Enhancing the Competence and Effectiveness of Sharī‘ah Advisory Boards: Case of Islamic Banking Institutions in Pakistan

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Abstract. The objective of this paper is to make an assessment of the competence of the members of Sharī‘ah Boards of the Islamic Banking Institutions (IBIs) in terms of enabling and ensuring Sharī‘ah compliance of banks business. The competency of Sharī‘ah board members is considered as a critical issue in the State Banks Sharī‘ah Governance Framework (SGF), which considers degree from any Wafāq al-Madāris as the basic qualification for their appointment. The paper investigates into the curricula of madārīs (religious schools) in Pakistan and orientation of the madārīs graduates for understanding increasingly innovative banking and finance operations. It also analyzes the syllabubs of the specialization/takhaṣṣus fī al-fiqh/takhaṣṣus fī al-iftā in the madārīs. Some pragmatic recommendations have been made to enhance the expertise of the Sharī‘ah board members in the light of SBPs Fit & Proper criteria. This is a pioneer study discussing the scheme of studies in Pakistani madārīs and provides a basis for further research on this area.

KAUJIE Classification: C2, C5, L22, L24
JEL Classification: G2, G39, I21, Z12

INTRODUCTION

Pakistan had been among the three countries in the world, the other two being Iran and Sudan, that started transforming the whole financial system to the principles of the Sharī‘ah, in late 1970s and early 1980s. Later in 1991, the Federal Sharī‘at Court, Pakistan declared

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the ‘Non-Interest based System’ introduced in Pakistan in early 1980s as un-Islamic due to the use of the buy-back arrangement (bay‘al-‘inah) and the sale of debt instruments as un-Islamic (Janjua, 2004). After a similar judgment by the Sharī‘at Appellate Bench of the Supreme Court of Pakistan, the State authorities and the State Bank of Pakistan (SBP) decided to launch Islamic banking system in the country parallel to conventional banking. Accordingly, the conventional and Islamic systems are in practice in Pakistan since 2002. As such, the ‘Banking Companies Ordinance’ (BCO) 1962 is equally applicable to both conventional and Islamic banks.

Over the last 16 years, Islamic banking services have been made available in almost all parts of the country. But the speed and the coverage is not satisfactory as in the country with around 95% Muslim population, the Islamic banking industry held only 13.6 percent share in banking assets in Pakistan by end September 2018 (State Bank of Pakistan, 2018). It is quite below the levels of over 25 percent in Gulf States and even Malaysia where Muslims are around 51 per cent of the population. According to the Thomson Reuters (2018) “State of Global Islamic Economy, 2018-19”, Pakistan ranks at the 7th position in Islamic finance, after Malaysia, UAE, Bahrain, Saudi Arabia, Kuwait, and even Oman that initiated its Islamic finance program in 2012. The main reason behind this slow growth is the lack of credibility of Islamic banks among the public in terms of the level of Sharī‘ah compliance and Sharī‘ah legitimacy (Khaleequzzaman, Mansuri & Rashid, 2016). Islamic banks have not been able to establish identity to offer really Sharī‘ah compliant products to resolve the problems created by the interest based system. It requires an effective regulatory framework with different approach aimed at adoption of the principles of Islamic finance in letter as also in spirit.

The regulators all around the world, and particularly the central banks of Pakistan (SBP) and Malaysia (the Bank Negara Malaysia, BNM) have issued comprehensive Sharī‘ah governance frameworks for Islamic banks in their respective jurisdictions. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and Islamic Financial Services Board (IFSB) have also issued Sharī‘ah governance standards for Islamic banks and financial institutions.

An effective Sharī‘ah governance framework is essential to maintain the trust of its users regarding the Sharī‘ah compliance of the IBIs products and services. In turn, the Sharī‘ah boards of Islamic banks and their members have to play an important role in ensuring compliance of the banks products and business to the principles of Sharī‘ah. The SBP, cognizant of the need for Sharī‘ah compliance, has been issuing instructions/regulations time to time (Shahzad and Rehman, 2017). One serious effort in this context is the ‘Sharī‘ah Governance Framework’ (SGF) issued in 2015 and slightly revised in 2018.

The SGF, 2015 provides for the Sharī‘ah Advisory Committee (SAC) at the level of the State Bank and Sharī‘ah Boards (SB) in Islamic banks, Islamic banking subsidiaries or the Stand-alone Islamic banking divisions of the conventional banks [collectively called as Islamic Banking Institutions (IBIs) in Pakistan]. The Sharī‘ah governance activities are to be performed by the Banks BOD, Sharī‘ah Board, resident Sharī‘ah board member (RSBM), Sharī‘ah Compliance Division (SCD), Sharī‘ah Audit Department and the Sharī‘ah Review
Department of the respective IBIs. The SGF covers all instructions given by Islamic Financial Services Board (2009)\(^1\) with addition of external audit.

As here we are discussing the SGF, 2015 which is applicable to the banking institutions in Pakistan, we will be focusing on Shari‘ah advisory and governance in IBIs only. The objective of this paper, therefore, is to discuss and analyze the effectiveness of the ‘Fit & Proper Criteria’ for the Shari‘ah boards members of Islamic banks that pertain to their religious qualification, experience in fatwā issuance and competence in understanding the increasingly complicated banking and finance products. It also analyzes the Shari‘ah Governance frameworks or guidelines issued by BNM, AAOIFI and IFSB in terms of expertise and qualification of the Shari‘ah board members.

This study is qualitative in nature conducted by extracting data from the Shari‘ah governance frameworks issued by the regulators like SBP and BNM, institutions like AAOIFI and IFSB and various classical and recent materials on requirements for issuance of fatwā, and the studies conducted on Shari‘ah governance for the IBFIs.

