معيار الحوكمة الشرعية للمؤسسات المالية الإسلامية

STANDARD RE. SHARI’AH GOVERNANCE FOR ISLAMIC FINANCIAL INSTITUTIONS
<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article (1) Introduction</td>
<td>3</td>
</tr>
<tr>
<td>المادة (1) مقدمة</td>
<td></td>
</tr>
<tr>
<td>Article (2) Objective</td>
<td>4</td>
</tr>
<tr>
<td>المادة (2) الهدف</td>
<td></td>
</tr>
<tr>
<td>Article (3) Scope of Application</td>
<td>4</td>
</tr>
<tr>
<td>المادة (3) نطاق التطبيق</td>
<td></td>
</tr>
<tr>
<td>Article (4) Definitions</td>
<td>5</td>
</tr>
<tr>
<td>المادة (4) التعريفات</td>
<td></td>
</tr>
<tr>
<td>Article (5) General Requirements for Shari’ah Governance Standard</td>
<td>9</td>
</tr>
<tr>
<td>المادة (5) المتطلبات العامة لمعيار الحوكمة الشرعية</td>
<td></td>
</tr>
<tr>
<td>Article (6) Islamic Financial Institution Responsibility</td>
<td>11</td>
</tr>
<tr>
<td>المادة (6) مسؤولية المؤسسة المالية الإسلامية</td>
<td></td>
</tr>
<tr>
<td>Article (7) Internal Shari’ah Supervision Committee</td>
<td>17</td>
</tr>
<tr>
<td>المادة (7) لجنة الرقابة الشرعية الداخلية</td>
<td></td>
</tr>
<tr>
<td>Article (8) Responsibility of Internal Shari’ah Supervision Committee</td>
<td>21</td>
</tr>
<tr>
<td>المادة (8) مسؤولية لجنة الرقابة الشرعية الداخلية</td>
<td></td>
</tr>
<tr>
<td>Article (9) Internal Shari’ah Supervision</td>
<td>27</td>
</tr>
<tr>
<td>المادة (9) الرقابة الشرعية الداخلية</td>
<td></td>
</tr>
<tr>
<td>Article (10) Internal Shari’ah Control Division or Section</td>
<td>28</td>
</tr>
<tr>
<td>المادة (10) إدارة أو قسم الرقابة الشرعية الداخلية</td>
<td></td>
</tr>
<tr>
<td>Article (11) Internal Shari’ah Audit Division or Section</td>
<td>33</td>
</tr>
<tr>
<td>المادة (11) إدارة أو قسم التدقيق الشرعي الداخلي</td>
<td></td>
</tr>
<tr>
<td>Article (12) External Shari’ah Audit</td>
<td>37</td>
</tr>
<tr>
<td>المادة (12) التدقيق الشرعي الخارجي</td>
<td></td>
</tr>
<tr>
<td>Article (13) Compliance with the standard</td>
<td>37</td>
</tr>
<tr>
<td>المادة (13) التوافق مع المعيار</td>
<td></td>
</tr>
</tbody>
</table>
Article (1)

Introduction

1.1 The Central Bank seeks to promote development of the banking activities to ensure its effectiveness and efficiency. To achieve this, financial institutions that conduct all or part of their activities and businesses in accordance with the provisions of Islamic Shari`ah (Islamic Financial Institutions “IFIs”) must have in place comprehensive and effective governance frameworks to enhance the compliance with Islamic Shari'ah provisions and principles ("Islamic Shari'ah") in those institutions to ensure their resilience, and promote general financial stability.

1.2 IFIs must have Shari’ah governance policies and mechanisms that cover all their operations and activities to ensure they are compliant with Islamic Shari’ah.

1.3 This standard is issued pursuant to the powers vested in the Central Bank under the provisions of the Decretal Federal Law No. (14) of 2018 Regarding the Central Bank & Organization of Financial Institutions and Activities (the Central Bank Law).

