



a trained and experienced Islamic scholar who possesses, foremost, deep knowledge of the Shari'ah with, at minimum, demonstrated, peer-reviewed competence in at least one of the traditional schools of jurisprudence. And second, he must bring practical, working knowledge of banking and finance, complemented by actual experience in the contemporary marketplace.

STANDARDISED AAOIFI BASED TRAINING PROMOTES SHARI'AH HARMONISATION

In 1991, the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI, pronounced "a-yo-fee") formed as an independent, non-profit, standard-setting body with a remit to promulgate Islamic finance standards for the entire industry. Twenty years on, AAOIFI is now widely regarded by banks and governments as the de facto industry standard for Islamic finance practitioners.² In fact, numerous central banks and financial service authorities now recommend the standards as a source of guidance for local banks.

AAOIFI's regularly updated texts have become the definitive reference work for those seeking a comprehensive rule book about Islamic financial

DELIVERY STANDARDS IN ISLAMIC FINANCE TRAINING SPAN THE SPECTRUM FROM EXCELLENT TO ILLEGAL



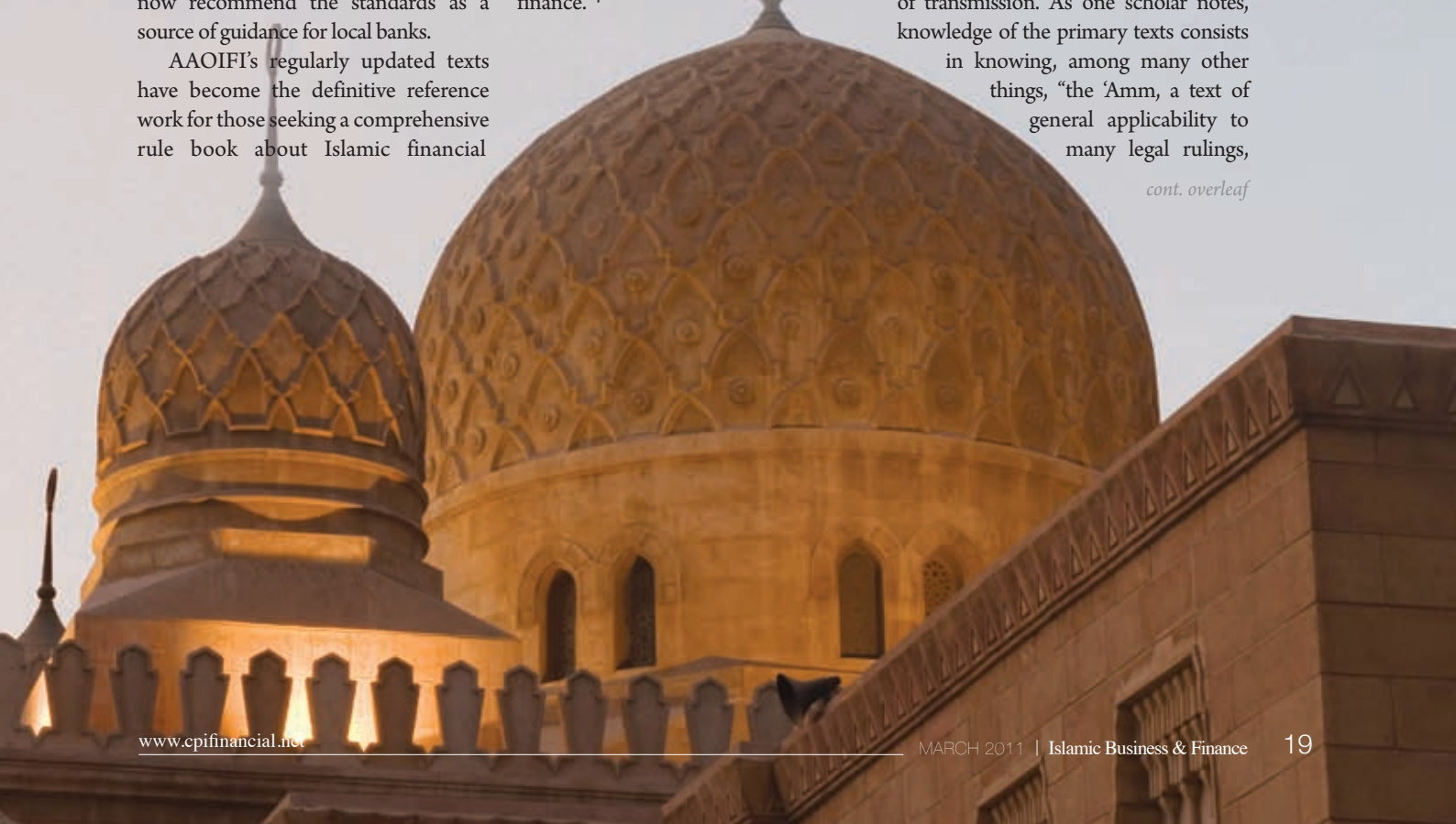
products and practices. Its 85 standards cover everything from accounting and auditing to governance and product-specific Shari'ah standards. The 16 to 20 scholars – the number depending on the year – who sit on AAOIFI's Shari'ah board are leading Islamic finance scholars who come from the Gulf, South Asia, South East Asia, Africa, and North America; each of them legally qualified to issue a Fatwa and adjudicate on matters Islamic finance.³ And for a religion that deeply values scholarly consensus, or Ijma, as one of the main sources for legal derivation in Islamic jurisprudence, it is a relief to hear one scholar put it this way: "AAOIFI is the closest thing we have to Ijma in Islamic finance."⁴