The rest of the paper comprises i) review of literature on education and competence of the members of the Islamic banks Shari‘ah boards; ii) importance of iftā and prerequisites for a muftī from the Qur‘ān, Sunnah, and opinions of the renowned jurists; iii) analytical comparison of the qualification requirements as prescribed by the SBP, BNM, AAOIFI and IFSB for the Shari‘ah board members; iv) the syllabi of eight years education prescribed by five education boards of religious institutions in Pakistan i.e, Wafāq al-Madāris ‘Arabiyyah, Wafāq al-Madāris Salaфиyyah, Rabīṭah al-Madāris, Tanẓīm al-Madāris and Wafāq al-Madāris Shī‘ah; v) comparison of the syllabus of Specialization (takhasṣus) offered in all Wafāqs in the country; vi) suggesting changes in curricula and training schemes enabling the madāris graduates to play effective role in developing products for Islamic banking and finance while ensuring compliance to the tenets of the Shari‘ah; and vii) concluding the paper with findings and recommendations.

**LITERATURE REVIEW ON EXPERTISE OF SHARĪ‘AH BOARD MEMBERS**

Farook (2011) examined the qualification of Shari‘ah scholars and emphasized that there was shortage of qualified scholars in Islamic finance industry. The author is of the view that only a few top ranking Shari‘ah scholars are in concentration and prominence due to absence of any recognized standard or requirement for this profession with regard to qualification and expertise. The paper suggested qualification and emphasized training of Shari‘ah scholars for understanding the modern complex economics and finance systems. It suggested some practical solutions to overcome the challenge in the long-run i.e., (i) by establishing academic and training institutions with relevant degree and training programs; (b) designing syllabus and setting standards for qualified Shari‘ah scholars for understanding the finished product; and (c) forming a professional body to recognize and certify Shari‘ah scholars in other modern professional disciplines (Farook & Farooq, 2013).

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\(^1\)IFSB. (2009). Guiding principles on Shari‘ah governance systems for institutions offering islamic financial services. Islamic financial services board
Alman (2012) explored the influence of Sharī‘ah supervisory boards compositional characteristics on Islamic banks’ risk-taking behavior. He analyzed as to which degree the supervisory functions of a Sharī‘ah board affected the banks’ risk-taking behavior using data of 2000-2010 of banks in the Middle East, Northern Africa, and Southeast Asia. The author concluded that the assets portfolio related risk-taking by Islamic banks was positively influenced by the increasing size of the Sharī‘ah supervisory board, as well as when top ranked Sharī‘ah scholars with multiple memberships had board mandates and annual changes occurred in the composition of a Sharī‘ah board. The study found that “supervisory effectiveness and disciplining power of individual bank SSBs towards the risk-taking in the loan portfolio of Islamic banks decreases in a decentralized Sharī‘ah-compliant governance structure. The reverse causality analysis shows strongly that SSB factors affect primarily loan portfolio risk-taking, not the other way around.”

Ullah (2012) reported some researchers saying that ‘banks do not select Sharī‘ah scholars on the basis of their competence in Sharī‘ah and banking fields, but rather on the basis of their leniency in issuing fatwā’. He mentioned in this regard Farook (2011) and others. He also referred to Warde (2000) saying that Islamic bankers consider SSC as a formality, rather than an active controlling body.

Kunhibava (2015) evaluated Malaysia’s Islamic Financial services Act 2013, Central Bank of Malaysia Act (CBMA), 2009 and its Sharī‘ah governance framework, and highlighted the role of the Sharī‘ah Advisory Council (SAC) of the BNM. The study suggested amendments in section 57 of the CBMA 2009 and proposed to allow ‘other persons’ to seek the expert advice of the SAC. Amanullah (2015) analyzed the criteria for appointment of SSB members. His study was comparative in nature; highlighting the guidelines of BNM and the Bangladesh Bank with regard to the criteria.

Raman and Bukair (2013) empirically examined the influence of the SSB and its impact on the level of Corporate Social Responsibility (CSR) related disclosure in 53 IBIs operating in GCC countries in 2008 by using content analysis and the multiple regression analysis.

Toufik (2015) explored the role of SSB in ensuring good corporate governance practices. The author used both primary and secondary data and concluded that Islamic banks were succeeding in adapting corporate governance elements i.e. accountability, trustworthiness and transparency. However, moral commitment in Sharī‘ah supervision is the real value adding factor to the corporate governance practices in Islamic banking institutions (Toufik, 2015).

Lahsasna (2011) discussed the role of fatāwá (Sharī‘ah rulings) and their issuance methodology in Islamic finance to ensure a sound process of issuing any accurate resolutions complying with the guidelines and rules prescribed in Islamic Jurisprudence. (Lahsasna, 2011).

According to a study published in the Journal ‘Islamic Economics Studies’ (IES) of IRTI (Ayub, 2008-9), Dars-e-Nīzāmī syllabus, taught generally in madāris in Indian subcontinent (Particularly in Pakistan and India), comprises studies in tafṣīr, ḥifẓ, ṣarf and nahw (Arabic syntax and grammar), Persian, Urdu, and Islamic history, Islamic jurisprudence and Islamic law. The study indicated that for certifying Sharī‘ah compliance of products and transactions/ṣukūk, scholars must not only be expert in Islamic law and banking, but also
have a thorough knowledge of conventional laws and financial system practices. It also required a high standard of English for understanding intricacies of the financial products and effective interaction with the financial engineers. The study estimated the facilities in madāris in Pakistan in 2005 for education in disciplines helpful to enhance desired expertise in Islamic banking and finance. The study found that only a few of total around 17,000 madris were providing or facilitating education in economics, banking and finance. Arabic language as medium of instruction was used in 11 madāris. While casual lectures on Islamic economics and finance were arranged in a few dozen, AAOIFI Sharī‘ah Standards were casually taught in 2 madāris at Karachi.

Regarding the level of Islamic economics/banking knowledge of the madāris graduates, the IES study concluded, "madāris graduates do not have sufficient knowledge of even those subjects that they study in the traditional books... majority of the teachers in did not know about the main principles of salam/salaf, a main topic in all traditional books of ḥadīth and fiqh....".

Practically, the ability of the Sharī‘ah boards members to fulfill their mandate may be constrained by the time they may give to any institutions and their involvement in the banks affairs, their understanding and access to monitoring systems, complexity of the products and transactions, and effectiveness of their independence (Grais & Pellegrini, 2006).

