jeddah. According to *Majma' al-Fiqh al-Islāmī*: “*Hay'at al-Raqābah al-Shar'īyyah* is a group of specialized scholars in Islamic law specifically in law of transactions, whose number is not less than three. They possess scholarly competence and practical knowledge to issue *fatāwā* (formal legal opinions) and review all transactions of the institution to ensure they are in conformity with the rulings and principles of *Sharī'ah*. Their reports are submitted to the general assembly, and its resolutions are mandatory upon the institution” (*Majma' al-Fiqh al-Islāmī*, 2009).

This definition is so comprehensive that it covers three important aspects:- some criteria of the members of *Sharī'ah* Supervisory Board (SSB), their duties and responsibilities, and the legal status of their resolutions. According to this definition, although the task of SSB is similar to a *mufī* (official expounder of Islamic legal opinion) in terms of giving *fatāwā*, it is different in a number of ways: (1) a *mufī* gives *fatwā* individually, while the *fatwā* of SSB is the work of a group of scholars; (2) a *mufī* is not in charge of ensuring that his *fatwā* has been implemented or not, while SSB is in charge of being sure that their *fatwā* and resolutions are implemented; and (3) *fatwā* of a *mufī* is not binding upon the questioner, while the *fatwā* and resolutions of SSB

are considered to be binding and mandatory upon the authority of a financial institution.

This definition, however, does not clearly state that its members must be Muslims. Perhaps it is automatically understood, but since nowadays non-Muslims are interested to obtain degrees in Islamic finance and since Islamic financial institutions are operating in non-Muslim countries, it is better to include in the definition the word *Muslim*. It also does not clearly say that all the SSB members must fulfil the conditions of a *mujtahid*. This is reasonable because they are found only in selected scholars. Likewise, in terms of piety and justice, it does not state anything. It is better to add an attribute of *ṣāliḥ* (righteous) or *muttaqī* (God-fearing) or *ʿādil* (just) to the definition. This is because cheating, insincerity, lying, etc. are not acceptable in financial transactions, just like other aspects of our daily life.

The most important type of *Sharī'ah* Supervision is the one which is conducted for a particular financial institution, which should have a board (al-Shubaylī, 2012). In this paper the title of this board is selected as *Sharī'ah* Supervisory Board (SSB). Several aspects of SSB are important, such as its criteria of selection, decision making procedures, duties and responsibilities. This paper focuses on its criteria of selection. First, it discusses the criteria of SSB members according to contemporary jurists; second, it reviews the guidelines of Bangladesh Bank (BB) in this regard; third, it reviews the guidelines of Bank Negara Malaysia (BNM) on it; and fourth, it makes a comparison between the guidelines of BB and that of BNM.

According to the knowledge of the researcher, no book or article has been written on the exact topic of this research paper. However, a number of works are found on aspects related to the topic. Among them is an article entitled "Regulation and Supervision of Islamic Banks and Financial Institutions: Bangladesh Perspective," written by Sarker (2012). In section III of the article the author discusses the role of Bangladesh Government and Bangladesh Bank, relationship between Central Bank and Islamic Bank, etc., but he does not touch upon the topic of Bangladesh Bank guidelines on the criteria of SSB. However, in his concluding remarks, he suggests that it is necessary to constitute a Central *Sharī'ah* Supervisory Council at Bangladesh Bank, for which he also proposes a number of broad functions of this council. However,

the proposed *Sharī'ah* council has nothing to do with the topic of the present research.

Another short article entitled “Analyzing the Islamic Banking Framework in Bangladesh,” is written by Chowdhury (2014). The author mentions that Bangladesh has yet to develop a full-fledged Islamic Banking Framework. He also states that it is required to establish an independent *Sharī'ah* Supervisory Council in Bangladesh Bank. However, he recognises that Bangladesh Bank issued guidelines for conducting Islamic Banking in Bangladesh in 2009. The author has not discussed the criteria of SSB mentioned in these guidelines.

For selecting and discussing the criteria of SSB according to contemporary jurists, the present researcher depends on a number of works. Important among them are *Al-Ma'āyir al-Shar'iyyah* by AAOIFI (2006), an article entitled “*Al-Raqābah al-Shar'iyyah fī al-Maṣārif al-Islāmiyyah*” by Shaḥātah (2014), and another article entitled “*Al-Raqābah al-Shar'iyyah 'alā al-Maṣārif*” by al-Shubaylī (2012). For discussing and evaluating the criteria of SSB given by Bangladesh Bank, the paper primarily depends on the Guidelines for Conducting Islamic Banking in Bangladesh (2009); and for discussing and evaluating the criteria of SSB given by Bank Negara Malaysia (2010), the paper mainly depends on BNM *Sharī'ah* Governance Framework for Islamic Financial Institutions.

