

COMMENTARIES ON THE EXPOSURE DRAFT GUIDING PRINCIPLES ON *SHARI'AH* GOVERNANCE SYSTEM

ZULKIFLI HASAN¹
DURHAM UNIVERSITY
TEL: +44 (0) 7761457686/ +44 (0) 1913772571
EMAIL: z.b.hasan@durham.ac.uk/ zul361977@yahoo.com
BLOG: <http://zulkiflihasan.wordpress.com>

1.0 Introduction

This document aims at providing commentaries and response to the recent exposure draft guiding principles on *Shari'ah* Governance (hereinafter referred to as the Guiding Principle) issued by the IFSB. The commentaries highlight various issues pertaining to *Shari'ah* governance system with a purpose to strengthen its governance structure and processes for IFIs. All comments, critics and observation are featured out through identifying and examining the existing *Shari'ah* governance system in different jurisdictions.

This document consists of three segments namely introduction, commentaries and concluding remark. Section 2.0 represents the most important part of the document where it provides comments, remarks, clarification and suggestion on the principles of *Shari'ah* governance contained in the Guiding Principles. This section is further divided into eleven parts i.e. Definition and Scope, General Approach to the *Shari'ah* Governance System, Competence, Independence, Confidentiality, Consistency, Key Term for Reference of the *Shari'ah* Board, Operative Procedures, Professional Ethics and Conduct, Minimum Competence Requirement and Performance Measures. It is hoped that this document may enlighten and enable the IFSB Working Group on *Shari'ah* governance to identify issues concerning *Shari'ah* board and related matters as well as further improving the Guiding Principles which may be universally adopted by any IFIs worldwide.

2.0 Commentaries

2.1 Definition and Scope of *Shari'ah* Governance System

Terminologies	Definition	Comment
<i>Shari'ah</i> Governance System”	The set of institutional and organisational arrangements through which an IIFS ensures that there is effective independent oversight of <i>Shari'ah</i> compliance over each of the following structures and processes	What is the definition of <i>Shari'ah</i> compliance? Does <i>Shari'ah</i> governance system only concern on the aspect of <i>Shari'ah</i> -compliant or beyond it i.e. <i>Shari'ah</i> -based?
“ <i>Shari'ah</i> pronouncements/ resolutions”	A juristic opinion on any matter pertaining to <i>Shari'ah</i> issues in Islamic finance, given by the appropriately mandated <i>Shari'ah</i> board.	Does it only cover issues in Islamic finance? The term Islamic finance seems to be very narrow.

¹ The writer is a Ph.d candidate in Islamic finance at Durham University, United Kingdom under the supervision of Professor Rodney Wilson and Dr. Mehmet Asutay. His research concerns on the *Shari'ah* governance system of IFIs in Malaysia, GCC Countries and the UK.

		Perhaps, it should be defined further to provide clarity or to replace with another term which is wide enough to cover <i>Shari'ah</i> issues in any kind of transaction.
" <i>Shari'ah</i> scholars"	Persons who are engaged professionally by IIFS to provide expertise in the <i>Shari'ah</i> compliance process. While the word "scholar" has been preferred as a direct translation for " <i>alim</i> " (<i>plural: ulama</i>), which connotes a person who is learned and expert, in the context of the IFSI we are actually referring to a more specialised level within <i>fiqh al-muamalat</i> (Islamic commercial laws) rather than <i>Shari'ah</i> more widely or other areas of Islamic studies.	Does it only provide expertise in the <i>Shari'ah</i> compliance process? Perhaps, the <i>Shari'ah</i> board should also play a role to continuously promote Islamic values and teaching to the industry.
Members of the <i>Shari'ah</i> board	The category of <i>Shari'ah</i> scholars, or <i>ulama</i> , who are equipped with not just general knowledge of <i>Shari'ah</i> or other disciplines, but more importantly have reached a specialised level of being learned and expert in <i>fiqh al-muamalat</i> . That specialisation is then dedicated to providing professional expert opinions in the form of <i>Shari'ah</i> pronouncements/resolutions, specifically to IIFS, beyond mere academic discourse and often not directly to the general public or to corporations in other industries.	It would be better to add further additional qualification of specializing in Islamic law of jurisprudence. Knowledge in Usul Fiqh is really essential as it is a tool for any <i>Shari'ah</i> board's deliberation.
<i>Shari'ah</i> advisory firm	An entity that, depending on its size and capacity, provides <i>Shari'ah</i> audit reviews, as well as <i>Shari'ah</i> -compliant product development, as part of its professional services.	Does it issue <i>Shari'ah</i> pronouncement as well as training for IFIs?
<i>Stakeholders</i>	Those with a vested interest in the well-being of an IIFS, including: (i) employees; (ii) customers; (iii) suppliers; (iv) the community; and (v) supervisors and governments, based on the unique role of IIFS in national and local economies and financial systems	Are Shareholders considered as part of the stakeholders?