**IMPORTANCE OF IFTĀ AND RESPONSIBILITIES OF A MUFTĪ**

In the Muslim societies, iftā (giving juristic opinion or Sharī‘ah ruling) is considered a great responsibility. Qur’ān highlights the importance of fatwá, “So ask of those who have knowledge [learned religious men], if you know not” (16:43). Iftā is also an honorable position according to the sayings of the Holy Prophet (PBUH); he (PBUH) said, “The ‘ulamā’ are the heirs of the Prophets who bequeath neither dinār nor dirham, but only knowledge; and he who acquires knowledge, has in fact acquired an abundant portion” (Abu-Dawud ḥadīth No. 3641). Ibn Salah, a renowned jurist, explained the ḥadīth, “So this ḥadīth is evidence that the Muslim jurists have an honorable position and a great rank in the Muslim community” (Ibn al Salaḥ, 1987; also see Al-Nawawi, 1408).

A muftī, therefore, must be a pious and learned person, because he is supposed to be the inheritor of the Prophet (PBUH) in conveying the message of the Qur’ān and Sunnah. Issuing Sharī‘ah rulings has to be accomplished only by the competent persons. A person should avoid giving Sharī‘ah rulings about the issues which he may not have sufficient knowledge. Allah (SWT) says: "وَلَا تَجْعَلْ مَا لَا أَنْتَ بِهِ عَلِيمٗا" "And follow not (O man i.e., say not, or witness not, etc.) that of which you have no knowledge" (Qur’ān, 17:36). Qur’ān warns, “Do not ascribe lies to Allah by decreeing with your tongues, "This is lawful and that is unlawful" for those people who ascribe lies to Allah can never come to any good. (They should remember that) the pleasures of this world are transitory and in the end there is a painful torment for them” (16:116). Ibn al Salaḥ, while elaborating the above verse said, "The meaning of the verse applies to a jurist who deviates in his fatwā and declares lawful which is unlawful, or declares unlawful which is lawful". (Ibn al Salaḥ, 1987)
This is why, the Companions of the Prophet (PBUH) used to be very careful in giving Shari’ah rulings. Al-Nawawi (1408) wrote, “Abdurrahman ban Lila narrated that I met 120 Anṣārī companions of the Prophet; when anyone was asked about an issue, he would sent to another, and then he would sent to another and finally he would come back to the first one”. “Ata bin Sayib narrated that he had seen the people (jurists) whose hearts become full of fear when any one of them was asked about any issue and he became shivering”.

As Ahmed Ibn Hamdan (1960) reported from Imām Malik, it was considered an alarming problem in Islam that any issue was referred to a person who did not have the relevant knowledge. The Muslim rulers were suggested to investigate as to why incompetent persons were issuing Shari’ah rulings, and to appoint any capable persons for issuing fatwā.

Al-Nawawī (1408) indicated, “Lack of care in issuing fatwā is due to lack of knowledge”. He added that “Imām Shafi (R.A) was inquired about an issue and he did not give any answer, he was asked, why you do not give answer? He said; till I know is it better to keep silence or to give answer”. Similarly, “Imām Abu Hanifa said; if there would not be fear that the knowledge would decrease, I would not have issued legal verdict because burden of fatwā would shift on me and they (to whom fatwā is given) would be beneficiary” (Al-Baghdadi, 1850).

Competency Requirements for the Position of a Muftī

Any muftī has to be expert in all related fields of knowledge; and if a person does not understand any related matter fully, he may not be issuing any verdict. There is a quote of Imām Shafi (R.A) that describes a person who might issue any Shari’ah ruling:

“It is not allowed for anyone to issue a fatwá, except one who is well-informed and educated about all aspects of the Holy Qur’an including the verses that are abrogated and by which verses they were abrogated, what’s mohkām [precise, decisive, entirely clear] and mutashābēh [unclear, unspecific, or the verses resemble each other in the Holy Qur’an], it’s [explanation, interpretation] and revelation, what’s Makkī or Madāni, what was meant by it and why it was revealed [perspective of revelation], and then he should be experienced (skilled) in ḥadīth: what’s abolishing and abolished, and know about ḥadīth like what he knows about Qur’an. Further, he has to be aware of the differences among people in countries with regard to the relevant area; and above all, have to have the talent. Only then, one is permitted to give fatwā and talk about ḥalāl and ḥarām, and if he doesn’t have all that then he can speak (discuss) in (Islamic) science but is not permitted to give fatwā” (Al-Baghdadi, 1850).
Imām Ahmad is reported to have said: “...Following five qualities are the fundamental requirements for issuing fatāwá. If any of them are lacking, there will be a commensurate defect in the muftī” (Albahoti, n.d.):

1. One should have a good intention, for if he does not have a good intention, he will not be blessed and there will be no blessings in his words.
2. One should be knowledgeable, forbearing, dignified and calm.
3. One should have a strong grasp of knowledge.
4. One should have a strong personality and not be affected by peoples criticism.
5. One should know well the habits and customs of the people and society to remain safe from their deceptive and mischievous ways and means.

It can be derived from the above that any person to serve as a muftī must be expert in following fields - Knowledge of the Islamic Law including: i) The Qurʾān and its sciences, ii) The Ḥadīth and its sciences; iii) The ijmāʿ(consensus) and difference of opinions regarding any issues; iv) The fundamentals of Islamic Jurisprudence; v) Command on Arabic language; and vi) The social and commercial norms of the people and current state of affairs.

Having the above qualifications and expertise, one is expected to give the right answers (and opinions), and derive correctly from the texts of the Sharīʿah while doing qiyās and ijtihād in case of new issues in banking and finance.

Role and Responsibilities of Sharīʿah Board in Islamic Banks
Sharīʿah board is the focal institution of Sharīʿah Governance system in the IBIs. The responsibility of the Sharīʿah board is to ensure Sharīʿah compliance in the bank by providing the management guidelines and reviewing their activities (Shahzad, Saeed, and Wallah, 2017). At least three Sharīʿah board members have to be appointed by the banks Board of Directors keeping in view the ‘Fit and Proper Criteria’ (FAPC) given in the SGF, 2015 (State Bank of Pakistan, 2018). One of the SB members serves as the Resident Sharīʿah Board Member (RSBM) as a full-time official of the bank. The RSBM has to provide explanation/clarification to the management and staff of the bank on products, documents, and processes in the light of decisions/rulings issued by the Sharīʿah board, and help the management in day-to-day activities for ensuring Sharīʿah compliance. The funds of the banks and the depositors are invested with approval of the Sharīʿah boards, and in case of non-compliance of any transaction to the Sharīʿah principles, the proceeds of such transactions are credited to the Charity Accounts of the banks, not to their P&L Accounts. It puts a huge responsibility on the shoulders of the Sharīʿah board members, in addition to the need for avoiding interest as the Sharīʿah requirement.