Criteria of the members of SSB according to contemporary Muslim jurists

Shubaylī has divided the criteria of the members of *Sharī'ah* Supervisory Board into four categories, i.e., basic (*asāsiyyah*) criteria, ethical (*sulūkiyyah*) criteria, scholarly (*'ilmiyyah*) criteria, and practical (*'amaliyyah*) criteria (al-Shubaylī, 2012). The following pages discuss these four categories one by one.

Basic (asāsiyyah) criteria

These criteria are required for considering a person legally competent for conducting all lawful transactions including occupying public positions, such as caliph, judge, etc. as well as deeds of worshiping, such as *ṣalāh* (performing five-time daily prayers), fasting, *zakāh* (alms giving), etc., which are applicable to the members of *Sharī'ah* Supervisory Board (SSB) also. Al-Shubaylī (2012) briefly touched on

these qualities.. Neither Shaḥātah nor AAOIFI standard indicates them. The reason for not indicating them probably is that they are so well-known and unanimously agreed upon by the jurists that they do not require to be highlighted (Shaḥātah, 2014; AAOIFI, 2006). They are as follows:

1. *To be a Muslim*: No Muslim jurist disagrees with the condition that a member of SSB must be a Muslim. This is because this position requires dealing with the *Qur'ān* and *Sunnah* and related sources of the *Sharī'ah*, which should be with full faith in them and fear of Allah, so that the careless or intentional misinterpretation will be avoided. A non-Muslim is not competent for this task even if he or she has knowledge of the *Qur'ān*, *Sunnah* and Islamic law of transaction because he/she does not believe in them. Likewise, there is the danger of distortion of the *Qur'ān* and *Sunnah* by non-Muslims.
2. *To be a sane*: All jurists unanimously agree that a member must be sane because without sanity a person is not able to understand and deal in commercial transactions and other affairs by his/her own self. Therefore, in a better way, he/she is not able to understand and deal with the affairs of others in a financial institution.
3. *To attain puberty*: Likewise, according to all jurists, he/she must attain puberty. A minor cannot be a member of SSB.

Ethical (sulūkiyyah) criteria

Ethical criteria relates to a person's righteousness. Ethics is necessary in all different types of occupations. *Sharī'ah* supervision is no different. Rather, this occupation requires extra caution to maintain ethics in it. Some important ethics that must be maintained by a member of SSB are as follows:

1. *To be trustworthy*: A member of SSB must be trustworthy in his/her dealings with other SSB members, employees of the internal supervisory department and other employees of the financial institution where he/she is an SSB member. Allah says: "Verily Allah commands that you should render back the trusts to those, to whom they are due" (*Qur'ān*, 4:58). Trustworthiness is so important that without this character

the religion of a Muslim remains incomplete. The Prophet (S.A.W.) says: “The one who does not possess trustworthiness (*amānah*) does not have perfect religion (*dīn*).” (Ibn Ḥanbal, vol. 3, p. 135). Likewise, the lack of this virtue leads to bad relationship, misunderstanding among the members/employees of an institution and even possible financial losses for an institution. Therefore, a member of SSB must not disclose the secrets of new products or contracts that are developed or are being developed by his/her financial institution.

2. *To be truthful and honest*: He/she must be truthful and honest in his/her dealings with others. Islam encourages truthfulness. Allah says: “O you who believe, fear Allah and remain with the truthful people.” (Qur’ān, 9:119). Without having this quality among the members of SSB and others affiliated with them, the financial institution will not be good. Lack of this virtue leads to false statements, fraudulent report and evaluation, which are not expected from any Muslim, especially SSB member.
3. *To be pious and God-fearing*: He/she must be pious and God-fearing. He/she must perform all obligatory duties and refrain him/herself from committing forbidden deeds. Shaḥātah (2014) briefly indicated this condition.
4. *To perform duties perfectly*: He/she must try to perform his/her duties as perfect as possible. The Prophet (S.A.W.) says: “Surely Allah loves the one from among you who, when he accomplishes any work, accomplishes it perfectly” (al-Bayhaqī, vol. 4, p. 334).¹
5. *To avoid conflict of interest*: A member of a financial institution is expected to avoid conflict of interest. Conflict of interest can happen in a number of ways.