المادة (1)

الشرح

1.1 يسعى المصرف المركزي إلى تعزيز التطوير والتحقق من أن عمل النظام المصرفي يسري على نحو كفء وفعال ولتحقيق هذه الغاية، يجب أن توافر لدى المؤسسات المالية التي تمارس كافة أو بعض أنشطتها وفقا لأحكام الشريعة الإسلامية ("المؤسسات المالية الإسلامية") أطر حوكمة شاملة وفعالة لتعزيز الالتزام بأحكام ومبادئ الشريعة الإسلامية ("الشريعة الإسلامية") في هذه المؤسسات وضمان صمودها وتعزيز الاستقرار المالي العام.

1.2 يجب أن تكون لدى المؤسسات المالية الإسلامية سياسات وآليات حوكمة شرعية تغطي جميع عملياتها وأنشطتها لضمان أنها متزنة بالشريعة الإسلامية.

1.3 وقد تم إصدار هذا المعيار عملا بالصلاحيات الممنوحة للمصرف المركزي بموجب المرسوم بقانون اتحادي رقم (14) لسنة 2018 في شأن المصرف المركزي وتنظيم المنشآت والأنشطة المالية ("قانون المصرف المركزي").

1.4 حيث تم النص في هذا المعيار على متطلب بتقديم معلومات، أو اتخاذ إجراءات معينة، أو التعامل مع بنود معينة، مشار إليها كحد
certain items listed as a minimum, the Central Bank may impose requirements, which are additional to the requirements provided in the relevant article.

Article (2)

Objective

2.1 The objective of this standard is to set the minimum requirements for IFIs to ensure their compliance with Islamic Shari’ah in all their objectives, activities, operations, and code of conduct.

2.2 This standard elaborates on the supervisory expectations of the Central Bank with respect to Shari’ah Governance for IFIs.

Article (3)

Scope of Application

3.1 This standard applies to all IFIs. IFIs established in the UAE with Group relationships, including Subsidiaries, Affiliates, or international branches, must ensure that the Standard is adhered to on a solo and Group-wide basis.

3.2 This standard must be read in conjunction with the standards and resolutions issued by Higher Shari’ah Authority and notified to IFIs.
Article (4)
Definitions

For the purposes of this standard, the following words and phrases shall have the meanings stated below.

a. **Senior Management**: The executive management of the Bank responsible and accountable to the Board for the sound and prudent day-to-day management of the Bank or IFI, generally including, but not limited to, the chief executive officer, chief financial officer, chief risk officer, and heads of the compliance and internal audit functions. The term Senior Management includes the head of Islamic banking at the licensed financial Institutions that conduct part of their activities and businesses in accordance with the provisions of Islamic Shari’ah.

b. **Independence**: Ensuring that the Internal Shari’ah Supervision Committee is not subject to any form of undue influence when issuing resolutions and fatwas in accordance with the Shari’ah parameters, and ensuring that the Internal Shari’ah Control Division or Section and Shari’ah Audit Division or Section are also not subject to any form of undue influence. This should be carried out to strengthen the confidence of both shareholders and stakeholders in the IFIs compliance with Islamic Shari’ah.

المادة (4)
التعريفات

لأغراض هذا المعيار تكون الكلمات والعبارات الآتية المعاني المبينة كل منها.

أ. **إدارة العليا**: الإدارة التنفيذية للمؤسسة المالية الإسلامية المسؤولة أمام مجلس الإدارة عن الإدارة اليومية لأعمال البنك أو المؤسسة المالية الإسلامية على نحو سليم واحترافي، وتشمل بصورة عامة، على سبيل المثال لا الحصر، الرئيس التنفيذي، والمسؤول المالي الرئيسي، ومسؤولا المخاطر الرئيسي، ومدير وظيفة الامثال، ومدير وظيفة التدقيق الداخلي. وتشمل عبارة الإدارة العليا رئيس الصيرفة الإسلامية في المشاريع الأعمال والأنشطة المالية وفقا لأحكام الشريعة الإسلامية.