In terms of the SGF 2015, the Sharīʿah Board has to consider, decide and supervise all Sharīʿah related matters of the bank. Its decisions/rulings/fatāwā are binding on the bank whereas the SB is accountable for its Sharīʿah related decisions (Shahzad et al., 2017). It has to help in developing a comprehensive Sharīʿah compliance framework and ensure that all products and services, agreements/contracts, structure, process flows, product manuals, marketing advertisements, sales illustrations and brochures are in conformity with the rules
and principles of Sharī‘ah. It has to rigorously deliberate on any issue placed before it for consideration. It shall also specify the process and procedures for changing, modifying or revisiting its earlier issued fatāwá/rulings/guidelines. The Sharī‘ah Board is also required to prepare a report on the Banks Sharī‘ah compliance environment and conditions based on the work of internal Sharī‘ah audit, external Sharī‘ah audit and Sharī‘ah compliance review. Hence, the burden whether a product passes Sharī‘ah compliance test and the banks business is really Sharī‘ah compliant rests on the shoulders of IBIs Sharī‘ah board members.

The management is to ensure provision of all necessary information, details and documents enabling the SB to have adequate understanding of the product, its process flows, business and economic outcomes and Sharī‘ah permissibility or impermissibility. The Sharī‘ah compliance Head and RSBM have to discuss the significant and unresolved issues with SBP inspection team during their on-site inspection and submit the report in Sharī‘ah Boards meeting.

In order to perform all above jobs diligently, Sharī‘ah scholars/boards members need to be knowing the increasingly complicated banking and finance products to approve only those which are truly Sharī‘ah compliant. Any deficiency in competence, or compromise in this regard could make the income so earned non-Sharī‘ah compliant defeating the very purpose of introducing Islamic banking. It may also be a source of disrepute to banking and finance system tagged with the divine system of Islam.

All this implies very professional and sacred duty for the Sharī‘ah boards and their members who are required to act like muftī and mujtahid in Islamic banks (Amanullah, 2015). The SBPs “Fit and Proper Criteria” also mentions that a candidate for Sharī‘ah board member may know the banking and finance. But, the issue is, how to ensure/judge whether any person has knowledge of finance, banking and capital market and is capable of understanding English - the technical language used in the formats and processes of the instruments/products and prospectus of securities.

The point we have to discuss is whether the members of the Sharī‘ah boards have sufficient knowledge and experience to accomplish all the above functions in befitting manner. According to the Jeddah based Majma‘ al-Fiqh al-Islami, banks’, Sharī‘ah board members should possess scholarly competence and practical knowledge to issue fatāwá and review all transactions to ensure that the same are in conformity with the rulings and principles of Sharī‘ah (IIFA-2009).

Below we give a comparative statement on qualifications and experience of the Sharī‘ah board/committee members as prescribed by the regulators like SBP and BNM, and AAOIFI and IFSB, the standards setting bodies.
Comparative Statement on Qualification & Responsibilities of Sharī‘ah Board Members in Different Sharī‘ah Governance Guidelines

TABLE 1
Comparative analysis qualification of Sharī‘ah board (Compiled by the authors)

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<td>&quot;Qualification and Experience of SSB/SB Members&quot;</td>
<td>&quot;The Sharī‘ah Board Chairperson shall have at least 05 years experience of working as Sharī‘ah Advisor or a member of Sharī‘ah Board of an IBI. The other Sharī‘ah Scholar members of the SB shall have at least 03 years experience as Sharī‘ah Advisor/Member of Sharī‘ah Supervisory Board&quot; SBP, ‘Sharī‘ah Governance Framework for Islamic Banking Institutions. (SBP, 2018)</td>
<td>&quot;A Sharī‘ah Committee with qualified members who are able to deliberate Islamic finance issues brought before them and provide sound Sharī‘ah decisions. (BNM), 2009). He must have at least bachelors degree in Sharī‘ah, which includes study in usūl al-fiqh or fiqh al-mu‘āmalāt (from recognized university&quot; (Bank Negara Malaysia, 2009)</td>
<td>&quot;The SSB is an independent body of specialized jurists in fiqh al-mu‘āmalāt, however the SSB may include a member other than those specialized in fiqh al-mu‘āmalāt, but who should be an expert in the field of Islamic Financial Institutions with knowledge of fiqh al-mu‘āmalāt&quot; (AAOIFI, 2015)</td>
<td>&quot;He or she must at least hold a bachelors degree from a recognized university in the sciences of Sharī‘ah, including Islamic transaction/commercial law. The member of the Sharī‘ah board who has at least three years experience of making Sharī‘ah resolutions, or at least four years post qualification experience in teaching or research in Islamic finance, should be appointed as Chairman of the Sharī‘ah board&quot;</td>
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Responsibilities of SB/SSB | "The SB shall advise the BOD and the executive management of the IBI on all Sharī‘ah related matters. All the SB decisions/rulings/fatāwā shall be binding on the IBI whereas the | "The Sharī‘ah Committee shall be responsible and accountable for all its decisions, views and opinions related to Sharī‘ah matters." | "The SSB entrusted with the duty of directing, reviewing and supervising the activities of the Islamic financial institution in | "To ensure the business of IIFS is in accordance to Sharī‘ah, the Sharī‘ah Board will issue relevant guideline/fatāwā, conduct Sharī‘ah
TABLE 1: Continue....