First, if he/she is a full time employee with another institution, his/her involvement with a financial institution as a *Sharī‘ah* Supervisory Council (SSC) member should not be on the account of his/her full time employment because it may inflict harm on his/her original institution where he/she has a full time job. According to a *ḥadīth*, no harm should be inflicted to anyone else. The Prophet (S.A.W.) says: “Harm should neither be inflicted nor reciprocated” (Ibn Mājah, vol. 2, p. 784).² Likewise, conflict of interest goes against sincerity. Therefore,

as a Muslim, an SSB member should try to avoid conflict of interest by giving priority to his/her full time job.

Secondly, a conflict of interest can happen, if he or she is a full time employee of the same institution of Islamic finance (IIF) where he/she is a *Sharī'ah* Supervisory Council (SSC) member. Therefore, it is not allowed for an SSC member to hold an employment with the same IIF where he/she is an SSC member.

Thirdly, conflict of interest can also occur, if he or she is a member of SSC with another IIF within the same industry. Therefore, he/she is not allowed to be an SSC member of another IIF of the same industry.

Fourthly, conflict of interest also arise if any of his close relatives holds an important position, such as CEO of a IIF where he/she is an SSC member. Therefore, he/she is not allowed to be an SSC member in an IIF where any of his/her close relatives is the CEO.

Fifthly, conflict of interest will occur, if an SSC member has personal interest in the issue that requires a *fatwā*. This condition is neither mentioned by al-Shubaylī nor by Şahatah. It is mentioned in the AAOIFI standards. It states that it is required that an SSC member must not have personal interest in the issue that requires a *fatwā* (AAOIFI, 2006).

Scholarly ('Ilmiyyah) criteria

Scholarly criteria are required more from a member of SSB than an internal *Sharī'ah* supervisor because issuing a *fatwā* mostly depends on the scholarly criteria that are supposed to be possessed by the former. Therefore, a member of SSB must have the following scholarly criteria:

1. *Qualities of a Mujtahid*: Al-Shubaylī says that a member of SSB must have qualities of a *mujtahid* (a legist who arrives at independent judgment) in general. Classical jurists have mentioned strict conditions for a *mujtahid*, which are not possible to be attainable except in a few exceptional scholars. For instance, they imposed the conditions that he should know the Qur'ānic verses and *aḥādīth* of *Sharī'ah* rulings (*āyāt al-aḥkām wa-aḥādīthuhā*), abrogating and abrogated (*nāsikh wa-mansūkh*) verses, sound and weak *aḥādīth*, issues of consensus (*ijmā'*), analogy, sciences of Arabic language,

indications of words (*dalālāt al-alfāz*), and objectives of the *Sharī'ah* (*Maqāsid al- Sharī'ah*). However, it is required upon him to have general knowledge of them, not in its entirety because this type of comprehensive knowledge is not possible (al-Shubaylī, 2012). Supporting this view, the author of *al-Baḥr al-Muhīt* argues that even the leading companions of the Prophet (S.A.W.) did not have this type of comprehensive knowledge. Certain proofs of *Sharī'ah* rulings were not known to many of them, they learned them from others.³

However, it seems that Shaḥātah is not that demanding. He has not said that an SSB member must have the qualities of a *mujtahid*. He has simply stated that he/she should know Arabic language, should have deep capacity of understanding (*fiqh*), good insight (*ḥusn al-badīḥah*), alertness, etc. (Shaḥātah, 2014). On the other hand, AAOIFI standards mentioned that an SSB member must have *fiqhī* talent (*malakah fiqhiyyah*) that makes him capable of understanding the words of *mujtahidūn* and of deriving the *Sharī'ah* rulings for newly arisen issues according to established principles. Likewise, he/she should have the attributes of intelligence, alertness and knowledge of the conditions and customs of people. Moreover, he/she should be alert about people's tricks in falsification, changing words, and depicting a wrong thing in the form of a right thing (AAOIFI, 2006).