TRAINING ACCREDITATION BY SCHOLARS, NOT ACADEMIC AND PROFESSIONAL BODIES

According to AAOIFI's Stipulation and Ethics of Fatwa in the Institutional Framework,⁵ the standards for issuing a Fatwa are, at minimum, knowledge of: Islamic jurisprudence in financial transactions; how to derive rulings from primary sources; Islamic jurisprudential contributions of other scholars; contemporary issues in the financial industry. Moreover, the individual should demonstrate discernment, scrupulousness, and peer-reviewed competence within the financial industry.⁶

In order to fully comprehend the complexity of the scholar's task, one should reflect upon the competing demands placed upon him when deriving a ruling from the Qur'an and Hadith (prophetic traditions) corpus; Hadith which number in the tens of thousands for those that are rigorously authenticated (Sahih) and exceed one million when counted as separate chains of transmission. As one scholar notes, knowledge of the primary texts consists in knowing, among many other things, "the 'Amm, a text of general applicability to many legal rulings,

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and its opposite; the Khass, that which is applicable to only one ruling or type of ruling; the Mujmal, that which requires other texts to be fully understood, and its opposite; the Mubayyan, that which is plain without other texts; the Mutlaq, that which is applicable without restriction, and its opposite; the Muqayyad, that which has restrictions given in other texts; the Nasikh, that which supersedes previous revealed rulings, and its opposite; the Mansukh: that which is superseded; the Nass: that which unequivocally decides a particular legal question, and its opposite; the Dhahir: that which can bear more than one interpretation.”⁷

This lengthy description of the minutiae facing the scholar in only one area of Ijtihad, or personal legal reasoning, is particularly relevant in an age when pretenders to the task open the doors of scholarship unto themselves. Lest one decry that such high standards only complicate matters, and that God’s word is divinely protected, we should have the humility to remind ourselves that divine protection relates to the word of God, not to our ability to derive rulings from it.

It is not lost on anyone the rareness of such individuals in present times. In

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a perfect world, such a scholar would be the trainer himself. But until there are enough scholars to go around, the best that we can do, and the least we must, is obtain their consent when accrediting a training programme.

FATWA SHOPPING AND THE HARMS OF LESS THAN 100 PER CENT STANDARDISATION

When training content is anything less than 100 per cent standardised to AAOIFI, discrepancies between the learner’s knowledge and the market’s practice abound. This rift widens into a chasm of confusion and leads to what can only be euphemistically described as the banker’s



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A NUMBER OF ISLAMIC FINANCE TRAINERS NOW WORK WITH GUIDEBOOKS AND OTHER MATERIAL THAT IS MERELY “AUTHORED” BY A SCHOLAR OR “SUPERVISED” BY A SCHOLAR

pendant for “Fatwa shopping”: finding the right Fatwa to fit your needs, rather than tempering your needs to comply with the Fatwa. At best, this occasionally costs some banks and customers their money. At worst, this laxity costs the whole industry its credibility.