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<td>Sharī‘ah Board shall be responsible and accountable for all its Sharī‘ah decisions.&quot; (SBP, 2018)</td>
<td>&quot;The Sharī‘ah Committee is expected to perform an oversight role on Sharī‘ah matters related to the institutions business operations and activities. This shall be achieved through the Sharī‘ah review and the Sharī‘ah audit functions. Regular Sharī‘ah review reports and the Sharī‘ah audit observations should enable the Sharī‘ah Committee to identify issues that require its attention and where appropriate, to propose corrective measures.&quot;</td>
<td>&quot;In order to ensure that they are in compliance with the Islamic Sharī‘ah rules and principles. The fatāwá of the SSB shall be binding for IFI.&quot; (AAOIFI, 2015)</td>
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<td>Responsibilities of RSBM/Sharī‘ah Advisor</td>
<td>&quot;Responsibilities of the RSBM/Sharī‘ah Advisor are to provide guidance on a day-to-day or routine Sharī‘ah related issues, post product approval, Sharī‘ah Training, Response to Sharī‘ah related queries, conduct Sharī‘ah review and submit a quarterly report to Sharī‘ah Board.&quot;</td>
<td>&quot;Not Indicated&quot;</td>
<td>&quot;The Sharī‘ah board shall be empowered to reserve rights to delegate some of its functions to the ISCU or internal Sharī‘ah officers of the IIFS i.e., product development and Sharī‘ah review&quot; (Islamic Financial Services Board, 2009)</td>
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In the light of the above regulations, Sharī’ah board members must be expert in the fields of Islamic commercial law, Islamic jurisprudence and Islamic financial transactions. According to the SBPs SGF (June, 2018), the fit and proper criteria of IBIs Sharī’ah board members is as follow.

**Academic Qualification**

"Shahādat al-‘ālamīyah Degree (Dars-e-Nizāmī) from any recognized Board of Madāris (Wafāq) with minimum 70% marks and Bachelors Degree with a minimum of 2nd Class; or Post Graduate Degree from Kulīyat al-Sharī’ah or Kulīyah uṣūl al-dīn, L.L.M. (Sharī’ah) with a minimum GPA of 3.0 or equivalent from any recognized University" (State Bank of State, 2018).

**Experience and Exposure**

"The Sharī’ah scholar members must have at least four (4) years experience of giving Sharī’ah rulings including the period of takḥaṣṣus fī al-iftā; or at least five (5) years post qualification experience in teaching or Research and Development in Islamic banking and finance. **Preference will be given to those who have certificate in takḥaṣṣus fī al-fiqh/takḥaṣṣus fī al-iftā**" (State Bank of State, 2018).

In addition to the skills in Islamic jurisprudence uṣūl al-fiqh), the Sharī’ah scholar members must have adequate understanding of banking and finance in general and Islamic finance in particular; good comprehension of Arabic language; and good communication skills in English language.  

Accordingly, Shahādat al-‘ālamīyah Degree from recognized Wafāq, or its equivalent degree in Islamic jurisprudence or (uṣūl al-dīn from any University is the main required qualification for the appointment of Sharī’ah board member in IBIs in Pakistan. Further, preference has to be given, as per the SGF, to the candidates having takḥaṣṣus fī al-iftā. But the area of iftā experience has been kept open and may pertain to general issues like ṣalāh, zakāh, ṭalāq, khula’, etc. The provision of fatwā issuance, or specialisation should have been specified with the matters of trade, business, banking and finance (al-mu‘āmalāt al-mālīyah).

**Evaluating the Curricula of Madāris**

Evaluation and comparison of the syllabus of Shahādat al-‘ālamīyah fī ‘ulūm al-‘Arbīyah w al-Islamia Degree of five wafāq al-madāris in Pakistan reveals that there is not any direct relevant subject in the curricula relating to Islamic commercial law or banking. A graduate from these wafāq may be expert in Sharī’ah, giving fatāwa’ on issues of divorce, inheritance, etc; but he/she does not become expert in the field of Islamic commercial law, and particularly, modern banking and finance. Similarly, after graduation from faculty of Sharī’ah or uṣūl al-dīn of any University, the candidate might not be able to issue fatāwā on

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3 However, no process or measure has been suggested to assess the actual competence of the members to understand the banking and finance matter.
many areas of Islamic banks transactions. Generally, he is not expected to be familiar with the modern Islamic banking transactions.

The syllabus or course outline of takhassus fi al-fiqh/takhassus fi al-ifta of different wafq have been listed out in Table-3 which shows that in the course work of takhassus there are no specialized courses particularly in fiqh al-mu‘amalat (Islamic commercial Law), except Dar ul Uloom Karachi. Even in Dar ul Uloom Karachi, they offer in the last year of specialization only some selected Sharī‘ah standards issued by AAOIFI, while no course is offered about banking and present day finance, or accounting treatment in business by Islamic banks.