2. *Specialized in fiqh al-mu'āmalāt*: Al-Shubaylī says that an SSB member should be a scholar of Islamic law of transaction (*fiqh al-mu'āmalāt*), i. e., he/she should have accurate and deep knowledge of principles (*uṣūl*) and general rules (*ḍawābiṭ*) of financial transactions in Islamic *Sharī'ah*, and the conditions of every contract and factors that nullify it (*mawānī*). General knowledge of them is not enough; rather, detailed knowledge is required. In other words, according to al-Shubaylī, he/she should be a *mujtahid* in the field of *fiqh al-mu'āmalāt*. Shaḥātah does not say clearly that an SSB member should be a scholar of *fiqh al-mu'āmalāt*. However, he maintains that SSB members must have the capability of giving Islamic alternatives for those transactions that are proved to be contradicting with the rulings and principles of *Sharī'ah*.

Thus, they can have the role of leadership. Likewise, they should have continuous knowledge of issues that newly arise in Islamic banking (Shaḥātah, 2014). It is stated in AAOIFI standards (2006) that it is not required to issue *fatwā* for financial institutions to be competent in all fields of Islamic *fiqh*. Rather, *fatwā* in this regard is considered to be sound from a jurist whose knowledge is limited to the jurisprudence of financial transactions.

3. *Ability to understand objectives of Sharī'ah*: Al-Shubaylī states that an SSB member should be able to understand objectives of *Sharī'ah* in financial transactions. This is because the *Sharī'ah* did not come to complicate the life of people or to prevent them from those aspects in which their interest/welfare are affected. Rather, it made permissibility as the basic principle of human transactions and confined the forbidden things to some limited aspects. If these points remain absent from a *mufīī* or an SSB member, then his/her viewpoint might be narrow and therefore, he/she may complicate things for people, which is against the objective of the Lawgiver. Shaḥātah (2014) does not say anything about understanding the objectives of *Sharī'ah*. Likewise, the AAOIFI standards (2006) does not mention anything about it.
4. *Have knowledge of new contracts and products and their technical aspects*: He/she should have knowledge of newly created contracts and products and their technical aspects, so that he/she will be able to derive his/her sound *Sharī'ah* rulings because the judgment on something or giving *Sharī'ah* ruling for something is part of its conception (*al-ḥukm 'alā al-shay' far' 'an taṣawwurih*). If his/her conception about these products is wrong, then the ruling based on it will mostly be wrong. According to al-Shubaylī, it is not enough for an SSB member to depend on the conception presented to him by others.

According to Shaḥātah (2014), an SSB member should have the knowledge of the basic design of the nature of economic, financing and banking transactions. However, he allows an SSB member at his/her beginning stage to seek help from experts at the time of issuing the *fatwā*. Then with practice, this experience will become part of his/her knowledge. AAOIFI standards (2006) mentions that an SSB member

must have *fiqhī* talent to derive *Sharī'ah* rulings for newly arisen issues according to established principles, as discussed earlier.

5. *Educational degrees*: Al-Shubaylī (1433AH) does not say clearly that an SSB member must have a university or equivalent degree in *Sharī'ah* or particularly in *fiqh al-mu'āmalāt*. However, referring to a website named "*Mawqī' al-Fiqh al-Islāmī*," he mentions that in order for someone to be recognised as a jurist (*faqīh*), he must be at least one of the following: (1) he/she is known through the spread of news (*istifādah*) that he/she issues *fatwā* in a country where he/she lives; (2) or he/she is affiliated with the *Sharī'ah* judiciary; (3) he/she has received a higher academic degree in the specialization of *fiqh*; (4) or he/she has several publications on *Fiqhī* (juristic) studies.

Shaḥātah (2014) clearly says that obtaining a university degree in *Sharī'ah* is a requisite for an internal *Sharī'ah* supervisor. But he has remained silent about this condition for an SSB member. AAOIFI standard (2006) has given two options. First, *fiqhī* competency could be known through the spread of news about someone that he/she is really competent (*istifādah*). In that case, there is no necessity to have a degree from a well-known university or religious institution. If someone is competent even without having a formal degree, he/she can be accepted as an SSB member.

Those who do not have a specific degree in *fiqh al-mu'āmalāt* but have a degree in *Sharī'ah* in general and are capable of understanding and deriving *Sharī'ah* rulings for financial transactions may fall under this category. Second, *fiqhī* competency could also be known through the evidences (*qarā'in*) such as specialized studies in *fiqh*, especially in *fiqh* of contemporary financial transactions. It means formal degrees in *fiqh* or *fiqh al-mu'āmalāt*. However, the standard does not state clearly that this degree must be in *fiqh al-mu'āmalāt*.