A number of Islamic finance trainers now work with guidebooks and other material that is merely “authored” by a scholar or “supervised” by a scholar. But what we often end up with is material that is 80 per cent or 90 per cent AAOIFI-based, “Shari’ah-compliant” according to somebody perhaps, but not uniformly Shari’ah-compliant according to any particular mainstream collectivity.

When trainers fail to conform their content 100 per cent against a widely accepted standard, newcomers get confused: “why is this guidebook telling me a product is unacceptable to most of the industry, but teaching it to me anyway?”⁸ It is not always quite clear where the Shari’ah-compliant part of the guidebook ends and where the non-compliant part begins. What is a newcomer in Islamic finance supposed to do?

ADDRESSING COMMON QUESTIONS

Shifting training certification away from conventional academic and professional bodies to Islamic finance scholars requires a paradigm shift in our collective thinking. Common

questions and comments, and how to address them, include:

Why follow a single standard when scholars cannot agree among themselves, and each bank has its own Shari’ah board? Does AAOIFI have an answer for everything?

Standards should be specific enough to be of technical benefit to the practitioner, and general enough to be of practical benefit to the broader audience in a variety of situations. Most Islamic finance scholars already acknowledge that AAOIFI is the leading standard-setting body in the industry. Differences in opinion between qualified scholars is a part of Islamic finance, indeed a part of Islam. But the operative word

here is “qualified,” and difference of opinion between laypersons is part of the problem.

Shari’ah harmonisation in training has the immediate effect of getting all the stakeholders in the industry moving in one direction. The laborious work of Ijtihad then returns to those qualified to adjudicate on the matter, far from the din of confusion now plaguing the lay audience. It is impossible for AAOIFI to anticipate every possible question on every possible matter. Operationalising rulings is the work of the banks’ Shari’ah advisors. However, for purposes of training, which is more general in nature, AAOIFI provides sufficient depth. **IB&F**

Continued next month...

Notes:

1. Abu Dawud 3.321 Well-authenticated (hasan).
2. http://www.thefinancialexpress-bd.com/more.php?news_id=95274; <http://www.philadelphia.edu.jo/courses/accountancy/Files/Accountancy/aa303.pdf>; <http://www.philadelphia.edu.jo/courses/accountancy/Files/Accountancy/0308910.txt>; <http://pakistanimes.net/pt/detail.php?newsId=7805>; <http://www.ibfim.com/v2/images/kmc/2011Bookshoppelist/iaccount/56%20islamic%20accounting.pdf>; <https://www.zawya.com/story.cfm/sidZAWYA20100125122913/islamic%20Bank%20leads%20on%20Sharia%20compliance%20with%20AAOIFI%20industry%20certification>; <http://www.islamicfinance.de/?q=node/1140>; http://www.tradearabia.com/news/bank_190503.html; <http://www.islamicfinance.de/?q=node/933>;
3. Accounting and Auditing Organization for Islamic Financial Institutions, Shari’ah Standards: Introduction, pp. XI-XXVIII (Manama, Bahrain: Accounting and Auditing Organization for Islamic Financial Institutions, 2008).
4. Private study session, Darul Uloom, Karachi, Pakistan, 2005.
5. Accounting and Auditing Organization for Islamic Financial Institutions, Shari’ah Standards: “Stipulation and Ethics of Fatwa in the Institutional Framework,” pp. 515-530 (Manama, Bahrain: Accounting and Auditing Organization for Islamic Financial Institutions, 2008).
6. State Bank of Pakistan, Islamic Banking Department, Fit and Proper Criteria for Shari’ah Advisors of Islamic Banking Institutions (Annexure-IV to IBD Circular No. 2 of 2004, revised vide IBD Circular 2) (Karachi, Pakistan: State Bank of Pakistan, 2004).
7. “Why Muslims Follow Madhhabs,” Nuh Ha Mim Keller, accessed February 2011, <http://www.masud.co.uk/ISLAM/nuh/madhhabstlk.htm>
8. Securities and Investment Institute (now Chartered Institute for Securities and Investment), “Islamic Finance Qualification (IFQ): Bay al Inah,” pp. 75-76 (London, UK: Securities and Investment Institute, 2007).

