



## BANKING SUPERVISION ENGINEERING FOR ISLAMIC BANKS IN ALGERIA

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### **Abstract:**

*Islamic banks are considered financial units, and like other financial institutions, they operate within the framework of Islamic Sharia, and their main objective is to follow and apply the provisions of Sharia on money and make it and harness it to serve the members of society. These banks also contribute effectively to achieving economic and social development within the framework of Sharia standards.*

*This study has dealt with the various techniques of Islamic banks' work and their subjection to Sharia control practiced by the Fatwa Board and the Sharia Audit Board operating at its level, which increases some reassurance in the hearts of consumers dealing with these banks.*

**Keywords:** *Islamic banks, Sharia supervision, auditing board, fatwa board*

### **INTRODUCTION:**

Islamic banks are among the most significant banking institutions that have emerged and gained prominence rapidly in our modern era. They have captured considerable attention as an attractive alternative to traditional banks, establishing themselves as a tangible and effective reality that extends beyond the Islamic world to encompass developed and developing countries alike. This expansion reflects their ability to adapt to international market needs and the desire of both individuals and institutions to operate within an ethical and economic framework compatible with Islamic principles.

These banking institutions operate according to the rules and principles of Islamic law, aiming to achieve development while adhering to transparency and ethical values in their transactions. They work to rectify the role of capital in society, guiding it toward developmental projects and contributing to economic stability. This is achieved through offering loans and investments based on the principle of shared profit rather than fixed interest, thereby fostering trust between the bank and the beneficiary. These institutions play a crucial developmental role by encouraging capital to shift towards sustainable, productive projects, enhancing their position as socially responsible financial institutions with a developmental perspective.

Islamic banking began as a new approach to achieving financial intermediation goals, operating on a non-interest-based foundation to attract savings and capital that had previously stayed outside the traditional banking system. This foundation has led Algerian consumers to engage with Islamic banks, as they wish to invest their funds within a system aligned with their beliefs and principles. Consequently, the state has encouraged and supported Islamic banking services as a means to attract capital amidst Algerians' reluctance to deposit in traditional banks. This support includes opening doors to private banks adopting this option, while ensuring the right to supervise these banks without discrimination, thereby safeguarding depositors and stabilizing the financial market, which aids in directing capital towards constructive projects supporting the national economy.

In this study, we aim to address the following research question:

- **What are the mechanisms of Sharia supervision applied to Islamic banks?**

The significance of this study lies in highlighting the supervisory role of Sharia boards over Islamic banks and verifying the suitability of this adopted supervisory system for monitoring and overseeing



this type of banking. Through this study, we also aim to introduce Islamic banks in terms of their origins and the services they provide in accordance with Islamic law.

To answer the posed research question, we relied primarily on the descriptive approach to examine the mechanisms of Sharia supervision in Islamic banks and the challenges they face.

### **Section One: The Essence of Islamic Banks**

Islamic banking is an integral part of a comprehensive system that combines Islamic beliefs, Sharia principles, and ethical values. Consequently, investment in Islam is rooted in the belief that wealth belongs to Allah and should be managed in ways that are pleasing to Him. This section addresses the definition of Islamic banks and their distinguishing features.

#### **First Requirement: Definition of Islamic Banks:**

Islamic banks have numerous definitions, making it challenging to provide a single comprehensive one. This is partly because they are considered a type of credit institution, and relevant laws often focus on describing the operations that classify an institution as a bank rather than defining it explicitly. Most definitions in Islamic jurisprudence revolve around the activities performed by these banks. Here are some of these definitions:

- The International Association of Islamic Banks, in article (05/F(1)) regarding membership conditions, defines Islamic banks as "those banks and institutions whose foundational law and articles of association explicitly mandate adherence to Sharia principles and prohibit the dealing in interest, whether in receiving or giving."<sup>1</sup>
- Another definition describes an Islamic bank as one committed to applying Sharia principles in all its banking and investment transactions, implementing the concept of financial intermediation based on profit or loss sharing and through both general and specific agency frameworks.<sup>2</sup>
- Other definitions focus on the developmental role of these banks, defining an Islamic bank as "a financial institution conducting banking and other transactions in accordance with Sharia law, aiming to uphold Islamic values and ethics, and to achieve the utmost economic and social justice to provide a dignified life for the Muslim community."
- In Algerian legislation, rules and regulations governing banking operations and Islamic finance are outlined in Article (02) of the Bank of Algeria's Regulation No. 2001-2002 dated March 5, 2020. This regulation specifies Islamic banking transactions and the rules for conducting them by banks and financial institutions as follows: "Any banking transaction that does not involve the collection or payment of interest, and these transactions must comply with the provisions mentioned in Articles 66 to 69 of Ordinance No. 03-1 dated Jumada II 27, 1414 AH (corresponding to August 26, 2003), regarding currency and credit as amended and supplemented."<sup>3</sup>

From the provisions of this article, two essential elements emerge in defining Islamic banking: broad-based participation and the prohibition of usury (riba).

In conclusion, Islamic banks are intermediary financial institutions that aim to mobilize and invest funds according to Sharia principles. They prohibit interest transactions, both in receiving and giving, and instead rely on financial intermediation based on profit and loss sharing, as well as agency frameworks. These banks seek to achieve economic and social development aligned with Islamic values, contributing to the well-being of society through adherence to ethical and Sharia standards in all activities.

#### **Second Requirement: Characteristics of Islamic Banks**

Islamic banks possess distinct characteristics that differentiate them from traditional banks. The most notable features include:

##### **First - Variety of Islamic Bank Instruments:**

Islamic banks utilize various financing methods, including Murabaha, Ijara, Salam, Istisna, Musharakah, and Mudarabah, among others, unlike traditional banking, which is limited to lending. Due to this diversity, the relationship between an Islamic bank and its clients varies. At times, the bank acts as a seller of goods, at other times as a lessor or lessee of assets, or as a buyer or seller in



Salam and Istisna contracts, and sometimes as a partner with the client, or as a financier for specific projects.

#### **Second - Exclusion of Interest Transactions:**

The core characteristic that distinguishes Islamic banks is the exclusion of interest (riba) from all transactions, both in receiving and giving. This is the primary and defining feature of an Islamic bank, as without it, the bank would resemble any other interest-based bank. Islam strictly prohibits riba in all its forms and imposes severe penalties on it.

#### **Third - Revival of the Zakat System:**

In line with their mission, Islamic banks strive to harmonize spiritual and material aspects, working towards the well-being and advancement of the entire Islamic community. For this reason, these banks have established a dedicated fund for collecting zakat, which they manage and ensure the distribution of to its legitimate recipients as prescribed by Islamic law.

#### **Fourth - Developmental Banks:**

Islamic banks aim to build an Islamic economy, with objectives extending beyond mere profit generation. They seek to mobilize resources and direct them towards those seeking financing to achieve mutual benefit, not only for both parties but primarily for the betterment of society.

#### **Fifth - Reassurance in Transactions:**

Transactions with banks that finance and invest through legitimate, non-exploitative means, free from deception and prohibited dealings, provide peace of mind to Muslims, whether individuals or institutions.

#### **Sixth - Sharia Supervision:**

Islamic financial institutions, especially financing entities, are expected to derive their principles and applications from Islamic Sharia. To reassure shareholders and clients of their commitment to Sharia principles, it is essential for these institutions to have a Sharia supervisory board, a feature that sets Islamic banks apart in terms of oversight compared to other banks.<sup>4</sup>

#### **Third Requirement: Functions of Islamic Banks**

The functions of Islamic banks do not differ significantly from those of traditional banks, except in their non-use of interest. The primary functions include:

##### **First - Accepting Deposits:**

The types of deposits that customers place in Islamic banks can be divided into four main categories:

1. **Current Accounts (Credit):** These accounts involve mutual transactions between banks and another party, which may be an individual or legal entities such as companies, institutions, or other banks. Current accounts represent an essential source of funds for Islamic banks, and they actively work to attract substantial deposits from individuals and entities in the form of credited current accounts.
2. **Savings Accounts:** Islamic banks encourage clients to save by offering them savings accounts with various incentives, such as cash or in-kind prizes (e.g., a home or car) awarded to winners in periodic draws conducted by the bank among the numbers of savings accounts during specific announced periods.
3. **Notification Deposit Accounts:** Like traditional banks, Islamic banks strive to attract various types of savings by offering diverse deposit account options to individuals and institutions, allowing clients to select the deposit account type that best suits their needs.
4. **Fixed-Term Deposit Accounts:** Some clients may find that they do not need certain amounts for a specified period, prompting them to place these amounts in fixed-term deposit accounts, which cannot be withdrawn until the specified term expires. Islamic banks receive these deposits and invest them in suitable investments for the duration.<sup>5</sup>

##### **Second - Issuance of Muqarada Bonds:**

These are fixed-value certificates issued by the bank in the names of subscribers in exchange for the nominal value, based on profit-sharing in the annual realized earnings. They come in two types, common Muqarada bonds and specialized Muqarada bonds, explained as follows:



1. **Common Muqarada Bonds:** These are uniform-value certificates issued by the bank in the names of subscribers, based on profit-sharing in the annual earnings realized from each specific issuance according to the terms unique to each issue.

2. **Specialized Muqarada Bonds:** These differ from common Muqarada bonds as they are tied to a specific project or purpose. They are classified according to the activities of the project funded by this particular issuance. A percentage of the project's net income invested in it is determined by the bank's board, with the project having an independent income account separate from other bank revenues.<sup>6</sup>

### **Third - Investment of Bank Funds:**

This function complements deposit acceptance, as the funds are invested in projects that comply with Islamic Sharia principles.

### **Fourth - General Banking Services:**

The general banking services provided by Islamic banks include:

- Processing checks through clearing.
- Conducting various types of transfers and buying and selling foreign currencies.
- Collecting bills of exchange on behalf of clients.
- Issuing letters of guarantee and warranties.
- Issuing letters of credit.
- Accepting bills of exchange, where the bank guarantees clients to facilitate their obligations.
- Offering interest-free loans, managing safe deposit boxes, social guarantees, and advertisements.
- Managing Zakat funds.<sup>7</sup>

## **Section Two: The Essence of Sharia Supervision**

Sharia supervision in Islamic banks ensures that all operations and financial products offered by the banks comply with Islamic Sharia. This supervision works to guarantee that financial transactions are conducted according to Sharia rulings, avoiding any practices that contradict it.

### **First Requirement: Definition of Sharia Supervision**

To clarify this concept, we define "supervision" linguistically and technically as follows:

#### **First - Supervision in Language:**

According to Ibn Faris, the root letters "R-Q-B" denote the act of setting up vigilance over something. The term "raqaba" in Arabic has multiple meanings, the most prominent being:

- **Waiting:** Such as "tarqaba" or "irtaqaba," meaning to wait or expect something, while "tarqab" refers to anticipation. The "raqib" is one who waits or anticipates.
- **Guarding and Protection:** "Raqa" also means to guard, where "araqabahu muraqabah" means to protect or watch over something. The "raqib" is a protector who does not overlook anything, while "raqib al-qawm" refers to the guard who watches from an elevated position to protect them.
- **Supervision and Elevation:** "Irtaqaba" means to look over or to be elevated, with "al-marqab" or "al-marqaba" referring to an elevated position or lookout point. The plural "maraqib" refers to high ground.<sup>8</sup>