Practical ('amaliyyah) criteria

Practical criteria (*al-ṣifāt al-'amaliyyah*) can be defined as having some suitable practical experience that can make an SSB member or an internal *Sharī'ah* supervisor capable of performing his/her duty. According to al-Shubaylī, the condition of experience can be realized for an SSB member through the experience of exercising issuance of

fatwā for a certain period of time. He also says that the condition of practical experience is required from an internal *Sharī'ah* supervisor more than from an SSB member. For an internal *Sharī'ah* supervisor, this condition can be realized by three things: (1) having knowledge of accounting and legal norms and internal review; (2) acquiring experience on internal *Sharī'ah* review through rendering assistance to an internal *Sharī'ah* supervisor for a certain period of time; and (3) participating in training workshops on financial transactions (al-Shubaylī, 2012).

AAOIFI standard (2006) does not say that an SSB member must have experience in issuing *fatwā* before joining this board. Because of the scarcity of finding members of SSB with practical experience in *iftā'* (issuing legal opinion), nowadays many of them have been recruited by many financial institutions on the basis of their teaching experience in *Sharī'ah*. These members can have a chance to gain experience through their active participation in their works as SSB members. Therefore, Shaḥātah says that at his/her beginning stage, an SSB member could seek help from experts in financial transactions to issue *fatwā*, and then with practice he/she will gather experience (Shaḥātah, 2014). In addition, the researcher recommends that SSB members, even those who have the experience in *iftā'*, should participate in the following activities is recommended:

1. An SSB member should try to refresh his/her knowledge through presenting research articles on topics of *fiqh al-mu'āmalāt* in national and international conferences.
2. He/she also should try to publish research articles on *fiqh al-mu'āmalāt* in refereed journals.
3. He/she should attend conferences and workshops on the topics of Islamic banking and finance to get benefits from the knowledge of other experts in the field.

Evaluation of the guidelines of Bangladesh Bank on these criteria

The guidelines given by Bangladesh Bank as “Fit and proper criteria for selection of members of *Sharī'ah* Supervisory Committee” are divided into five sections: (1) educational qualification; (2) experience and exposure; (3) track record; (4) solvency and financial integrity; and (5) integrity, honesty and reputation. Although these criteria are divided into five sections, according to the previous discussion, they fall under three

broad criteria: educational qualification goes under scholarly criteria; experience and exposure go under practical criteria; and the remaining three (track record, solvency and financial integrity, and integrity, honesty and reputation) go under ethical criteria. No section is found under the basic criteria. The researcher will evaluate in the following paragraphs these guidelines in light of what has been discussed earlier.

Basic criteria

As mentioned earlier that no section on the basic criteria, i.e., to be a Muslim, sane, and to attain puberty, is selected by Bangladesh Bank (BB) in its guidelines for the selection of Members of *Sharī'ah* Committee. It is not known why BB did not mention these criteria. The possible reason could be that they are so obvious that it is not necessary to mention them. Rather, they are automatically understood and implemented. This argument could be appropriate for sanity and puberty, but it is not so for the condition of being a Muslim. This is because nowadays Islamic finance has become so important and popular that even non-Muslims are interested to learn about it and obtain university degrees in this field. Additionally, Islamic finance institutions are being administered by non-Muslims in some foreign countries. Hence a non-Muslim who is knowledgeable in Islamic financial transactions might become interested to be a member of the SC in some Islamic financial institutions. In order to prevent non-Muslims from becoming members of this committee, it is recommended to mention clearly in BB guidelines that a non-Muslim should not be allowed to be a member of this committee.

Ethical criteria

As discussed earlier all three sections (i.e., track record, solvency and financial integrity, and integrity, honesty and reputation) fall under the broad ethical criteria. Most of the points mentioned under these sections are related to ethics of financial transactions. Likewise, most of them are negative points, i.e. they start with the wording “has not;” and most of them also are considered to be certain examples of wrongdoings; they are mostly not general comprehensive statements that can cover avoidance of all wrongdoings. They do not say clearly that a member must be pious and God-fearing in all aspects of his/her life. Likewise, they do not mention that a member must avoid conflict of interest and must not have personal interest in the issue that requires *fatwā*. They also do not state that a member should perform his/her duty perfectly.

However, most of the points are related to trustworthiness, truthfulness and honesty, which are good.