Fiqh or Fiction

The primacy of a Fatwa when accrediting an Islamic finance training programme, and why Islamic finance scholars, not academic and professional bodies, should certify training programmes for authenticity

This article is the second in a two-part series by Atif R. Khan, Ethica Institute of Islamic Finance™ (www.EthicaInstitute.com) Copyright © 2011. Part one can be found in the March issue of *Islamic Business & Finance* (p. 18)

Shifting training certification away from conventional academic bodies to Islamic finance scholars requires a paradigm shift in our collective thinking. Common questions and comments, and how to address them, include the following:

Academic and professional bodies are necessary to ensure high standards.

Pedagogical standards and Islamic finance standards are related but separate issues. Ideally, the industry's aim should be to deliver high pedagogical standards along with scholar-approved certification. Academic bodies serve an important role here. But this role must be treated as secondary to the more

important matter of standardising Shari'ah compliance. Mediocre learning that leads to a 100 per cent scholar-standardised examination is far better for the industry than the best guidebook, trainer, or online course that is anything less than 100 per cent Shari'ah standardised. Of course, it would be best if training institutes delivered both 100 per cent standardisation with the best pedagogical standards possible.

Banks use scholars because bankers execute the products themselves in the marketplace. But students do not need scholar-approved certification because they are just trying to get a job and require only general knowledge of Islamic finance, not detailed knowledge of standards.

Islamic banking students are future Islamic banking professionals. The same care that is taken by scholars working inside banks to ensure that products are Shari'ah-compliant must also be taken to ensure that training is Shari'ah-compliant. Newcomers to Islamic finance, even those who are still students, need standardised knowledge more than ever precisely

because of their limited exposure to practical application.

Who determines which individuals are considered Islamic scholars? Why do we need scholars when anyone who memorises AAOIFI rulings can give certifications?

It is not merely a matter of memorising AAOIFI's rulings and parroting them to a captive audience. An individual must possess the ability to join between contemporary rulings and the classical texts in order to help bankers better navigate the uncharted waters not yet faced; new and detailed matters which necessarily give rise to new Ijtihad.

The standards for scholarship vary by institution, but generally a student of Islamic Sacred Law reaches the rank of scholar through a system of prolonged study in the classical Islamic sciences, throughout receiving Ijazas, or formal authorisation to transmit a particular subject, from qualified individuals and institutions. This is followed by a period of apprenticeship under scholars who are already qualified to issue Fatwas, where at the culmination of as few as six years and as many as sixteen years of Shari'ah and general study one hopes

to attain sufficient competence to reach the level of a scholar.

To give an idea of the specialness of such individuals and the loftiness of their rank, at the beginning of Islam and at the end of the Prophet's life (Allah bless him and give him peace), when there were estimated to be as many as one hundred thousand companions, only as few as seven individuals were at the level of scholarship to be able to perform Ijtihad and issue Fatwa independently. Today, the jurisprudence of these several individuals personally taught by the Prophet (Allah bless him and give him peace) have been distilled into the four traditional Madhhabs, or schools of jurisprudence, by verifiable contiguous chains of transmission resulting in the schools well known to students of Sacred Law: the Hanafi, Shafi'i, Maliki, and Hanbali schools.¹

There is not a classical scholar after the early Muslims except that he followed one of these schools: Bukhari, Muslim, Nawawi, Suyuti, and Subki, to name but a few, each of whom had memorised over 100,000 Hadiths, sometimes as many as several hundred thousand, with their individual chains of transmission

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and each chains relative authenticity committed to memory. In order to put this feat into perspective, consider that a nine volume Sahih Bukhari contains just over 7,000 Hadith.

All this is relevant to understanding the importance of upholding scholarship in the present age where opinions are bandied about with little regard for jurisprudential authority. The Prophet himself (Allah bless him and give him peace), the gentlest of mankind, responded to the ignorance of loose opinion in the strongest terms in a Hadith that should give any thinking individual reason for pause:

"We went on a journey, and a stone struck one of us and opened a gash in his head. When he later had a wet-dream in his sleep, he then asked his companions, 'Do you find any dispensation for me to perform dry

ablution (tayammum)?' [Meaning instead of a full purificatory bath (ghusl).] They told him, 'We don't find any dispensation for you if you can use water.' So he performed the purificatory bath and his wound opened and he died. When we came to the Prophet (Allah bless him and give him peace), he was told of this and he said: 'They have killed him, may Allah kill them. Why did they not ask?—for they didn't know. The only cure for someone who does not know what to say is to ask' (Abu Dawud).²

How can we rely on a single fatwa? That is just one scholar's opinion.