2.2 Part 1- General Approach to the *Shari'ah* Governance System

Principles	Section	Comment
Principle 1.1- The <i>Shari'ah</i> governance structure adopted by the IIFS should be commensurate and	13. In some jurisdictions, supervisory authorities have their own <i>Shari'ah</i> board that works together with them in issuing standardised <i>Shari'ah</i> pronouncements/resolutions, as well as aligning relevant policy and regulatory frameworks with the <i>Shari'ah</i> . Although they may be known by different names such as National <i>Shari'ah</i>	In view of the shortage of <i>Shari'ah</i> scholars in some jurisdiction the restriction on multiple appointments of <i>Shari'ah</i> advisors may not be a good approach. There must be other mechanism

<p>proportionate with the size, complexity and nature of its business.</p> <p>No “single model” and “one-size-fits-all” approach</p>	<p>Advisory Council, National <i>Fatwa</i> Council, High <i>Sharī`ah</i> Board, etc., their functions are similar i.e. to become the highest body issuing <i>Sharī`ah</i> pronouncements/resolutions for IFSI in the country. Some of these supervisory authorities have even gone one step further, whereby they prohibit the members of the national <i>Sharī`ah</i> panel from sitting on a <i>Sharī`ah</i> board of the market players. In addition, each member of the <i>Sharī`ah</i> board is restricted in terms of the number of <i>Sharī`ah</i> boards of market players that he or she can serve. This restriction is intended not only to minimise the conflict of interest and maintain an appropriate firewall to preserve confidentiality, but also (perhaps more importantly) to ensure that the members of a <i>Sharī`ah</i> board can dedicate adequate time and effort to each IIFS that they serve.</p>	<p>to mitigate any potential conflict of interest such as declaration in writing or to limit the appointment to not more than three <i>Shari`ah</i> boards at one particular time.</p>
	<p>14. In line with internationally recognised corporate governance standards such as those issued by the OECD, IIFS should exercise proper discretion in choosing <i>Sharī`ah</i> governance structures so that they appropriately safeguard the fulfilment of fiduciary duties including good faith, care, skill and diligence towards all their <u>stakeholders</u>. Each IIFS should consider its size and, with a view to determining the impact of the number of members upon effective decision-making, decide what size <i>Sharī`ah</i> board is most appropriate. IIFS should further take into account the scope and nature of their operations. As far as possible, an IIFS should aim for a <i>Sharī`ah</i> board with a mixture of experience and competencies.</p>	<p><u>stakeholders.</u> (<u>Stakeholders</u>)</p> <p>What is meant by mixture of experiences and competencies?</p>
	<p><i>Ex-post considerations that should be observed at product offering stage – i.e. after the product has been offered to the customers and transactions have been carried out</i></p> <p>18. <u>For good risk management and progressive verification of product viability</u>, an IIFS would want to ensure that its <i>Sharī`ah</i> Governance System covers the relevant <i>ex-post</i> processes – namely, internal <i>Sharī`ah</i> review and <i>Sharī`ah</i> governance reporting. Without such follow-up, the IIFS would not be able to monitor the consistency of its <i>Sharī`ah</i> compliance and effectively manage any <i>Sharī`ah</i> compliance risk that may arise over time.</p>	<p>To consider to add “To ensure proper implementation of <i>Shari`ah</i> board’s deliberation”.</p>
<p>Principle 1.2:</p>	<p>20. In order for the <i>Sharī`ah</i> board to have</p>	<p><u>stakeholders</u> (<u>Stakeholders</u>)</p>

<p>Each IIFS must ensure that the <i>Shari'ah</i> board has: a clear terms of reference regarding its mandate and responsibility; well-defined operating procedures and lines of reporting; and good understanding of, and familiarity with, professional ethics and conduct.</p>	<p>a precise chain of command and accountability towards the respective <u>stakeholders</u> of the IIFS, it has to be equipped with:</p> <p>(i) a mandate that grants it appropriate powers to carry out its role and functions;</p> <p>(ii) well-organised operative procedures with regard to meetings, the recording of meetings, decision-making processes and to whom its decisions will be passed for effective implementation, including processes to review those decisions whenever necessary; and</p> <p>(iii) a sound code of ethics and conduct that would enhance the integrity, professionalism and credibility of the members of the <i>Shari'ah</i> board.</p>	<p>(iv) a proper assessment and evaluation of the <i>Shari'ah</i> board.</p>
	<p><i>Terms of appointment</i></p> <p>21. Principles of good governance, prudent risk management and professionalism require the appointment of the <i>Shari'ah</i> board to be made formally in writing and with the terms of reference clearly set out. The appointment letter, which becomes the contract of service for the members appointed to serve on the <i>Shari'ah</i> board of the IIFS, is the primary document that determines the form of relationship, level of fiduciary duties, and chain of accountability between the <i>Shari'ah</i> board, the IIFS and its <u>stakeholders</u>. As it is legally a binding contract between the two parties, at the minimum, the terms of reference should contain the information set out in Appendix 1.</p>	<p><u>stakeholders</u> (<u>Stakeholders</u>)</p>
	<p>22. As the legal framework in most jurisdictions holds the BOD as the body ultimately responsible with regard to the governance of an IIFS, the <i>Shari'ah</i> board has to be clear on the limits of its own power. Respect for each other's role and function is crucial, as good governance requires all organs of governance to work <i>with</i>, and not against, one another. The BOD, the <i>Shari'ah</i> board, the management, the supervisory authority, <u>as well as other stakeholders such as the customers, suppliers and the public</u>, should always seek to improve communications among themselves in order to avoid</p>	<p>What are the actual roles of <i>Shari'ah</i> board? Is it merely advisory or supervisory?</p> <p>What is the position of <i>Shari'ah</i> board in the organization structure of IFIs? Is the <i>Shari'ah</i> board considered as part of the governance structure, in parallel or above the BOD?</p> <p><u>stakeholders</u> (<u>Stakeholders</u>).</p> <p>To delete <u>such as the customers, suppliers and the</u></p>