ب. **الاستقلال**: ضمان حرية لجنة الرقابة الشرعية الداخلية في إصدار القرارات والفتاوى وفق ما تقضيه الضوابط الشرعية دون مؤثرات على آرائها، وضمان حرية عمل إدارة أو قسم الرقابة الشرعية الداخلية وإدارة أو قسم التدقيق الشرعي الداخلي بما يكفل تعزيز ثقة المساهمين وأصحاب المصالح بسلامة التزام المؤسسة المالية الإسلامية بالشريعة الإسلامية.
c. **External Shari’ah Audit:** An annual assessment conducted by external body to inspect and assess the IFI’s compliance with Islamic Shari’ah and the level of adequacy and effectiveness of the governance of Shari’ah supervision systems.

d. **Internal Shari’ah Audit:** regular process to inspect and assess the IFI’s compliance with Islamic Shari’ah and the level of adequacy and effectiveness of IFI’s Shari’ah governance systems.

e. **Compliance with Islamic Shari’ah** refers to compliance with Shari’ah in accordance with:
   a. resolutions, fatwas, regulations, and standards issued by the Higher Shari’ah Authority in relation to licensed activities and businesses of IFIs (“HSA’s Resolutions”), and
   b. resolutions and fatwas issued by ISSC (“ISSC”) of the respective IFI, in relation to licensed activities and businesses of such institution (“the Committee’s Resolutions”), provided they do not contradict HSA’s Resolutions.

f. **Shari’ah Supervision:** monitoring of IFI’s compliance with Islamic Shari’ah in all its objectives, activities, operations, and code of conduct.

g. **Subsidiary:** An entity, owned by another entity by more than 50% of its capital, or under full control of that entity regarding
the appointment of the Board of directors.

h. **Affiliate:** An entity owned by another entity by more than 25% and less than 50% of its capital. ح. شركة شقيقة: كيان مملوك من كيان آخر بنسبة تتجاوز 25% وتقل عن 50% من رأس ماله.

i. **Fatwas:** juristic opinions on any matter pertaining to Shari’ah issues in Islamic finance, issued by HSA or ISSC. ط. الفتاوى: الآراء الفقهية في أي مسألة من المسائل الشرعية في المالية الإسلامية تصدرها الهيئة العليا الشرعية أو لجنة الرقابة الشرعية الداخلية.

j. **Internal Shari’ah Supervision Division (or Section):** a technical division (or section) in the IFI with a mandate to support the ISSC in its duties. ي. إدارة (أو قسم) الرقابة الشرعية الداخلية: إدارة (أو قسم) فني في المؤسسة المالية الإسلامية مختص بمساندة لجنة الرقابة الشرعية الداخلية في مهامها.

k. **Internal Shari’ah Supervisory Committee (“ISSC”):** a body appointed by the IFI, comprised of scholars specialized in Islamic financial transactions, which independently supervises transactions, activities, and products of the IFI and ensures they are compliant with Islamic Shari’ah in all its objectives, activities, operations, and code of conduct. ل. لجنة الرقابة الشرعية الداخلية: جهاز معين من قبل المؤسسة المالية الإسلامية يتكون من فقهاء متخصصين في فقه المعاملات المالية الإسلامية، يقوم بالرقابة المستقلة على معاملات وأنشطة ومنتجات المؤسسة المالية الإسلامية والتأكد من التزامها بالشريعة الإسلامية في جميع أهدافها وأنشطتها وعملياتها ومواثيق عملها.

l. **Board:** IFI’s board of directors. م. مجلس الإدارة: مجلس إدارة المؤسسة المالية الإسلامية.

m. **Group:** A group of entities which includes an entity (the ‘first entity’) and: م. المجموعة: مجموعة من الكيانات التي تضمن كياناً ("الكيان الأول"), أ. أي مساهم سيطر في الكيان الأول؛ ب. أي شركة تابعة للكيان الأول، أو لمساهم سيطر في الكيان الأول;
b. any Subsidiary of the first entity or of any Controlling Shareholder of the first entity; and  

c. any Affiliate, joint venture, sister company and other member of the Group.

n. Shari’ah Non-Compliance Risks: probability of financial loss or reputational damage that IFI might incur or suffer due to not complying with Islamic Shari’ah.

o. Confidential Information: information that is publicly unavailable and its disclosure is not allowed.