Reliance on a single fatwa is not being suggested – quite the opposite. The industry should rely on the opinions of many scholars – through their acceptance of already agreed upon standards. The purpose of the single Fatwa is to assure users of a particular training programme that these agreed upon standards are actually being followed. Think of the commercial pilot: he makes the final decisions, but his decisions are based upon an already agreed upon standard recognised by the mainstream aviation industry. Islamic finance training standards, on the other hand, abide by no such standard and are still very much up in the air.

What about Islamic scholars who disagree with AAOIFI scholars?

The Prophet (Allah bless him and give him peace) said "The hand of Allah is over the Jama'ah" (Tirmidhi)³ where the word Jama'ah refers to the overwhelming majority of the Muslim collectivity, and in the context of Ijtihad, the overwhelming majority of those qualified to independently derive rulings.

But where, one wonders, does difference of opinion come in when the opinion of an overwhelming majority prevails? The answer is that within the overwhelming majority,

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BANKERS NO LONGER WANT MORE THEORY AND THE CONFUSION OF MULTIPLE STANDARDS

AAOIFI does not certify training programmes besides their own face-to-face programmes as of this writing. It is the work of the scholars familiar with AAOIFI who are hired by training institutes to check that material conforms to their standards.

What about the Malaysian standard in Islamic finance? How is it different from AAOIFI?

The Malaysian standard in Islamic finance is accepted in few countries – Thailand and Indonesia are two that come to mind – of the more than 90 per cent of the industry that is heading towards common AAOIFI convergence. In an exclusive interview with Ethica a few years ago, we had the privilege to speak with Malaysia's former Prime Minister, Dr. Mahathir Mohammad, who expressed his country's willingness to move away from products that were once introduced in order to galvanise their then fledgling industry; products based on the buyback and debt trading structures.⁴ Such willingness is to be applauded when, to even the most casual observer, it is apparent that most liquidity flows have not seen occasion to move from AAOIFI-based markets to Malaysian-based markets.

NEXT STEPS: PROMOTING SHARI'AH HARMONISATION IN TRAINING AND THE ROLE OF ACADEMIC AND PROFESSIONAL BODIES

Face-to-face trainers, guidebook publishers, and online course providers now need to take a hard look at their content and decide whether they want

to continue allocating resources to marketing and distribution, or finally step back and acknowledge that the market has changed, and so too have the needs of the customer. Bankers no longer want more theory and the confusion of multiple standards; they want to know the practical application of what is already widely accepted in the industry.

The author of this article recommends the following steps:

Step 1: Go to www.aaofl.com⁵ and order AAOIFI's latest "Shari'ah Standards."

Step 2: Bring bankers and scholars together in order to create training content around these standards.

Step 3: Review and approve the certification examination by one or more third-party Islamic finance scholars who understand AAOIFI and confirm that the content, and certainly the examination, is consistent with these standards.

With common standards in training, the dividends to the industry are substantial. At the moment, Islamic finance faces a credibility problem.

On the one hand, bankers are often not entirely convinced of their own products; not knowing the difference between what they used to execute as conventional bankers and what they now execute as Islamic bankers. And customers face a similar crisis of confidence as they grapple with how Islamic banking is any different from conventional banking. Some level of informational asymmetry is to be expected in a young, burgeoning sector. But trainers, who are the fountainheads of much of the information streaming out into the industry, have no excuse for falling prey to this asymmetry.

Even so, it is a time of optimism and opportunity. Never before has the industry had a critical mass of so many banks and so many bankers. And never before have we had a set of so many heavily refined standards agreed upon by the majority of the industry's scholars. And, most important, not once before have we had the opportunity to consolidate this critical mass into a standardised whole. With an entire industry working in unison towards a common purpose, Islamic finance will then truly embody the lofty ideals on which it was originated rather than be mired in the confusion that may one day hasten its undoing. **IB&F**

Notes

1. Ahmad ibn Naqib al Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, trans. Keller (Maryland: Amana Publications, 1999).
2. Abu Dawud 1.93, well-authenticated (hasan).
3. Tirmidhi, well-authenticated (hasan).
4. Dr. Mahathir Mohammad, interview by Ethica Institute of Islamic Finance, available as a podcast at www.EthicaInstitute.com, 2008.
5. "Shariah Standards," Accounting and Auditing Organization for Islamic Financial Institutions, accessed February 2011, <http://www.aaofl.com>.

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