	<p>misunderstandings and confusion, in line with the <i>Quranic</i> injunction in <i>Surah Al-Maidah</i> verse 2: “<i>Help ye one another in righteousness and piety, but help ye not one another in sin and rancour; Fear Allah, for Allah is strict in punishment.</i>”</p>	<p><u>public</u> since the Stakeholders are already defined.</p>
	<p>23. A clear set of rules and bylaws on how meetings shall be conducted, decisions made and recorded, and reports prepared and submitted, will provide much-needed direction for the <i>Sharī`ah</i> board in understanding the level of their accountability. This also would facilitate the relationship between the <i>Sharī`ah</i> board and other organs within the IIFS’s set-up, thus allowing them to work more effectively with one another without ambiguity over responsibilities and overlapping of tasks. Appendix 2 recommends some best practices that could be adopted by the IIFS in respect of their operative procedures.</p>	<p>To add how meeting shall be conducted and <u>arranged...</u></p>
	<p>24. It is strongly recommended that IIFS develop an in-house capability by having a dedicated ISCU comprised of <i>Sharī`ah</i> officers with appropriate qualifications and experience. Those in-house officers can, among other things:</p> <ul style="list-style-type: none"> (i) become the first point of reference for <i>Sharī`ah</i> compliance issues, with an advisory/consultancy <u>role delegated by the <i>Sharī`ah</i> board</u>; (ii) handle the processing and secretarial matters relating to issues to be raised to the <i>Sharī`ah</i> board; and (iii) provide input for executive decisions to be made by the senior management. 	<p>Issue of delegation of powers. The <i>Shari’ah</i> board must have clear authority to delegate its power to the ISCU.</p>
	<p><i>Professional ethics and conduct</i></p> <p>25. In the absence of an internationally recognised code of ethics and conduct for members of <i>Sharī`ah</i> boards, the IIFS shall establish its own appropriate code of ethical conduct to be complied with by its <i>Sharī`ah</i> board. This code of ethical conduct may be developed together and in consultation with members of the <i>Sharī`ah</i> board, who should be reminded of it prior to their appointment or the renewal of their service as members of the <i>Sharī`ah</i> board to the IIFS. Revisions and improvements to the code of ethical conduct should be carried out from time to time, also with full participation from the <i>Sharī`ah</i> board. Supervisory authorities might be interested to satisfy themselves that adequate systems are in place to monitor compliance</p>	<p><i>This code of ethics should be endorsed by the AGM to ensure proper implementation.</i></p> <p><i>There must be a proper mean to evaluate and disciplinary action against the Shari’ah advisor who has breached the code of ethics.</i></p>

	with this code, and to ensure that any misconduct is swiftly and effectively dealt with. Some basic “do’s” and “don’ts” for members of the <i>Shari’ah</i> board, including the duty to avoid a conflict of interest with the IIFS, are set out in Appendix 3 . This also relates directly to the issue of independence, which will be elaborated on in Part III.	
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2.3 Part II – Competence

Principles	Section	Comment
Principle 2.1: The IIFS shall ensure that any person mandated with overseeing the <i>Shari’ah</i> Governance System fulfils an acceptable fit and proper criteria	27. The BOD of IIFS should consider the following criteria when assessing the fitness and propriety of individuals to serve on the <i>Shari’ah</i> board as well as officers of the ISCU and ISRU: (i) <u>good character</u> – i.e. honesty, integrity, fairness and reputation; and (ii) competence, diligence, capability and soundness of judgement. It should be noted that the above list is not exhaustive and, accordingly, the BOD should consider all other relevant matters on a case-by-case basis in particular, aspects that are relevant to the segments of the IFSI they are in, and the jurisdiction’s legal and regulatory framework.	Good behavior, attitude and character.
	<i>Good character</i> 28. Good character – i.e. honesty, integrity, fairness and reputation are qualities that are demonstrated over time. In determining a person’s good character, and to guide the hiring criteria to be applied before appointing someone to serve on the <i>Shari’ah</i> board, the IIFS should, just as when considering nominations for the BOD, the chief executive officer or key senior management, put in place a transparent process that considers all the appropriate factors, including, but not limited to: (i) whether the person has been convicted of a criminal offence, particularly an offence relating to dishonesty, fraud or financial crime; (ii) whether the person has been the subject of any adverse findings or any settlement in civil proceedings, particularly in connection with banking or other financial business, misconduct or fraud; (iii) whether the person, or any business in which the person is a controlling	The guideline to determine a person’s good character seems very relevant to the BOD, CEO or senior management but some of provisions are less pertinent to potential candidate of <i>Shari’ah</i> board. Perhaps, another distinct provision is needed as the nature of <i>Shari’ah</i> board’s roles is different with the CEO, BOD or senior management.

	<p>shareholder or has a controlling interest or exercises significant influence, has been investigated and disciplined or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately;</p> <p>(iv) whether the person has been the owner, manager or director of a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to conduct trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated;</p> <p>(v) whether, as a result of the removal of the licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authorisation;</p> <p>(vi) whether the person has been a director, partner or otherwise involved in the management of a business that has gone into receivership, insolvency or compulsory liquidation while the person was connected with that organisation or within a reasonably short period (e.g. one year) after the person's departure from the institution;</p> <p>(vii) whether the person has been dismissed, asked to resign, or resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity;</p> <p>(viii) whether the person has ever been disqualified from acting as a director or serving in a managerial capacity because of wrongdoing;</p> <p>(ix) whether the person has not been fair, truthful and forthcoming in dealings with customers, superiors, auditors and regulatory authorities within the past ten years and has been the subject of any justified complaint relating to regulated activities; and</p> <p>(x) whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards</p>	
	<p><i>Competence and capability</i></p> <p>29. The IIFS should ensure that members of the <i>Shari'ah</i> board demonstrate the competence and ability to understand the</p>	<p>The element of competency here just emphasizes on the notion of understanding the technical requirement, risk and processes.</p>