p. Code of Conduct: refers to the principles that are intended to govern the activities of IFI with regard to (a) protection of their customers’ interest, and (b) market integrity (c) and internal work environment.

q. Islamic Financial Institutions (Institutions/IFIs): The CBUAE licensed financial Institutions that conduct all or part of their activities and businesses in accordance with the provisions of Islamic Shari’ah.

r. Higher Shari’ah Authority (HSA): is the Central Bank’s Higher Shari’ah Authority for financial and banking activities.
Article (5)

General Requirements for Shari’ah Governance Standard

5.1 The IFI must comply with Islamic Shari’ah in all of its goals, activities, operations and code of conduct at all times.

5.2 An IFI must have in place governance controls and mechanisms in accordance to its size and complexity of its operations to ensure compliance with Islamic Shari’ah in all of its activities, operations and code of conduct.

5.3 Branches of foreign licensed financial institutions that conduct all or part of their activities and businesses in accordance with the provisions of Islamic Shari’ah must adhere to this standard or establish equivalent arrangements to ensure regulatory comparability and consistency. The equivalent arrangement, if applicable, should include the matters related to general assembly, the Board and its Committees without contradicting the prevailing laws in the UAE. The equivalent arrangements shall be submitted to the CBUAE for approval.

5.4 The Shari’ah governance of IFIs must include the following as minimum requirements:
a. Stating the responsibility of the Board in regards to the IFI’s compliance with Islamic Shari’ah, the oversight over the IFI, and establishing an adequate Shari’ah governance framework.

ب. تحديد مسؤولية الإدارة العليا في التزام المؤسسة المالية الإسلامية بالشريعة الإسلامية وتوفير موارد كافية لتنفيذ متطلبات الحوكمة الشرعية للتأكد من أن تنفيذ أعمال المؤسسة المالية الإسلامية يتم وفقاً للشريعة الإسلامية.

c. Appointment of a qualified ISSC in accordance with the eligibility and competence requirements set out in this standard.

ج. تعيين لجنة رقابة شرعية داخليّة مؤهلة وفقا لمعايير الأهلية والكفاءة المنصوص عليها في هذا المعيار.

d. Establishment of Internal Shari’ah Control Division (or Section).

د. إنشاء إدارة (أو قسم) الرقابة الشرعية الداخلية.

e. Establishment of Internal Shari’ah Audit division (or section).

ه. إنشاء إدارة (أو قسم) التدقيق الشرعي الداخلي.

f. Publication of the ISSC’s resolutions regarding standard products, services, fees, and other basic mechanisms governing IFIs operations, including late payment fees and the commitment to donate it, or awards granted by the IFI, and other essential matters.

و. نشر فتاوى لجنة الرقابة الشرعية الداخلية المتعلقة بالمنتجات والخدمات المالية الإسلامية التمويلية والرسوم والalties الأخرى الأساسية التي تحكم عمليات المؤسسة المالية الإسلامية ومنها غرامات التأخير في السداد والالتزام بالتزام بالتبرع بها أو الجوائز التي تمنحها المؤسسة المالية الإسلامية وغيرها من الأمور الأساسية.

g. Providing training and awareness programs related to compliance with Islamic Shari’ah.

ز. توفير برامج تدريب ووعية مستمرة بشأن الالتزام بالشريعة الإسلامية في المؤسسة.
Islamic Shari’ah in the IFI, this should include all levels in the organization.

5.5 This standard must be implemented through a set of policies and procedures that outline the structure, roles, responsibilities, accountability, scope and duties of different functions, and reporting lines and communication channels between different functions with regard to the IFI’s compliance with Islamic Shari’ah.

5.6 The IFI must spread awareness regarding Islamic finance and boost the culture of compliance with Islamic Shari’ah within the IFI, including workshops for the members of the Board and senior management on Islamic financial transactions and compliance with Islamic Shari’ah.