Scholarly criteria

Scholarly criteria for SSC members mentioned by BB are so simple that they are mostly related to certain degrees, i.e., a member must have a *kāmil* (highest degree from a certain religious institution, called Madrasah *'aliyyah*), or *dawrah* (highest degree from a certain religious institution called *qawmī* Madrasah), or postgraduate degrees in Islamic Studies, Arabic, Islamic Law, Islamic Economics or Islamic Banking. They also must have profound knowledge in the Arabic language. They do not say that a member must have the general qualities of a *mujtahid*, a profound knowledge of *fiqh al-mu'āmalāt*, an ability to understand the objectives of *Sharī'ah* in financial transactions, and have idea of new contracts and products and their technical aspects. Probably, BB has considered the practical situations of Islamic disciplines in Bangladesh, i.e. if these aspects are made mandatory; it will be really difficult to find jurists of that category. But this should not continue indefinitely. There should be attempts for further improvement by imposing some higher level conditions.

Practical criteria

Practical criteria or experiences mentioned by BB guidelines for SSC members are considered to be very good and appropriate. They say that a member must have at least 3 years of experience in teaching or research work in Islamic jurisprudence, or Islamic Law, or Islamic Banking related subjects. They also say that a member must either have three years of experience as a member of any *dār al-iftā'*/*fatwā* Board that gives *Sharī'ah* rulings on Islamic financial transactions, or have 3 published articles in recognized journals or books on Islamic financial transactions. BB may add another option for the purpose of getting experiences, i.e., participation in national and international conferences and workshops on Islamic finance and transactions.

Evaluation of the guidelines of Bank Negara Malaysia on these criteria

Guidelines of Bank Negara Malaysia (BNM) regarding the proper criteria of an SSC member are provided in appendix 2 of *Sharī'ah* Governance Framework for Islamic Financial Institutions, 2010. These guidelines

are mentioned under six sub-headings: (1) appointment of the *Sharī'ah* Committee; (2) application procedures of the SC; (3) resignation and dismissal of the SC; (4) qualification; (5) disqualification; and (6) negative list; looking into points mentioned under them, they may be divided into two broad sub-headings, i.e., first three: appointment of the SC; application procedures of the SC; and resignation and dismissal of the SC; could come under “appointment procedures” and other three: qualification; disqualification; and negative list; can be combined together under the sub-heading “qualification.” The present paper does not talk about appointment procedures. In light of the earlier discussion, qualification related points mentioned in these guidelines may further be divided into three criteria, i.e., basic criteria, ethical criteria, and scholarly criteria. These guidelines do not touch upon the practical criteria. Each one of these criteria is evaluated below.

Basic criteria

From among the basic criteria, BNM has not mentioned the conditions of sanity and puberty. This omission is probably due to their obviousness. However, it has mentioned the third basic condition, i.e., an SSC member must be a Muslim. This is timely because interest among non-Muslims to learn about Islamic finance and banking and to obtain formal degree it has been growing day by day. This is necessary in order to deter non-Muslim graduates from becoming an SSC member. BNM has also added an important point that this Muslim should be an individual, not an institution or body or company.

Ethical criteria

In terms of ethics, BNM has not mentioned them under the sub-heading of “ethical criteria.” Rather, it mentions them partially under the sub-headings of “disqualification” and “negative list.” Under “disqualification,” it says that “the members of the SC shall be persons of acceptable reputation, character and integrity.” Then it elaborates on them and mentions points related to them because breaches of these criteria may lead to disqualification by SAC of BNM.

The first point mentions that if a member “acted in a manner which may cast doubt on his fitness to hold the position as a SC member,” he may be disqualified. This point is vague. It should be explained more clearly.

The second point mentions that if a member fails to attend 75% of SSC meetings in a year without any reasonable excuse, he may be disqualified. This point may related to ethics, especially honesty, because if a member remains absent without any valid reason, he would still receive the monthly remuneration.

The third point is related to bankruptcy. It says that if a member is “declared bankrupt or a petition under bankruptcy laws is filed against him,” he may be disqualified. This point, as it is written, is difficult to be accepted Islamically because bankruptcy is not always related to a person’s ethics. It may be the result of some economic and financial conditions of a particular country which have nothing to do with the member’s ethics, unless he/she has committed some gross wrong doings leading to his/her bankrupt. If a person is an SSC member and he has become bankrupt because of reasons which are out of his control, he should not be disqualified because it will be double punishment for him. Rather, he should be helped, in this case, *zakāh* money should be given to him.