	<p>technical requirements of the business, the inherent risks therein, and the management processes required to conduct its operations effectively, with due regard to the interests of all <u>stakeholders</u>. In assessing the competence and capability of a person, all relevant factors should be considered, including, but not limited to:</p> <p>(i) whether the person has demonstrated, through qualifications and experience, the capacity to successfully undertake the responsibilities of the position;</p> <p>(ii) whether the person is physically, mentally and emotionally fit to perform his or her duties;</p> <p>(iii) whether the person has ever been disciplined by a professional, trade or regulatory body, dismissed or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement; and</p> <p>(iv) whether the person has a sound knowledge of the business and the responsibilities of the position.</p>	<p>As a <i>Shari'ah</i> scholar, the <i>Shari'ah</i> board members should be able to demonstrate and articulate their <i>Shari'ah</i> knowledge and how it could be applied in the course of providing its advisory or supervisory opinion.</p> <p><u>stakeholders</u> (<u>Stakeholders</u>)</p>
	<p>30. It follows that members of the <i>Sharī'ah</i> board and officers of the ISCU and ISRU should at least possess the appropriate knowledge and skills in order for them to adequately execute their duties and responsibilities. IIFS should be diligent by carrying out background checks on candidates to be appointed to the respective positions. A list of minimum competencies is set out in Appendix 4.</p>	<p>This provision is unclear as to the differences of criteria for the <i>Shari'ah</i> board and the officers of the ISCU and ISRU. Is the criteria for officers of the ISCU and ISRU only concerned about possessing the appropriate knowledge and skills?</p>
	<p><i>Sharī'ah</i> advisory firm</p> <p>31. In the context where a <i>Sharī'ah</i> advisory firm is appointed by an IIFS, such a firm should have sufficient expertise and resources to carry out its work. A <i>Sharī'ah</i> advisory firm should not undertake any <i>Sharī'ah</i> audit/review work beyond its capacity and expertise. The IIFS should reserve the rights to check and ensure, from time to time, that the firm has the relevant expertise and adequate resources to perform its role properly. The management of the <i>Sharī'ah</i> advisory firm should appoint a dedicated team whose members should be competent in general, and in particular in the context of the work to be carried out by the team; and the team should have the manpower and resources to carry out the <i>Sharī'ah</i> audit/review work</p>	<p>The condition should not only to have sufficient expertise and resources and subject to the code of ethics.</p> <p>The <i>Shari'ah</i> advisory firm should also be registered with the central Bank or monetary agencies. Then it would help the IIFS to easily lodge complaint and submit report to the authorities upon the misconduct or negligence on the part of the <i>Shari'ah</i> advisory firm.</p>

	to the standards expected by the IIFS.	
Principle 2.2: The IIFS shall facilitate continuous professional development of persons serving on its <i>Sharī`ah</i> board, as well as its ISCU and ISRU, if any.	32. In order to enhance professionalism and effectiveness of persons serving as members of the <i>Sharī`ah</i> board, the ISCU or the ISRU, as the case may be, an IIFS is encouraged to facilitate and sponsor appropriate training for their continuous professional development. Training policies shall be established with adequate consideration given to training needs to ensure compliance with the IIFS's operational and internal control policies and procedures, and all applicable legal and regulatory requirements to which the IIFS generally, and members of the <i>Sharī`ah</i> board and internal <i>Sharī`ah</i> officers particularly, are subject. Adequate training should be provided both initially and on an ongoing basis.	Set up a framework for training where the financial authorities may have record and data on the training provided. Only then, the requirement for the continuous and adequate training can effectively be complied with. Based on the record and data, the authorities may give instruction to any institution that fail to provide adequate training.
	33. When they are first appointed to the positions, the IIFS shall ensure that members of the <i>Sharī`ah</i> board and internal <i>Sharī`ah</i> officers receive appropriate training (including with regard to their role and responsibilities and how to discharge their duties). This should include an orientation and induction program to ensure that incoming members of the <i>Sharī`ah</i> board and internal <i>Sharī`ah</i> officers are familiar with the IIFS's business and governance practices. Where appropriate, a mentoring programme whereby the more experienced members of the <i>Sharī`ah</i> board and internal <i>Sharī`ah</i> officers would provide guidance and tutelage to their less experienced counterparts should be encouraged.	Set up a framework for training where the financial authorities may have record and data on the training provided.
	35. Exchange of knowledge and expertise between members of the <i>Sharī`ah</i> board and internal <i>Sharī`ah</i> officers with the BOD, senior management, and other staff on the operational side of the IIFS would lead to more effective communications across the organisation. Hence, members of the <i>Sharī`ah</i> board and internal <i>Sharī`ah</i> officers should be encouraged, from time to time, to conduct training for the other organs of governance <u>to further develop the compliance capabilities of the IIFS.</u>	To consider to add "to further develop the compliance capabilities of the IIFS <u>as well as to promote the Islamic values and teaching.</u> It is strongly believe that Islamic finance should promote added values and this could be done via institution of <i>Shari'ah</i> board".
Principle 2.3: There should	37. IIFS shall decide how the <i>Sharī`ah</i> board's performance may be evaluated and	<u>shareholders'</u> and Stakeholders' value.