### Table 2

| Subjects of Islamic law (fiqh) and Islamic jurisprudence (usul al-fiqh) in wafq’s curricula - shahadat al-‘alamiyah degree program (dars-e-nigam) |
|---|---|---|---|---|---|
| | | Wafq al-Madaris Arba‘iyah | Wafq al-Madaris Salafiyah | Rabihah al-Madaris | Ta’azun al-Madaris | Wafq al-Madaris Shit’ah |
| **Degree** | **Year** | **Class** | **Class** | **Class** | **Class** | **Class** |
| Shahidat-al-Madaris | 2nd Year | There are no fiqh / usul al-fiqh Subjects in this class. | There are no fiqh / usul al-fiqh Subjects in this class. | There are no fiqh / usul al-fiqh Subjects in this class. | There are no fiqh / usul al-fiqh Subjects in this class. | *Fiqh Istislah Vol. IV* |
| | 2nd Year | *Hidayatul-Mujahid 4 Chapters jihād, mustaharak, qirād. *Al Wajih fi usul al-fiqh | *Hidayatul-Mujahid (Marriage and Divorce) *Al Wajih fi usul al-fiqh | *Fiqh Istislah Vol. IV (Part 4)* |
| | 1st Year | *Hidayah Vol. III and IV* | *Hidayah Vol. IV (Kitaab al Shefa’at)* | *Hidayah Vol. IV (Part 4) *Al Tozeeh (Preamble) |
| | 1st Year | *Hidayah Vol. I Hussami (from preamble to Qiyas)* | *Fiqh al Summah (Prayer)* | *Fiqh al Summah (Prayer)* |
| Shadharat-al-Madaris (MA) | 2nd Year | *Fiqh al Summah (Prayer)* | *Fiqh Shara‘a al Islam (al ‘Ibadah) Al Mujahid fi al Usool* |
| | 2nd Year | *Kanz al-Da‘iq (Except Inheritance) Usool al Shashi* | *Kanz al-Da‘iq (Prayer)* | *Hidayah Vol. I *Noor al Anwar (Qur‘an, Sunnah & jama’ah)* |
| | 2nd Year | *Kanz al-Da‘iq (Prayer)* | *Usool al Shashi* | *Fiqh Shara‘a al Islam (al ‘Ibadah) Al Mujahid fi al Usool* |
| Shadharat-al-Madaris (PhD) | 2nd Year | *Qur‘an & Shari‘ah (Prayer)* | *Fiqh Shara‘a al Islam (al ‘Ibadah) Al Mujahid fi al Usool* |
| | 2nd Year | *Usool al Shashi* | *Qur‘an & Shari‘ah (Prayer)* | *Fiqh Shara‘a al Islam (al ‘Ibadah) Al Mujahid fi al Usool* |
| Shadharat-al-Madaris (s.j.) (Master) | 1st Year | *Qur‘an & Shari‘ah (Prayer)* | *Qur‘an & Shari‘ah (Prayer)* | *Fiqh Shara‘a al Islam (al ‘Ibadah) Al Mujahid fi al Usool* |
| | 1st Year | *Usool al Shashi* | *Qur‘an & Shari‘ah (Prayer)* | *Fiqh Shara‘a al Islam (al ‘Ibadah) Al Mujahid fi al Usool* |
Of course, a few institutions are offering specialized degree in Islamic commercial law, e.g., Karachi based Jamiah al-Rasheed is offering takхаs<s>ûs̲</s> fi al-mu'амальаt al-mаlіyаh. Secondly, Faculty of Sharі'ah & law, International Islamic University Islamabad is offering MS and LLM in Islamic Commercial Law. Both these institutions have very strong curricula in Islamic commercial law and their graduates could become the best professionals in Sharі'ah advisory, if proper training and orientation in practices of banks and other institutions is provided to them. But, this aspect of training and orientation is being ignored and, therefore, their graduates also are not capable of issuing Sharі'ah opinion on structured banking and finance matters due to lack of finance and banking related knowledge (Shahzad & Rehman, 2017).

Further, before or after appointment of Sharі'ah board members, there is not any training or refresher course required or prescribed in the SGF. The SBP issued a detailed circular "IBD Circular No. 02 of 2018" in order to enhance Training & Capacity Building Measures for IBIs which includes instructions for the training of Executive Management, Board of Directors, and even branch level staff. But, it pointed out the training of Sharі'ah Board members without giving the training areas, process or any other details. It is not clear as
to how such training of Sharī‘ah board members is to be executed. Practically, of course, the IBIs are interested in engaging generally such madāris graduates, without bothering much about their expertise in banking and finance, who are supposed to be quite flexible in allowing the replicas of the conventional banking instruments and products (Ayub, 2016).

SUGGESTING CHANGES IN CURRICULA AND TRAINING SCHEMES

We come to the point, therefore, that while on the one hand, revision of curricula of madāris is required, on the other hand, a number of training and orientation courses need to be designed and introduced enabling the madāris graduates/Sharī‘ah scholars to make an effective contribution of development of Islamic finance while ensuring Sharī‘ah compliance in letter and spirit. Below, we suggest changes in the curricula for various programs of madāris that need to be introduced by all wafāqs in Pakistan.

Teaching Material to be included in Curricula at ‘Ālim, Muftī and Takhaṣṣuṣ level Classes in Madāris [As suggested by IES-IRTI Study (2008-9)]

Two options are discussed in this regards. One, there may be a Curriculum Review Committee, constituted jointly by the Ministry of Education and the Ministry of Religious Affairs, comprising experts from all Wafāqs that may select necessary parts from the chapters on Contracts (‘uqūd), Partnership (shirkah/qirād), Sales (bay‘), ijarah (leasing), Loans/Debts (qard and dayn) including Guarantee (Kafālah) and assignment of debts (hawālah) and others related with mu‘āmalāt of the following books:
1) Al-Sarakhsi, Shamsuddin Abu Bakr Muhammad: Al Mabsut;
2) Shafii, Abu Abdullah, Muhammad bin Idrees: Kitab al ‘Umm
3) Malik Ibn-e-Anas: Al Muawwatta;
4) Ibn Qudama, Abu Muhammad Abdullah bin Ahmad, ‘Al Mughni’
5) Al Hilli, Shaair-al-Islam;
6) Hussain, Ali al Husaini (Aqd al Bai fi fiqhal Jafri)
7) Al Jaziri, Abdur Rahman, Kitabul Fiqh ‘Alā Mazāhib-e-Arba‘a
8) Al-Atasi, Muhammad Khalid: ‘Sharah Majallah al Ahkm al ‘Adliah’,

The selected material from the above books may be in addition to the books that are already being taught, or may be in replacement of some materials that neither have much relevance with the fundamentals of Islam nor have any obvious application in the present age.

The second option is that the research oriented books by the contemporary jurists only be included in the existing curricula of madāris as the students would find them helpful to comprehend the business, banking and finance systems and their application in the present age. Further, such books generally contain the comparative view of all schools of thought along with relevance with the primary sources of the Sharī‘ah and views of the salaf. The authors would prefer the latter view as the focused material would be more useful and helpful in understanding the concepts and their application to the present business and financial
transactions without mere sectoral prejudices. Selected books by different authors may, inter alia, include:

1) Zuhayli, Wahbah; Al Fiqhul Islami wa Adillatohu (Chapters on Mu’amalat),
2) Sh. Saleh bin Fozan; Al Molakhas ul Fiqhi Talkhees; Darul Manar, Cairo, 2004; Vol. 2 (Chapters on Mu’amalat (Pp: 1 - 119);
3) Mubarik bin Sulaiman b. Muhammad Aal e Sulaiman; Ahkāmutt’āmul fil Aswāqil mālia al Mu’asirah, Dr Kanuz Ashbeilia; Riyadh, KSA, 2005
6) Al M’aāyyeer al Sharī’ah (AAOIFI Sharī’ah Standards)


Areas and Modules for Courses for Shārī’ah scholars on Fundamentals of Economics, Business and Finance as suggested by IES, IRTI Study, 2008-09