#### **Second - Supervision in Technical Terms:**

- Supervision is a means by which one can ensure that objectives are achieved efficiently and effectively within a specified timeframe.
- Sharia supervision, in its general sense, involves monitoring, examining, and analyzing all actions and behaviors undertaken by individuals, groups, institutions, and units to ensure compliance with Islamic Sharia rules and principles. It uses suitable and legitimate methods to identify and correct violations and errors promptly. Reports are then provided to the relevant parties, including observations, advice, guidance, and ways for improvement.<sup>9</sup>
- Specifically, in Islamic banking, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines Sharia supervision as "an independent body of scholars



specialized in Islamic jurisprudence of financial transactions. One member may be a non-jurist specialist in Islamic financial institutions with knowledge of jurisprudence in transactions. The Sharia board is entrusted with guiding, monitoring, and supervising the institution's activities to ensure compliance with Sharia principles. Its fatwas and decisions are binding for the institution."<sup>10</sup>

In practice, Sharia supervisory boards play a role similar to issuing fatwas, which communicate Allah's ruling, accountability, witnessing, documentation, and arbitration—especially when presenting their annual report to management and shareholders.

#### **First Requirement: Components of Sharia Supervision**

Sharia supervision in Islamic banks comprises two bodies: the Fatwa Committee, which primarily issues fatwas and addresses theoretical aspects, and the Sharia Audit Committee, which oversees the practical implementation of the Fatwa Committee's rulings. Each body relies on the other for several reasons, including:

- The role of Fatwa Committees in most Islamic banks is often limited to theoretical guidance without direct supervision of bank operations, which may lead to gaps between theoretical guidance and the practical application of banking operations.
- With the growth and development of Islamic banks, along with the expansion of their banking and investment activities, it has become challenging for Fatwa Committees, often part-time, to monitor all activities and personally track implementation and adherence to their guidance and decisions. This necessitates the presence of a Sharia Audit Committee.<sup>11</sup>
- Islamic banks differ from traditional banks in their exercise of Sharia supervision. This supervision ensures that the operations of Islamic financial institutions comply with Sharia law, in accordance with issued fatwas and approved decisions by the Fatwa Committee.

#### **Second Requirement: Sharia Supervisory Bodies in Islamic Banks**

Sharia supervision in Islamic banks is conducted by the following bodies:

##### **First - The Fatwa Committee:**

This committee primarily issues fatwas, focusing on theoretical aspects, providing Sharia-compliant alternatives, and offering practical solutions to the challenges faced by Islamic banks. Additionally, there is a Sharia Audit Committee, which is mainly concerned with practical aspects, ensuring the implementation of the Fatwa Committee's rulings. It verifies the bank management's adherence to the Sharia guidelines established by the Fatwa Committee. Both committees are essential for several reasons:

- The role of Fatwa Committees in most Islamic banks extends beyond theoretical guidance to actual supervision of banking activities, with the Sharia Audit Committee responsible for ensuring fatwas are implemented and all banking activities are reviewed by the Fatwa Committee.
- As Islamic banks continue to grow and expand in their banking and investment activities, it has become challenging for Fatwa Committees, often part-time, to monitor all activities and directly oversee the implementation of their guidance and decisions. This has made the establishment of a Sharia Audit Committee necessary.<sup>12</sup>

##### **1. Scope of the Fatwa Committee's Supervisory Role:**

The Fatwa Committee exercises its supervisory role through various functions across several levels, including the following key areas:

##### **• Ensuring Sharia Compliance in Founding Documents:**

This includes overseeing the Sharia aspects of the bank's articles of incorporation, bylaws, and basic regulations. The committee supervises the preparation and drafting of contract templates, banking services, and agreements with third parties. It also reviews projects and conducts feasibility studies from a Sharia perspective. Examples of such templates include account-opening agreements, such as:

- Deposit accounts of various types.



- Banking service templates, such as currency purchase and sale agreements, and letters of credit.

- Templates for various investment structures, including sales contracts, Mudarabah, Musharakah, and Istisna.

- **Developing New Sharia-Compliant Models:**

The committee seeks to create additional Sharia-compliant structures suitable for Islamic banks to keep pace with advances in banking services and methods.