<p>be a formal assessment of the effectiveness of the <i>Shari'ah</i> board as a whole and of the contribution by each member to the effectiveness of the <i>Shari'ah</i> board.</p>	<p>propose objective performance criteria. Such performance criteria, which allow for comparison with industry peers, should be developed together and in consultation with the <i>Shari'ah</i> board and may include, for example, how the <i>Shari'ah</i> board enhances long-term <u>shareholders' value</u>. These performance criteria should not be arbitrarily or unilaterally changed by the IIFS, and where circumstances deem it necessary for any of the criteria to be changed, the onus should be on the IIFS, through the BOD, to justify this decision.</p>	<p>The assessment should include to what extent the <i>Shari'ah</i> board has promoted Islamic ethics and values within the organization</p>
	<p>39. IIFS shall act on the results of the performance evaluation and, where appropriate, consider nominations of new members to be appointed to the <i>Shari'ah</i> board or seek the resignation of any member of the <i>Shari'ah</i> board who fails to meet adequately the terms and conditions of his or her contract.</p>	<p>The renewal of <i>Shari'ah</i> board member's tenure must also be subjected to this assessment.</p>

2.4 Part III – Independence

Principles	Section	Comment
<p>Principle 3.1: The <i>Shari'ah</i> board should play a strong and independent oversight role, with adequate capability to exercise objective judgement on <i>Shari'ah</i>-related matters. No individual or group of individuals shall be allowed to dominate the <i>Shari'ah</i> board's decision-making.</p>	<p>40. In order to uphold the integrity and credibility of the <i>Shari'ah</i> board, its members must not only be able to exercise independent judgement without undue influence or duress, especially from the management of the IIFS, but also to be <i>seen</i> to be truly independent. In this respect, it would be desirable for an IIFS to formalise the independence of the <i>Shari'ah</i> board and its members by recognising the <i>Shari'ah</i> board's roles and mandate. The IIFS shall have in place an appropriate and transparent process for resolving any differences of opinion between the BOD and the <i>Shari'ah</i> board. This process may include having direct access (after duly informing the supervisory authority) to the shareholders as a "whistleblower". The supervisory authorities may be involved in this process of resolving differences, without compromising the binding nature of the pronouncements/resolutions of the <i>Shari'ah</i> board.</p>	<p>This provision is silent as to whom the <i>Shari'ah</i> board is accountable to. The literatures claim that the appointment of <i>Shari'ah</i> board by the AGM may resolve the issue of independence. By contrast, the practice seems to show otherwise where the appointment can be made by either the BOD or AGM or the government in the case of the <i>Shari'ah</i> board at the regulatory level. This Guideline should clarify as to whom the authority for the appointment of <i>Shari'ah</i> board is given. In addition, there must be different practice of Islamic banks, Islamic window, foreign Islamic banks or Islamic windows or its subsidiaries.</p>
	<p>45. When a member of the <i>Shari'ah</i> board has multiple <i>Shari'ah</i> board responsibilities/appointments, he or she must ensure that sufficient time and</p>	<p>In order to avoid issues on conflict of interest and confidentiality, it would be better to put some restriction for</p>

	<p>attention is given to the affairs of each IIFS. The IIFS should decide if a member of the <i>Shari'ah</i> board is able to and has been adequately carrying out his or her duties in serving his or her <i>Shari'ah</i> board. Internal guidelines should be adopted that address the competing time commitments that are faced when members of the <i>Shari'ah</i> board serve on multiple <i>Shari'ah</i> boards.</p>	<p>multiple appointments or to limit the appointment of not exceeding three <i>Shari'ah</i> boards.</p>
<p>Principle 3.2: In order to fulfil their responsibilities, the <i>Shari'ah</i> board should be provided with complete, adequate and timely information prior to all meetings and on an ongoing basis.</p>	<p>46. The management of an IIFS has an obligation to supply the <i>Shari'ah</i> board with complete, accurate and adequate information in a timely manner. Relying purely on what is volunteered by the management is unlikely to be enough in all circumstances, and further enquiries may be required if the <i>Shari'ah</i> board is to fulfil its duties and responsibilities properly. Hence, the <i>Shari'ah</i> board should have separate and independent access to the company's senior management for all the information it needs, while adhering to obligations of confidentiality.</p>	<p>The <i>Shari'ah</i> board shall have a written policy in respect to the preparation and dissemination of <i>Shari'ah</i> information</p>
	<p>47. Information provided should include background or explanatory information relating to matters to be brought before the <i>Shari'ah</i> board, copies of disclosure documents, financial statements and risk assessment reports. As far as possible, such information should be tailored and presented in a manner that would assist the <i>Shari'ah</i> board to analyse not only the form of, but also the substance surrounding, the issues brought before them.</p>	<p>Does the <i>Shari'ah</i> board need to have access to these information i.e. financial statements and risk assessment reports? For what purpose?</p> <p>The <i>Shari'ah</i> board only deals with the <i>Shari'ah</i> or fiqh issues and not to the financial aspect. This provision indicates that the <i>Shari'ah</i> boards shall also take into consideration other aspects such as financial and risk management before giving their rulings.</p>
	<p>49. Where the <i>Shari'ah</i> board has its own secretariat, the appointment and removal of members of the secretariat should be appropriately carried out in consultation with the <i>Shari'ah</i> board.</p>	<p>To what extent the <i>Shari'ah</i> board has authority upon its secretariat? Who is actually appointed the secretariat?</p>
	<p>50. IIFS shall have a procedure for the <i>Shari'ah</i> board, either for each individual member or as a group, in the furtherance of their duties, to take independent professional advice, such as on legal, accounting, financial or valuation issues, if necessary, at the IIFS's expense.</p>	<p>This provision seems to enhance the roles of the <i>Shari'ah</i> boards where they also have to consider legal, financial and valuation issues before issuing <i>Shari'ah</i> pronouncements.</p>