The fourth point says that if a member is “found guilty for any serious criminal offence or any other offence punishable with imprisonment of one (1) year or more,” he may be disqualified. This point is reasonable. It can be related to ethics and integrity in a number of ways.

The fifth point states that if a member is “subject to any order or detention, supervision, restricted residence or banishment,” he may be disqualified. This point is somehow also related to ethics, but it should not be used randomly because a person might not be guilty in these cases until he/she has been proven guilty. If proven guilty, he/she may be disqualified. Under “negative list”, BNM does not mention the conflict of interest clearly. However, points mentioned under this list indicate this problem, which must be avoided by an SSC member. For instance, according to BNM, an SSC member should not have any close relative, such as a spouse, children or siblings, who is or are in the last financial year CEO or a non-independent board member in the IFI where this member is affiliated. Likewise, an SSC member shall not be an employee of the IFI or its related companies for the current or the last financial year.

Additionally, a member shall not be an SSC member of another IFI within the same industry. All these points are related to conflict of

interest. They are appropriate conditions because in these situations an SSC member's judgment, *fatwā*, review, etc. might not be free from biasness. However, BNM does not mention anything about a member's full-time affiliation with an institution other than IFI. This affiliation, as discussed earlier, also can cause conflict of interest and harm to the original institution. BNM also does not say anything about the personal interest of an SSC member in a *fatwā*, which is mentioned by AAOIFI. It is because an SSC member must not have personal interest in an issue that requires a *fatwā*. Likewise, BNM does not say clearly that an SSC member should try to perform his/her duty perfectly. Likewise, it does not say clearly that a member must be pious and God-fearing.

Scholarly criteria

Scholarly criteria are mentioned under the sub-heading of "qualification." The point no. 2 under this sub-heading says that "the majority of members in the *Sharī'ah* Committee shall at least hold a bachelor's degree in *Sharī'ah*, which includes study in *uṣūl al-Fiqh* or *fiqh mu'āmalāt* from a recognized university." This condition does not say that this degree should include both *uṣūl al-fiqh* and *fiqh mu'āmalāt*. Rather, it has given the option of obtaining either one. Likewise, BNM does not state clearly that an SSC member should have the minimum condition of a *mujtahid* or at least he/she should be able to understand the words of *mujtahidūn* and be able to understand the new contracts and products and their technical aspects. It also does not say that a member should be able to understand the objectives of *Sharī'ah* in financial transactions. It seems that in mentioning the qualification of an SSC member, BNM depends on the certificates more than actual knowledge.

BNM also requires that an SSC member should have "strong proficiency and knowledge in written and verbal Arabic, and have good understanding in Bahasa Malaysia and the English Language." These conditions, especially the knowledge of Arabic is very important because original sources of *Sharī'ah* are in this language. Likewise, knowledge of English is also very important because decisions of IFI are written in this language. It also says that some members may be "experts from relevant backgrounds such as finance and law.... However, these members must not form the majority of the SC."

Practical criteria

Appendix 2 of BNM *Sharī'ah* Governance Framework for Islamic Financial Institutions 2010 on the fit and proper criteria of the SC, does not say anything about practical criteria, such as training, participation in workshops, conferences, presenting and publishing articles and books on *mu'āmalāt*, or having previous experience in teaching *Sharī'ah* related subjects, or issuing *fatwā*.

Comparison between the guidelines of Bangladesh Bank on these criteria and that of Bank Negara Malaysia

This comparison is conducted in all four criteria discussed earlier by mentioning similarities and differences between the guidelines of Bangladesh Bank and Bank Negara Malaysia.

Basic criteria

1. Both BB and BNM do not mention the conditions of sanity and puberty.
2. None of them mention anything about the gender of an SSC member.
3. BB does not mention the condition that an SSC member must be a Muslim, while BNM clearly says that an SSC member must be a Muslim.
4. Likewise, BB does not state who can or cannot be members of SSC, while BNM says that only an individual can be an SSC member.

Ethical criteria

1. Both of them do not assign a particular section under a sub-heading of “ethical criteria”.
2. Both of them do not mention clearly that an SSC member must be a pious and God-fearing person.
3. Both of them do not state clearly that an SSC member must try to perform his/her duty perfectly.
4. Although both of them do not mention words of trustworthiness, truthfulness, honesty, etc., clearly, both of them state a number of ethical points that are related to these attributes.
5. Both of them do not say anything about the personal interest of an SSC member in an issue which requires a *fatwā*.