Article (6)

IFI’s Responsibility

The Board

6.1 IFI’s Board is ultimately responsible for IFI’s compliance with Islamic Shari’ah. The Board is expected to be aware of Shari’ah non-compliance risk and its potential impact on the IFI. Accordingly, the Board is responsible for establishing and implementing a Shari’ah governance framework that is commensurate with the size and complexity of the operations of the IFI and its risk appetite, to ensure the IFI’s compliance with Islamic Shari’ah.
The Shari’ah governance framework should incorporate the three lines of defense approach comprising the business line, the support and control functions, and internal Shari’ah audit function.

6.2 Members of the Board must nominate ISSC members to the general assembly for the establishment of ISSC.

6.3 The Board must, in coordination with the ISSC, ensure the development, approval and implementation of internal policies related to the IFI compliance with Islamic Shari’ah.

6.4 The Board must maintain effective communication with the ISSC. Meetings must be held to discuss issues pertaining to Shari’ah compliance, with at least one meeting per financial year.

6.5 The Board must refer to the ISSC for all Shari’ah matters related to IFI activities, operations and code of conduct.

6.6 The Board must ensure that the annual Shari’ah report issued by the ISSC is submitted to the HSA for review and approval before sharing it with shareholders at the general assembly.
The Board’s Risk Committee ("Risk Committee") must supervise and monitor management of Shari’ah non-compliance risk, and set controls in relation to this type of risk, in consultation with ISSC and through the internal Shari’ah control division or section.

The Risk Committee is responsible to review and approve the establishment of framework for managing Shari’ah non-compliance risk as part of the overall risk management framework of the IFI, and must oversee its implementation by the Senior Management.

The Risk Committee must ensure there is an information system that enables IFI to measure, assess and report Shari’ah non-compliance risk. Reports must be provided on a timely manner to the Board and Senior Management, in formats suitable for their use and understanding.

The Board’s Audit Committee (‘Audit Committee’) must:

Evaluate the effectiveness of IFI’s policies (approved by ISSC) designed to monitor compliance of the IFI with Islamic Shari’ah.
b. Assess the effectiveness and adequacy of internal Shari’ah audit and its contribution in ensuring IFI’s compliance with Islamic Shari’ah. The Audit Committee’s responsibility includes the following:

- Assess the independence, effectiveness and adequacy of internal Shari’ah audit scope and programs.
- Review the reports prepared by the internal Shari’ah audit division or section to ensure that all necessary measures have been undertaken.
- Facilitate the work of the internal Shari’ah audit division or section.
- Hold regular meetings with the head of internal Shari’ah audit division or section twice a year, at minimum.

C. Review the scope, results, and adequacy of the external Shari’ah audit review (if applicable). In addition, the Audit Committee’s responsibility includes the following:

- Facilitate the work of the external Shari’ah auditor.
- Review the reports prepared by external Shari’ah auditor to ensure that the senior management have taken all necessary measures in this regard.
- Hold meetings with the external Shari’ah auditor with a minimum of one meeting per financial year.
6.11 It is recommended that the Audit Committee invite a member of the ISSC to attend the meetings when discussing the internal Shari’ah audit report to ensure compliance of the IFI with the resolution of the ISSC concerning the report. The Audit Committee and the member of ISSC are not authorized to change the ISSC’s resolution in this regard.

Senior Management

6.12 The Senior Management must execute and manage the IFI’s activities and businesses in compliance with Islamic Shari’ah.

6.13 The Senior Management must report to the Board regarding IFI’s compliance with Islamic Shari’ah in all of its activities, operations, policies, internal regulations, and code of conduct.

6.14 The Senior Management is responsible before the Board for:

a. submitting Shari’ah matters related to all IFI’s businesses and activities, including its policies, internal regulations, code of conduct, all onshore/offshore transactions, services and products to ISSC, and should not consider approval of any of the Group’s Shari’ah supervision committees (or equivalent committees) outside the country as substitution to approval of the ISSC,
b. ensuring implementation of the ISSC’s fatwas and resolutions.

6.15 The Senior Management must fully disclose all relevant information required by the ISSC in a transparent, accurate and timely manner.

6.16 The senior management shall provide the ISSC with financial and human resources that are commensurate with the IFI size and the nature of its business.