2.5 Part IV – Confidentiality

Principles	Section	Comment
<p>Principle 4.1: <i>Shari'ah</i> board members should ensure that internal information obtained in the course of their duties is kept confidential.</p>	<p>52. Confidential information here refers to information received by members of the <i>Shari'ah</i> board or <i>Shari'ah</i> advisory firm in the course of their duties that is not public and is not authorised to be made public. This includes information received under seal, expressly marked or designated by the IIFS to be kept confidential, or relating to the deliberative processes of the IIFS. Examples of confidential information are:</p> <ul style="list-style-type: none"> (i) information on the development of new products and services that the IIFS plans to offer or get involved in; (ii) the substance of draft opinions or decisions of the BOD or senior management; (iii) internal memoranda, in draft or final form, prepared in connection with matters presented, or to be presented, before the <i>Shari'ah</i> board or <i>Shari'ah</i> advisory firms; (iv) the content or occurrence of conversations among members of the <i>Shari'ah</i> board concerning matters deliberated on in the meeting of the <i>Shari'ah</i> board and representatives of the IIFS; (v) the timing of a decision, or other business transaction, including the status of or progress on a business transaction or action not yet finalised (except as may be authorised by the BOD under the internal procedures of the IIFS); (vi) views expressed by various parties in the course of discussions about a particular matter before the <i>Shari'ah</i> board; and (vii) any subject matter that the appointing IIFS has indicated should not be revealed, such as internal office practices, informal procedures, the content or occurrence of statements or conversations, and actions by a fellow member of the <i>Shari'ah</i> board or <i>Shari'ah</i> advisory firm. 	<p>To consider to add “the legal documentations”. The legal documentations are considered as the IFI's property rights and should be classified as confidential.</p>
	<p>57. The interpretation of the <i>Shari'ah</i> rules and principles based on the discipline of <i>fiqh al muamalat</i> is a matter of the professional judgement of members of the <i>Shari'ah</i> board. However, members of the <i>Shari'ah</i> board should be consistent in the opinions that they provide in serving the <i>Shari'ah</i> boards of different IIFS. Consistency in this respect is related to competence and independence, as mentioned above, and also is a matter of professional ethics.</p>	<p>...members of the <i>Shari'ah</i> board should be consistent upon the same particular issues... If it involves different <i>Shari'ah</i> issues, any inconsistency of opinions are acceptable.</p>

2.6 Part V – Consistency

Principles	Section	Comment
<p>Principle 5.1: The IIFS should fully understand the legal and regulatory framework for issuance of <i>Shari'ah</i> pronouncements/resolutions in the jurisdiction where it operates. It should ensure that its <i>Shari'ah</i> board strictly observes the said framework and, wherever possible, promotes convergence of the <i>Shari'ah</i> governance standards.</p>	<p>59. More often than not, a majority of <i>Shari'ah</i> boards at the IIFS mention in their <i>Shari'ah</i> pronouncements/resolutions only whether a transaction conducted, or to be conducted, by the IIFS, or a product that the IIFS wishes to offer, is permissible or non-permissible. Rarely in their <i>Shari'ah</i> pronouncements/resolutions do they make available supporting evidence that could be examined by other members of the <i>Shari'ah</i> board. Furthermore, even when they do publish such evidence, the language used is often technical and not easily understandable by the general public. As a result, it is very difficult to improve public awareness in terms of understanding the basis of and justifications behind a <i>Shari'ah</i> pronouncement/resolution. The industry could benefit by providing a <u>wider access to <i>Shari'ah</i> pronouncements/resolutions</u>, as strong public support and appreciation of the <i>Shari'ah</i> boards' roles can only come through better awareness of what the <i>Shari'ah</i> boards have been and are still doing.</p>	<p>Not only a wider access to <i>Shari'ah</i> pronouncements but also information pertaining to Islamic principles and values pertaining to Islamic finance.</p>
	<p><i>Ex-post (after the products have been offered to customers)</i></p> <p>61. From time to time, members of the <i>Shari'ah</i> board should participate in various seminars, workshops and meetings of <i>ulama</i> specialised in <i>fiqh al-muamalat</i> to present and debate existing and new <i>Shari'ah</i> pronouncements/ resolutions. They must also expect to answer questions from shareholders and the public in a general assembly or similar forum. For better recording and dissemination of information, it would be helpful if they were to produce in the annual reports a section on <i>Shari'ah</i> compliance by the IIFS and <i>Shari'ah</i> pronouncements/ resolutions issued by the <i>Shari'ah</i> board and/or its members, including clarifying the process of how the <i>Shari'ah</i> board reached its decisions.</p>	<p>Not only to debate the existing and new <i>Shari'ah</i> resolutions but to evaluate and asses as to what extent they have met the principle of <i>Maqasid Shari'ah</i>.</p>
	<p>62. The IIFS should ensure that the <i>Shari'ah</i> board adopts a specified process for changing, amending or revising any <i>Shari'ah</i> pronouncements/resolutions issued by it. Appropriate and timely disclosure shall be made to shareholders and/or the public whenever the <i>Shari'ah</i> board and/or its</p>	<p>Appropriate and timely disclosure <u>with sufficient information</u> shall be made to shareholders and/or the public whenever the <i>Shari'ah</i> board and/or its members depart from or</p>

	members depart from or revise any of its <i>Shari`ah</i> pronouncements/resolutions	revise any of its <i>Shari`ah</i> pronouncements/resolutions. There must be an explanation of why the <i>Shari`ah</i> resolutions are amended or changed.
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2.7 APPENDIX 1: Key Terms of Reference for the Shari`ah Board