1) The main features of the conventional economic system;
2) Money, monetary theory and the system of public finance;
3) Functions and creation of Money in Islamic Perspective;
4) The concept of direct and indirect financial intermediation and the need for banking and finance institutions;
5) The debt creation and problems generating from incurring debt by issuing debt instruments in an interest based framework;
6) Deposit taking and management by commercial banks;
7) Financing activities of conventional commercial banks;
8) Investment banking and fund management;
9) Service based operations of the commercial banks;
10) Financial instruments and markets;
11) Financial Derivatives
12) The basic principles of Islamic Economics;
13) The independent functioning of the market forces and the role of the State/Regulators for just distribution of wealth among various factors of production in the Islamic economic system;
14) The nature and time value of money in Islamic economics and impact of inflation.
15) The need for Islamic banking
16) The basic principles and philosophy of Islamic banking as distinct from the conventional banking.
Training Programs and Resource Persons for the Sharī‘ah Scholars’ Training

Designing training and orientation courses, introducing the same and improving upon them in the light of developments in Islamic banking products and practices requires a lot of efforts on the part of the madāris organizations and the authorities in banking and finance. There has to be a "Business and Finance Course for Sharī‘ah Advisors", structured and managed by NIBAF (Training arm of SBP), Institute of Bankers, Pakistan (IBP), or any other third party entity like EYFRSH, etc; that could offer professional courses, with choice of the applicants for preparation, on money, economics, finance, financial instruments, banking law and practice. Particularly, the new entrants in Sharī‘ah advisory for banks, and those having less relevant experience than the required, may be given examination to be eligible for Sharī‘ah advisory and certifications. Effective coordination between the institutions involved in designing, planning, introducing and amending the programs/courses is also important.

As the orientation of the madāris people in banking and finance is a big challenge, the resource persons (trainers) for such programs must have the following qualifications:

a) They must be fully confident as to why Islamic finance be introduced, what are its distinctive features and tools and how, when and to what extent it may lead to socio-economic development and distributive justice in a society;
b) Sound knowledge of the principles of Islamic jurisprudence for derivation of the principles of business and finance;
c) The knowledge of difference of opinions in all established schools of thought on economic and commercial matters;
d) Knowledge of the basis, features, products and operations of Islamic banking and finance;
e) Knowledge about financial markets, instruments and operations in the conventional and Islamic frameworks;
f) A good level of English and/or Arabic languages and impressive presentation skills.

Course contents of Diploma For the Madāris Graduates Specializing in Islamic Finance as Suggested by IES-IRTI Study, 2008-09

(Duration: Normally 100 to 120 teaching hours)

1) The Main Principles of Islamic Economics and Sharī‘ah Boundaries
2) Basic Concepts and Philosophy of Islamic Banking
3) Islamic Law of Contracts and Principles of trading
4) Concepts of mushārakah and muḍārakah classical and as could be operative today
5) Deposits/Resources Mobilization and management
6) Credit and Forward sales musāwamah, murābaḥah and salam, istiṣnā‘
7) Structured and hybrid products and instruments like DM, tijārah, tawarruq and derivatives
8) Processes of ijārah based financing along with accounting aspects and tax issues, case studies
9) Intermediation and accessory modes like ju‘ālah, wakālah, amānah, hawālah
10) An overview of AAOIFI’s Sharī‘ah Standards with practical orientation
11) Accounting Procedures under various Modes of Financing  AAOIFI standards versus IFRS
12) Prospects and Issues in Specific Areas of Financing by Islamic banks
13) Local and Foreign Trade Financing Case Studies
14) Consumer and Corporate Financing
15) Islamic Securitization, Financial Instruments and Markets
16) Risk management framework for Islamic Banking
17) Internal Control and Audit for Shari'ah Compliance of Islamic banks operations
18) Conversion of a Conventional Bank to an Islamic Bank
19) Debit, Charge and Credit Cards in Islamic Finance
20) Comparison of Islamic and Conventional Banking
21) Documentation for various Modes to be used by Islamic Banks.

Key Areas and Modules for ‘Training of Trainers’ Programs as Suggested by IES-IRTI Study, 2008-09

(Duration: Normally 48 teaching hours stretched over two weeks)

1) Module on the sources of Shari'ah and the principles of Islamic jurisprudence with comparative position in all established schools of law.
2) Module on AAOIFI’s Shari’ah Standards
3) Module on accounting aspects of various Islamic financing modes in the light of AAOIFI’s Accounting standards;
4) Module on Financial markets, instruments and operations in the conventional and Islamic frameworks;
5) Module on Issuance of Shari‘ah Rulings, Shari‘ah Endorsement of Products and Instruments and Shari‘ah advisory services for Islamic banking; Internal Controls and Inspection for Shari‘ah compliance;
6) Module on ‘How to become a Professional Trainer’ Comprising:
   • Learning Psychology: KASH: (Knowledge, Attitude, Skill, and Habit)
   • Inter-personal and Intra-personal Skills
   • Attitude Handling: How to handle different people
   • Excuse handling
   • Questions Handling
   • Learning process: (PESOS: Preparation, Explanation, Showing, Observing, and Supervision) - Information, Explanation, and Application.
   • Presentation Skills
   • Communication Skills
   • Classroom Management
   • Time Management
   • Workshop on Pedagogical tools: Self-assessment Test; Case Studies.