6.17 The Senior Management must:
- facilitate work of internal Shari’ah audit and external Shari’ah audit,
- ascertain that the Shari’ah auditors are not obstructed in their work,
- enable Shari’ah auditors to access information or staff, from all different levels.

6.18 The Senior Management is responsible to establish sufficient knowledge regarding the Compliance with Islamic Shari’ah requirements and the culture of Islamic Shari’ah compliance banking in the IFI.
Article (7)  
ISSC  

Membership and Appointment

7.1 The Board shall nominate the members of ISSC, and send the member’s appointment request to HSA for approval prior to presenting its nomination to the general assembly.  

7.2 IFI’s general assembly have the authority to appoint the ISSC members based on the Board’s nomination and after HSA’s approval.

7.3 The composition of ISSC members in IFI should not be less than (5) five members with proper qualifications and competence (as prescribed in this standard).

7.4 Emirati members in ISSC should not be less than one third.

7.5 The membership of each member in the ISSC is subject to the following:
a. must not exceed three ISSC memberships inside the UAE,

b. must not exceed a total of (15) fifteen ISSC (or equivalent committees) memberships inside and outside the UAE,

c. Only one member of the IFI’s ISSC may have more memberships stated in (7.5/b).

7.6 The HSA may exempt UAE nationals from the clause (7.5) if necessary.

7.7 If a position of ISSC member becomes vacant, at any time, and that causes lack of quorum, the Board must nominate a substitute member and shall send the appointment request to HSA for approval before presenting the same to the general assembly.

However, if a position of ISSC member becomes vacant, at any time, and this leads to non-compliance with the clause no. 7.3 in this standard, but it does not breach the quorum, the Board may appoint a member after obtaining the HSA approval on the appointment. It is not required in this case to hold the general assembly for the appointment provided that the appointment is tabled to the general assembly for the appointment provided that the appointment is tabled to

7.7 This is not applicable to companies of under one group. The ISSC member may be an ISSC member of the group’s companies and that will count as one membership.
general assembly for final approval in its next meeting.

7.8 The term of office for ISSC members shall be specified in the IFI’s engagement letter with a minimum of three years, and may be renewed for a similar period. The engagement letter must also specify the responsibilities of the ISSC members and their remunerations. The remuneration must not be linked to the performance of the ISSC members.

7.9 Membership of ISSC shall be renewed upon a recommendation from the Board. HSA shall approve the membership renewal request before presenting it to the general assembly. The renewal shall not be considered as new appointment.

Second: Eligibility and Competence

7.10 Members of the ISSC must:

a. be Muslim persons (not a company);

b. hold a bachelor degree (as a minimum) in Islamic Shari’ah, particularly in jurisprudence of transactions, from a university that is acknowledged in Shari’ah studies, especially methodologies of jurisprudence, or have a minimum of 10 years’ experience in fatwas issuance related to jurisprudence of financial transactions.
c. have proven competence and expertise, especially in jurisprudence of financial transactions;

d. have a strong comprehension of finance in general and Islamic finance in particular, and should have worked in the spectrum of Islamic finance and/or Shari’ah Supervision for a minimum of (10) ten years whether in direct employment or advisory level, or at least (10) ten years of post-graduation experience in teaching and scientific research related to jurisprudence of financial transactions;

e. have good knowledge of the legal and supervisory framework related to financial and banking activities in the UAE;

f. be excellent in Arabic, and preferably to have good knowledge of English;

g. have good conduct and behavior, particularly with regard to credibility, integrity, and reputation in professional and financial transactions.

7.11 HSA may exempt UAE candidates from some of the above clauses that would not impair their competence in performing their duties, provided that the candidate commits to the development and training required by the HSA.
Third: Termination or Resignation of ISSC member

7.12 Termination of appointment or resignation of ISSC members is not considered effective until the termination or resignation request is approved by HSA, before it is presented to the general assembly for approval.

7.13 The request must clarify the reasons for termination or resignation of the ISSC member.

Article (8)

Responsibility of ISSC

8.1 ISSN undertakes Shari’ah supervision of all businesses, activities, products, services, contracts, documents, and code of conducts of the IFI. ISSN issues Shari’ah fatwas and resolutions that are binding upon IFI. The members of ISSN are accountable for the resolutions and fatwas they issue to the IFI, and their compliance with the resolutions and standards issued by the HSA.