		Comment
Primary Duties	<p>(i) Advising the BOD on Shari`ah-related matters.</p> <p>(ii) Reviewing and endorsing Shari`ah-related policies and guidelines. For this purpose, the IIFS should also have a Shari`ah Process Manual which specifies the manner in which a submission or request for Shari`ah pronouncements/resolutions should be made to the Shari`ah board, the conduct of the Shari`ah board's meeting and the manner of ensuring operational compliance with any decision of the Shari`ah board.</p> <p>(iii) Endorsing and validating relevant documentation for new products and services, including contracts, agreements or other legal documentation used in the IIFS's business transactions.</p> <p>(iv) Overseeing the computation and distribution of Zakat and any other fund to be channeled to charity.</p> <p>(v) Assisting and advising relevant parties that serve the IIFS, such as its legal counsel, auditor or other consultants, upon request.</p> <p>(vi) Put on record, in written form, any opinion that it gives on Shari`ah-related issues.</p> <p>* In case the IIFS operates within a jurisdiction where there is a central/national/highest body that is mandated to issue Shari`ah pronouncements/resolutions for IFSI in the country (the "Central Shari`ah Body")</p> <p>(vii) Adopt any Shari`ah pronouncements/resolutions issued by the Central Shari`ah Body and address any arising issues.</p>	<p>To consider the following:</p> <p>(i) Developing <i>Shari`ah</i> approved instruments.</p> <p>(ii) Approving model agreements of Islamic modes of financing</p> <p>(iii) Achieving harmonization in the concepts and applications amongst the <i>Shari`ah</i> boards</p>

2.8 APPENDIX 2: Operative Procedures of the Shari`ah Board (To guide meeting proceedings, the decision-making process and the passing of decisions for effective implementation, including processes to review those decisions whenever necessary)

		Comment
Presentation of Request for Decisions on Shari`ah-related Matters	<p>All proposal papers submitted to the Shari`ah board by the management of the IIFS must clearly state the purpose of the paper and <u>be presented to the Shari`ah board by the officers in-charge</u>, with sufficient and adequate details, to facilitate evaluation of the proposals. Where appropriate, other relevant organs of governance shall also be provided with a copy of the proposal papers.</p> <p>All papers for presentation shall be submitted to the secretary of the Shari`ah board for onwards distribution to members of the Shari`ah board not later than one week prior to the Shari`ah board's meeting. Any paper submitted after the cut-off time shall be presented to the Shari`ah board only upon approval of the Chairman.</p>	<p>Sometimes, the presentation of request for decisions is done by the external legal firm or external supplier and etc. It may be relevant to include these third parties in the provision.</p>
Reports by the Shari`ah Board	<p>At the end of any consultation between the IIFS and the Shari`ah board, the Shari`ah board shall have the discretion to produce its reports in the form of:</p> <p>(i) a fact-finding report;</p> <p>(ii) (an ex-ante) report in relation to product design and development;</p> <p>(iii) (an ex-post) internal Shari`ah audit/review report on the products offered to customers; and</p> <p>(iv) an annual Shari`ah compliance report.</p> <p>Fact-finding reports and reports in relation to product design and development shall be submitted to the CEO/Managing Director of the IIFS.</p> <p>(v) An internal Shari`ah audit/review report on products offered to customers should be made available to the Audit Committee of the IIFS.</p> <p>The annual Shari`ah compliance report should be submitted to the BOD for onwards distribution to shareholders, and upon request, should be made available to the supervisory authority and members of the public, including investment account holders (IAH).</p>	<p>Internal <i>Shari'ah</i> Audit has duty to report to the <i>Shari'ah</i> board and not to the Audit Committee. It needs a clarification as to whom the <i>Shari'ah</i> audit is accountable to. If there are findings of non-<i>Shari'ah</i> compliance by the Internal <i>Shari'ah</i> audit in some of the transaction or operation, who has the authority to deal with the matter? The audit committee or <i>Shari'ah</i> board?</p> <p>If the audit committee has the authority to deal with the issue of non-<i>Shari'ah</i> compliance, do they need a representative of the <i>Shari'ah</i> board to seat in the audit committee?</p>
Chairman	<p>One of the members of the Shari`ah board shall be elected as its Chairman. The Chairmanship should preferably be on a rotation basis, such as whenever there is a reappointment of the Shari`ah board.</p> <p>In the event that the Chairman is unable to attend the meeting, the members shall elect one of themselves to become the Alternate Chairman to preside over the meeting.</p>	<p>There must be a clear term of reference in the letter of appointment as to the roles of the <i>Shari'ah</i> board's Chairman.</p>

Secretariat	The Managing Director or any other person as empowered by the BOD shall, upon consultation with the Shari`ah board, appoint the IIFS's head of the ISCU or the internal Shari`ah officer. ISCU or the internal Shari`ah officer shall be the secretariat for the Shari`ah board. If there is no ISCU or internal Shari`ah officer within the IIFS's set-up, this function may be carried out by other officials such as <u>the company secretary, head of the product development department or the head of the legal department.</u>	To consider to add "the head of risk management department".
Frequency of Meeting	The Shari`ah board shall meet regularly to carry out periodic reviews to monitor Shari`ah compliance of the operations of the IIFS generally. However, as and when necessary, the Shari`ah board can hold a meeting if the IIFS urgently requires its advice and opinion on Shari`ah-related matters.	It would be a good practice to have an annual calendar of the <i>Shari'ah</i> boards' meetings, just as the BOD.
Decision-making	In the absence of a consensus, decisions shall be made on the basis of a majority vote of members of the Shari`ah board who attend a meeting	In the event that decision is made on the basis of equal vote as the case may be, the Chairman has the right to make a decision.
Power to Invite Relevant Officers to Sit in Meetings	The Chairman – and in the absence of the Chairman, the Alternate Chairman – is empowered to invite any relevant officers to sit in its meetings. It is recommended that representatives from the ISCU, risk management department and legal department shall be invited as Permanent Invitees. However, these invitees do not have voting or veto rights.	To consider to add "representative from product development department".