6. BB does not say anything about the attendance of SSC members in their meetings, while BNM says clearly that every member must attend 75% of SSC meetings in a year, except if there is any reasonable excuse for not doing so.
7. BB mentions several points of ethics which are related to breach of financial ethics, while BNM only mentions one point of bankruptcy in this regard.
8. BB does not say anything on the conflict of interest. On the other hand, BNM discusses it elaborately though does not mention the word of “conflict of interest.”

Scholarly criteria

1. Both of them mention receiving certain degrees as a condition for an SSC member.
2. Both of them emphasize on the degrees more than actual knowledge.
3. Both of them do not maintain the minimum condition of a *mujtahid*.
4. Both of them do not touch on the topic of the objectives of *Sharī‘ah*.
5. Both of them do not say that a member must be able to understand new contracts, products and their related techniques.
6. Both of them impose the condition of profound proficiency in Arabic language.
7. In terms of *Sharī‘ah* related specialization, BB has more options than BNM. BB mentions Islamic Studies, Arabic, Islamic Law, Islamic Economy or Islamic Banking. On the other hand, BNM mentions only *Sharī‘ah* which includes study in *uṣūl al-fiqh* or *fiqh al-mu‘āmalāt*.
8. In terms of relevant specialization, BB does not mention any secular subjects, while BNM mentions finance and law.
9. BB has more options for receiving degrees. It says that an SSC member either have a *kāmil* or *dawrah*, or a postgraduate degree, while BNM mentions only a bachelor degree as minimum requirement.
10. BB does not say anything about *uṣūl al-fiqh* and *fiqh al-mu‘āmalāt*, while BNM emphasizes on them.

Practical criteria

BB mentions a number of practical experiences as condition for an SSC member, as discussed earlier. On the other hand Appendix 2 of BNM *Sharī'ah* Governance Framework for Islamic Institutions, 2010 on fit and proper criteria of the SC, does not say anything about them.

Conclusion

According to the definition of *al-raqābah al-Shar'īyah*, decisions of *al-hay'ah al-Shar'īyah* are binding. This makes these decisions different from the normal *fatwā*. The most important qualifications and attributes that an SSC member must possess are: he must be a Muslim; he must be trustworthy, truthful, honest, pious, God-fearing; he must try to perform his duties perfectly; he must avoid conflict of interest; he must understand words of *mujtahidūn*; he should be knowledgeable in *fiqh al-mu'āmalāt*; he should be able to understand objectives of *Sharī'ah*; he should have an idea on new contracts, products and their technical aspects; he should have either experience in teaching of *Sharī'ah*, or giving *fatwā* or publications on *mu'āmalāt*.

Among the similarities between BB and BNM are: both mention ethics but not under its well-known heading, rather under a negative list or disqualification; both of them emphasize on degrees more than actual knowledge. Among the differences between BB and BNM are: BB does not mention the condition of Muslim, while BNM mentions it; BB emphasizes on many financial breaches, while BNM mentions only bankruptcy; BB mentions a number of practical experiences as condition for an SSC member, as discussed earlier. Appendix 2 of BNM *Sharī'ah* Governance Framework for Islamic Institutions, 2010 on fit and proper criteria of the SC, however, does not say anything about them.

The researcher provides the following suggestions for both BB and BNM. First, both should emphasize on actual knowledge of SSC members more than their degrees; both should impose the condition of understanding capacity of the objectives of *Sharī'ah* in financial transactions; both should mention that a member should try to perform duties perfectly; both should give more emphasis more on piety and God-fearing. BB should add the condition of being a Muslim and mention that conflict of interest should be avoided. BNM should impose

conditions of some relevant trainings/experiences, such as experience of issuing *fatwā* or teaching in the field, or having published in the field.

Endnotes

1. Al-Albānī (1998, vol. 1, p. 383, 1995, vol. 3, p. 106) says that this is a *ḥasan ḥadīth*.
2. Ibn Rajab (2001, vol. 2, p. 207) says that this is a *ḥasan ḥadīth*. Al-Albānī (1997, vol. 2, p. 258) too considers the *ḥadīth* to be *ṣaḥīḥ*.
3. Al-Shubaylī mentions it when quoting from *al-Baḥr al-Muḥīṭ*.

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