Below, some revisions are suggested in the courses of MS/LLM Islamic Commercial Law.
FIGURE 1. Revised scheme of Studies

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<tr>
<th>S #</th>
<th>Course Code</th>
<th>Title</th>
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<tr>
<td>1</td>
<td>MSL-401</td>
<td>Islamic Law of Commercial Transactions-1</td>
<td>03</td>
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<tr>
<td>2</td>
<td>MSL-402</td>
<td>Property and Ownership in Islamic Law</td>
<td>03</td>
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<tr>
<td>3</td>
<td>MSL-403</td>
<td>Law of Banking</td>
<td>03</td>
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<td>4</td>
<td>MSL-404</td>
<td>Research methodology</td>
<td>03</td>
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<td></td>
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<td><strong>Total Credit Hours</strong></td>
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<tr>
<th>S #</th>
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<tr>
<td>1</td>
<td>MSL-405</td>
<td>Islamic Law of Commercial Transactions 2</td>
<td>03</td>
</tr>
<tr>
<td>2</td>
<td>MSL-406</td>
<td>Shariah Maxims on Commercial Transactions</td>
<td>03</td>
</tr>
<tr>
<td>3</td>
<td>MSL-407</td>
<td>International Trade and Finance</td>
<td>03</td>
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<td>4</td>
<td>MSL-408</td>
<td>Islamic Law of Banking and Insurance: Theory and Practice</td>
<td>03</td>
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<tr>
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<td><strong>Total Credit Hours</strong></td>
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**Research Work**

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<tbody>
<tr>
<td>1</td>
<td>MSL-415</td>
<td>Thesis</td>
<td>06</td>
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</table>

As such, the State Bank of Pakistan has to pay proper attention regarding professional development of the Sharī’ah board members. The Sharī’ah governance guidelines issued by the IFSB (2009) [which has been implemented by the SBP] require the IFIs to facilitate continuous professional development of persons serving on their Sharī’ah boards, as well as Internal Sharī’ah compliance unit/department (ISCU) and Internal Sharī’ah review/audit unit/department (ISRU). But, this aspect of training and orientation of Sharī’ah scholars is being ignored and, therefore, majority of *madāris* graduates are not capable of giving proper Sharī’ah opinion due to lack of finance and banking related knowledge. For the most of the IBIs, the practices of any other Islamic bank within the country or abroad become the basis for approval of the structured products and instruments.

**CONCLUSION**

Banking and finance products and instruments being increasingly complicated, the Sharī’ah boards have to carefully review and supervise the business and transactions of the IBIs from product development stage to the implementation stage (Shahzad, 2015). In the process of promoting Islamic banking in the country, the SBP has not only tried to ensure independence of the Sharī’ah boards of the IBIs, but also required the banks’ BODs and Executive Management to be fully involved in the process of development of the new system and be
accountable for any Sharī‘ah non-compliance. Still, it has to play crucial role to enhance credibility of Islamic banking system, which in turn, depends upon factors, inter alia, competence of the Sharī‘ah scholars involved in Sharī‘ah advisory for their effective role.

The position of a Sharī‘ah board members is sensitive because the legality or invalidity of all business transactions by the IBIs, and distribution of ḥalāl income among the capital owners depends upon their opinions/fatāwá. One can easily visualize the importance and sensitivity of the duty of Sharī‘ah board by the fact that if a prohibited transaction is approved by the board, may be due to lack of proper expertise of the SB members, the income of the bank and the return to the depositors would be ḥarām. It implies that the Sharī‘ah board members must know all about the contemporary business, banking, finance and the impact of banks financing on individuals, society and the economy.

As the curricula and the courses currently taught in the madāris do not sufficiently provide the qualification and expertise required for effective Sharī‘ah advisory in banks, the Sharī‘ah scholars, even the graduates from usūl al-dīn, LLM Sharī‘ah and takhsāṣṣ fī al-iftā generally, not meet with appropriate qualification for the position. Therefore, while the curricula need to be revised on the one hand; training, orientation courses and Diplomas need to be designed and implemented, on the other hand. To meet the requirement, this paper has indicated various education and training programs in line with the suggestion given in the IES-IRTI study (2008-09) conducted with special reference to madāris in Pakistan.

**Recommendations**

- The curricula of the madāris need to be up-dated to also include the practical social and economic issues of the present age. Involvement of the relevant state authorities for the purpose would be a step forward in initiating a process of effective dialogue with madāris to make their education system practice-oriented particularly in respect of business and finance. Medium and long term policies may be discussed in the subsequent/follow-up meetings/seminars regarding the role of the Sharī‘ah advisors and the possible measures in imparting them requisite education and training. Some special education and orientation courses may be introduced at ‘ālim, muftī and takhassus levels. Modules and courses for these training programs have been suggested.

- NIBAF, the training arm of the State Bank of Pakistan, may design and arrange an advance level rigorous training course on Islamic fiqh, economics, accounting, banking and finance for Sharī‘ah scholars having sufficient knowledge of Islamic law of contracts, banking, finance and accounting, followed by a comprehensive written Exam. Only the scholars securing (70)% or more marks may be eligible to become Certified Sharī‘ah Advisors in Islamic banking system of the country.

- As availability of resource persons and teachers for the emerging system is a big challenge, A ‘ToT’ program has also been suggested in the paper.

- As mentioned in the Principle 2.2 of IFSB Sharī‘ah Guidelines, the IBIs have to facilitate continuous professional development of persons serving on their Sharī‘ah board, as well as

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4SBP may like to exempt some senior level Sharī‘ah scholars who in its view are already well aware of the innovative techniques and instruments in conventional finance.
its ISCU and ISRUT. Particularly, the role of the resident Sharī’ah board member (RSBM) is crucial in application of the Sharī’ah governance framework of the IBIs. Therefore, the State Bank of Pakistan has to ensure that the IBIs take necessary steps for training and orientation of their SB members also including RSBMs on regular basis.

- The SBP may cause to initiate special degree programs/certifications in collaboration with Centers of Excellence in Islamic Finance (CEIFs) and leading madāris to train the madāris graduates (Sharī’ah Scholars) in the field of Sharī’ah audit and Sharī’ah advisory.
- A special program may be designed for induction of the Sharī’ah advisors for the banks, their comprehensive training, and examination to prepare a list of the eligible Sharī’ah board members/advisors. For the purpose, the SBP may like to maintain a panel of expert Sharī’ah advisors, and nominate the SB members from that list for all Islamic banks. For effective independence of the Sharī’ah boards, pay and perks of the members may also be decided by the State Bank.
- The panel, as indicated above, may have two categories of members, i.e., senior and junior members. If a candidate having more than 15 years of experience in the field, specifically, Islamic banking, as Sharī’ah advisor, Sharī’ah board member etc; he would be enlisted without any test or interview. Besides, the other category who have less or don’t have experience, but they have academic qualification in the field of Islamic banking, may apply for the membership in the panel. The SBP or the NIBAF may arrange test and interview to select the junior members.

REFERENCES


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