2.9 APPENDIX 3: Basic Professional Ethics and Conduct for the Shari`ah Board
In the performance of his or her duties to any IIFS, a member of the Shari`ah board is expected to conduct himself or herself at all times in a manner consistent with the principles governing the profession and of the organisation to which he or she belongs. The following principles apply in particular in the practice of the profession:

		Comment
Care and Conscientiousness	While practising his or her profession, a member of the Shari`ah board must have due regard to the legal as well as the ethical requirements of his or her profession. This calls for independence in all professional dealings and, in particular, the exercise of objectivity when judging the facts of a case. Before accepting an appointment, a member of the Shari`ah board should consider carefully and thoroughly whether he or she is in a	stakeholders (Stakeholders)

	<p>position to carry out the engagement with due regard to his or her obligations and competence.</p> <p>He or she shall always strive to:</p> <p>(i) uphold fairness and equity for all the <u>stakeholders</u>;</p> <p>(ii) act in a manner that preserves his or her honesty and integrity;</p> <p>(iii) exercise appropriate discretion in decision-making by taking into consideration not only the technical aspects of Shari`ah compliance; and</p> <p>(iv) appreciate the diversity of opinions among various schools of thought and differences in expertise among his or her fellow members of the Shari`ah board</p>	
Post-qualification Education	A member of the Shari`ah board should strive to continuously improve his or her personal and professional development, particularly in terms of knowledge and skills in Shari`ah, and especially in fiqh al-muamalat	To consider to add "knowledge in <i>usul fiqh</i> "

2.10 APPENDIX 4: Minimum Competence Requirements for the Shari`ah Board
An IIFS shall carry out a background check and verify that any person to be appointed to serve as a member of the Shari`ah board shall at least have the following competencies:

		Comment
Academic Qualification	<p><u>He or she must at least hold a bachelor's degree/ijazah from a recognised university</u> in the sciences of Shari`ah, including Islamic transaction/commercial law (Fiqh al-Mu`amalat), and be able to demonstrate reasonable technical understanding of Islamic finance.</p> <p>It is reasonable to expect a member of the Shari`ah board to have good knowledge of written Arabic; and it is highly recommended that the member of the Shari`ah board be able to converse in English, as this could help improve the clarity of communication between him or her and stakeholders of the IIFS</p>	<p>To consider to add "He or she must at least hold a bachelor's degree/ijazah from a recognised university or <u>recognized educational institution</u> in the sciences of Shari`ah. Some of the <i>Shari'ah</i> scholars are well educated from traditional institution such as <i>madrasah</i>.</p>

2.11 APPENDIX 5: Examples of Performance Measures for the Shari`ah Board
The assessment process shall be objective and related to the accountability of the Shari`ah board. It is important to ensure that it is transparent, so that it is not misused or abused by the BOD or senior management of the IIFS to force their will on the Shari`ah board, or to compromise its independence.

		Comment
Collective Assessments	Did the Shari`ah board: 1. demonstrate effective organisational accountability? 2. communicate effectively with other organs of governance, including the BOD, management and auditors? 3. properly identify and evaluate the organisation's exposure to Shari`ah non-compliance risk and reputational risk, and effectively communicate that risk information to appropriate bodies in the organisation? 4. promote appropriate ethics and values within the organisation? 5. promote continuous improvement of an organisation's Shari`ah control processes?	Who is responsible to conduct the performance measures of the <i>Shari`ah</i> board?
Individual Assessments	Did each member of the Shari`ah board: 1. demonstrate integrity and honesty? 2. strive for continuous self-improvement? 3. accept responsibility with due care and diligence? 4. strive to be diplomatic and sensitive to cultural differences? 5. strive to be observant/aware of contextual factors before coming to a decision? 6. exercise rational and logical reasoning? 7. demonstrate willingness to learn from others? 8. strive to be inquisitive (capable of asking intelligent and relevant questions)?	

3.0` Concluding Remarks

Shari`ah governance system adds additional values to the existing corporate governance framework. It inculcates transparency, trust, ethical behavior, credibility, philosophy, values and beliefs under lying faith and beliefs (*aqidah*), *Shari`ah* and ethics (*akhlaq*). Since there are numerous conventional corporate governance codes available in various jurisdictions, the absence of universal *Shari`ah* governance principles is one of the main obstacles and challenges for IFIs. The IFSB Guiding Principles of *Shari`ah* Governance is a good initiative for a purpose of promoting sound *Shari`ah* governance practices within the Islamic finance industry. While praising the work of the IFSB Working Group on *Shari`ah* governance, there are few issues needed to be addressed and resolved with. Understandably that not all issues and comments will be acceptable but at least the writer has already highlighted his concern on *Shari`ah* governance matter as he thinks necessary. It is hoped that this document may contribute something for the development of *Shari`ah* governance system in IFIs.