8.2 ISSN must monitor, through internal Shari’ah control division or section and internal Shari’ah audit, the IFI’s compliance with Islamic Shari’ah.
8.3 In case a Shari’ah non-compliance issue is identified in an IFI, the ISSC must review and approve:
   a. corrective measures, if the correction is feasible,
   b. remediation required by the Islamic Shari’ah regarding the consequences arising from the Shari’ah non-compliance issue if the correction is not feasible,
   c. preventive measures to avoid reoccurrence of such issues.

8.4 ISSC shall review and approve from Shari’ah perspective:
   a. the method for calculation and distribution of profits, and for allocation of expenditures and costs and their division between holders of investment accounts and shareholders.
   b. final annual accounts before presenting them to the Central Bank.

8.5 In case where an IFI is a branch or subsidiary of an offshore bank, the ISSC of such IFI should approve all business operations, products, services investments, and financial securities that IFI executes, issues, manages, promotes, offers to its customers, or participates in. The approvals from offshore Shari’ah committees (or similar committees) in relation to the above should not be used as a substitute for the onshore ISSC approval.
The ISSC must issue an annual report stating the extent of IFI’s compliance with Islamic Shari’ah that is published within the financial statement in the IFI’s disclosures and other available means.

The annual Shari’ah report of ISSC must contain the main components specified by the HSA in the annual Shari’ah report form.

The annual Shari’ah report should be submitted to the HSA for review and approval prior to presenting the same to the general assembly.

Performance Assessment of ISSC

The IFI in coordination with the chairman of the ISSC should develop an assessment for ISSC based on the following aspects:

First: Shari’ah and scholarly aspects in terms of the member’s participation in decision making, discussions, and review of contracts, documents and reports submitted to ISSC. This should account for 70% of the assessment.

Second: Organizational aspect in terms of members’ attendance of meetings and adherence to meeting schedule (dates and times), and other procedures prescribed by ISSC charter, in line with this

8.6 The ISSC must issue an annual report stating the extent of IFI’s compliance with Islamic Shari’ah that is published within the financial statement in the IFI’s disclosures and other available means.

8.7 The annual Shari’ah report of ISSC must contain the main components specified by the HSA in the annual Shari’ah report form.

8.8 The annual Shari’ah report should be submitted to the HSA for review and approval prior to presenting the same to the general assembly.

8.9 The IFI in coordination with the chairman of the ISSC should develop an assessment for ISSC based on the following aspects:

First: Shari’ah and scholarly aspects in terms of the member’s participation in decision making, discussions, and review of contracts, documents and reports submitted to ISSC. This should account for 70% of the assessment.

Second: Organizational aspect in terms of members’ attendance of meetings and adherence to meeting schedule (dates and times), and other procedures prescribed by ISSC charter, in line with this

6.8 يجب أن تصدر لجنة الرقابة الشرعية الداخلية تقريرا سنوياً يشير إلى مدى التزام المؤسسة المالية الإسلامية بالشريعة الإسلامية ينشر في الحسابات الختامية ضمن إفصاحات المؤسسة المالية الإسلامية والوسائط الأخرى المتاحة.

7.8 يجب أن يحتوي التقرير الشرعي السنوي للجنة الرقابة الشرعية الداخلية على العناصر الرئيسية التي تحدد الهيئة العليا الشرعية في نموذج التقرير الشرعي السنوي.

8.8 يرسل التقرير الشرعي السنوي إلى الهيئة العليا الشرعية من أجل مراجعته واعتماده قبل عرضه على الجمعية العمومية.

9.8 يجب على المؤسسة المالية الإسلامية بالتنسيق مع رئيس لجنة الرقابة الشرعية الداخلية أن تطور تقييماً لهذه الرقابة الشرعية الداخلية بناءً على الآتي:

أولاً: الجانب الشرعي والعلمي من حيث مشاركة عضو لجنة الرقابة الشرعية الداخلية في اتخاذ القرارات والنقاش ومراجعة العقود والمستندات والتقارير المرفوقة إلى لجنة الرقابة الشرعية الداخلية، وآخذ هذا الجانب نسبة 70% من التقييم.