- **Creating a Sharia Operational Manual:**

This procedural guide covers all bank operations, from opening current and investment accounts to financing transactions such as Murabaha and Mudarabah, and concluding with banking services like transfers and opening lines of credit. The manual is important for standardizing procedures, ensuring accuracy and oversight, and raising employee awareness about Sharia foundations in Islamic banking, thus helping the Fatwa Committee understand the contractual obligations associated with banking activities.

- **Sharia Review of Investment Processes:**

The committee conducts a Sharia review at every stage of the investment process, providing feedback during all stages of implementation.

- **Active Role in Employee Sharia Training:**

The committee educates bank employees on Sharia principles governing banking operations, organizes training sessions and scientific forums, and addresses any Fiqh-related questions or concerns.

- **Reviewing External Supervisory Reports:**

The committee reviews reports from external oversight bodies, such as the central bank, and provides periodic reports assessing the bank's transactions and adherence to the issued fatwas, guidelines, and instructions.<sup>13</sup>

## 2. **Scope of the Sharia Audit Committee's Role:**

Internal Sharia auditing is one of the most crucial components of the Sharia supervisory system in Islamic financial institutions. This committee is primarily responsible for evaluating the institution's adherence to the fatwas and decisions issued by the Sharia Supervisory Board. It must operate at an administrative and organizational level that ensures its independence, with a qualified staff that performs its duties objectively. Key responsibilities of this committee include:

- **Ensuring Compliance with Sharia Principles:**

The committee verifies that the bank's activities align with Islamic Sharia principles.

- **Implementing Sharia Board Decisions and Recommendations:**

It ensures that the Sharia Supervisory Board's decisions and recommendations are followed in all transactions, maintaining adherence to Sharia guidelines.

- **Reviewing Organizational Units:**

The committee audits the organizational units in the general administration, branches, and subsidiaries, preparing reports on Sharia-related observations and actions necessary to address issues and violations. These reports are created independently, without external interference.

- **Discussing Reports with Branches and Subsidiaries:**

The internal Sharia audit department has the right to discuss its reports with the branches and subsidiaries that were audited.

- **Identifying and Disposing of Non-Sharia-Compliant Profits:**

It identifies any earnings that do not comply with Sharia and handles them in accordance with the Sharia Board's directives.

- **Evaluating Risk Management Compliance:**



The committee assesses the bank's adherence to a risk management system designed to prevent losses in operations, adhering to the Islamic principle of "no harm and no harassment." This evaluation is guided by Sharia principles, specifically the rule of "revenue follows"<sup>14</sup>

### **Second - Supervision by the National Sharia Board for Islamic Financial Industry Fatwa**

The National Sharia Board for Islamic Financial Industry Fatwa was established on January 1, 2020, by decree of the Supreme Islamic Council (Decree No. 20/01/2020). According to Article 2 of this decree, its mission is to assess the compliance of financial products presented by official bodies, banks, and certified financial institutions with Islamic Sharia, and to issue certificates of compliance. The board also provides Sharia opinions on other financial products brought before it, particularly in areas such as Takaful insurance, securities markets (stocks and sukuk), and charitable financing (zakat, waqf, and donations).

The board comprises members appointed by the President of the Supreme Islamic Council as per Article 3 of the establishment decree. Appointees must meet the following qualifications:

- Hold a doctorate in jurisprudence, Sharia, or an equivalent field.
- Be a specialist in Islamic financial jurisprudence or an expert with a doctorate in jurisprudence and sufficient knowledge of Islamic financial transactions.
- Not hold a managerial or executive position or be a shareholder in any bank or financial institution.<sup>15</sup>

Article 5 of the decree allows the board to seek external national expertise when necessary.

The board meets four times a year, at the end of each quarter, and may convene additional meetings as needed, either at the request of its president or upon request by two-thirds (2/3) of its members. Meetings are typically held at the headquarters of the Supreme Islamic Council, with the option to meet elsewhere with the president's approval.

The board's mandate extends beyond verifying the Sharia compliance of banking and financial institutions involved in Islamic finance. Its role encompasses all aspects of the Islamic financial industry, including Takaful insurance, securities markets (stocks or sukuk), and managing funds related to zakat, waqf, and charitable donations. Within this scope, the board is responsible for the following tasks:

- **Assessing Sharia Compliance:** Evaluating products presented by official bodies, banks, and certified financial institutions for Sharia compliance and issuing certificates accordingly.
- **Providing Sharia Opinions on Financial Products:** Offering Sharia opinions on additional financial products, particularly Takaful insurance, securities markets (stocks and sukuk traded in the stock exchange), and charitable financing, such as zakat, waqf, and donations.
- **Reviewing Financing Contracts and Islamic Financial Transactions:** Examining the contracts and financial transaction formats adopted by Sharia supervisory bodies within banks and financial institutions to ensure compliance with Sharia principles.
- **Identifying Non-Compliant Practices:** Issuing opinions on activities deemed non-compliant with Sharia and offering appropriate corrective measures before approval.
- **Addressing Emerging Issues:** Studying new issues or practical challenges encountered by banking and financial institutions and proposing suitable solutions consistent with Sharia principles.
- **Resolving Practical Challenges:** Providing solutions to any operational issues in applying Islamic banking or financial products, particularly those arising from ambiguity or conflicts with other products or with Sharia guidelines.
- **Responding to Inquiries:** Issuing opinions on matters presented by banks, financial institutions, or referred to it by the Supreme Islamic Council.
- **Adopting Sharia Standards for Financial Products:** Establishing standards for banking and financial products and determining their compliance with these standards.
- **Resolving Sharia-Related Issues:** Addressing Sharia-related issues that may arise concerning these products.



- **Encouraging Research and Ijtihad:** Promoting research and innovation in developing financial transactions derived from national doctrinal references and Islamic jurisprudential heritage.<sup>16</sup>

#### Conclusion:

Private Islamic banks in Algeria operate within a legal framework similar to that of conventional banks and are subject to the same supervisory bodies. However, what distinguishes these banks is their adherence to Sharia supervision, implemented by the Fatwa Committee and the National Sharia Board for Islamic Financial Industry. The former addresses theoretical issues, developing Sharia-compliant alternatives and practical solutions to Islamic banking challenges, while the latter ensures that the banks' products comply with Islamic Sharia principles, providing reassurance to consumers. From our study focused on Sharia supervision, we have identified the following key findings:

- Islamic banks stand out for their diverse financing structures, such as Murabaha, Ijara, and Musharakah, making their transactions more varied than conventional banks, which rely on interest-based lending.
- The prohibition of interest is a fundamental principle distinguishing Islamic banks and establishing their Sharia-compliant identity, making them attractive to customers seeking Sharia-compatible financial solutions.
- The success of Islamic banks depends on a robust Sharia supervisory structure, comprising the Fatwa Committee for theoretical guidance and the Sharia Audit Committee for implementation oversight.
- The primary role of Sharia supervisory bodies in Islamic banks is to review and ensure Sharia compliance for all proposed new investment methods.
- Islamic banking in Algeria has yet to receive a suitable legislative environment that would enable it to achieve independence in its operations, with current regulations focusing on organization rather than foundational legislation.
- Sharia supervision within Islamic banks needs further activation and structuring, with an emphasis on moving from theoretical frameworks to practical applications.
- Regarding recommendations, we propose the following:
  - Explore the possibility of establishing a "Higher Fatwa Committee" to unify Islamic financial rulings and transactions.
  - Consider creating global standards for Sharia auditing.
  - Develop guidelines for managing transactions with non-Islamic banks.
  - Increase awareness of Islamic banking benefits and products within various communities.
  - Islamic banks should focus on developing the zakat fund, not only as a distribution tool but also as a means to support sustainable projects that improve living standards.

Finally, we conclude that Islamic banking faces significant challenges and urgent needs for development, innovation, and the provision of solutions and alternatives. Therefore, Sharia supervisory bodies are tasked with organizing seminars, conferences, and scientific research sessions to address these challenges and mitigate risks.

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