ثانياً: الجانب التنظيمي من حيث حضور عضو لجنة الرقابة الشرعية الداخلية اجتماعات لجنة الرقابة الشرعية الداخلية والتزامه بالمواعيد والأوقات المحددة للاجتماعات والإجراءات الأخرى التي تنص
standard. This should account for 30% of the assessment.

The IFI should inform each ISSC member upon appointment and at the beginning of each fiscal year about the assessment criteria.

8.10 At the end of a fiscal year, the Chairman of the ISSC shall provide HSA with a report on performance assessment.

IFI must adopt a charter for the ISSC that defines details of decision making process and their implementation, and setting of adequate methods to fulfil ISSC’s responsibilities without prejudice to the requirements of this standard, and in accordance to the format approved by the HSA.

ISSC Independence

The following controls and guidelines, as a minimum, must be observed to ensure the independence of ISSC members:

a. Members of the ISSC must not have a first-degree relative as member of IFI’s Board or executive body in the IFI.
b. Should not be an owner/shareholder of/in a company that provides consultancy or Shari’ah services to the IFI where he acts as member of ISSC.

ج. يجب أن لا يكون العضو مالكا أو مساهما في شركة تقدم استشارات أو خدمات شرعية للمؤسسة المالية الإسلامية التي هو عضو في لجنة الرقابة الشرعية الداخلية لديها.

c. Members of the ISSC should not be employees at the IFI or any of its affiliates when serving as members of the committee and should not provide services to the IFI outside the scope of ISSC’s assigned functions.

د. أن لا يكون أحد أعضاء لجنة الرقابة الشرعية الداخلية موظفاً لدى المؤسسة المالية الإسلامية أو أي من الشركات التابعة لها حال العضوية أو أن يقدم للمؤسسة المالية الإسلامية خدمات خارج نطاق عمل اللجنة.

d. Members of the ISSC shall not accept any allowance from IFI or its affiliates other than the allowance they receive for being members of the ISSC, the allowance for attending ISSC meetings, and other matters related thereto. If a financing is granted to a member of the ISSC, such member should be treated as ordinary customers and should not receive any preferential treatment,

ه. أن لا يقبل أي عضو من الأعضاء أي مكافأة من المؤسسة المالية الإسلامية أو من الشركات التابعة لها، باستثناء المكافأة على عضويته في لجنة الرقابة الشرعية الداخلية وبدل حضور اجتماعاتها وغيرها من الأمور المتعلقة بذلك. وبالنسبة لتقديم التمويل للعضو فيجب أن يتم بذات الشروط التي تطبقها المؤسسة المالية الإسلامية مع المتعاملين الآخرين دون وجود أي شروط تفضيلية.

e. Member of ISSC or his first or second-degree relatives, shall not own a share equal to/or more than 5% that entitles him to act as executives or managers in any commercial company to which the IFI has paid, or received from, payments of material size, or one of its subsidiaries during the current or previous fiscal year.

و. أن لا يملك عضو لجنة الرقابة الشرعية الداخلية أو قرينته من الدرجة الأولى أو الثانية حصة يكون بها شريكا، بما يعادل 5% أو أكثر، أو مسؤولًا تنفيذياً أو مديراً في أي شركة تجارية دفعت لها أو قبضت منها المؤسسة المالية الإسلامية أو إحدى شركاتها التابعة دفعات هامة في السنة المالية الجارية أو المنتهية.

f. The entitlement to ISSC allowances should not be conditional on achieving certain results, or linking it to the results

وي. لا يجوز أن يكون استحقاق أعضاء لجنة الرقابة الشرعية الداخلية مكافأتهم مشروطاً بتحقيق نتائج معينة، أو ربط المكافآت بنتائج
of the services provided by the ISSC (conditional remuneration).

The foregoing cases are examples of ISSC members’ independence. In case the IFI desires to treat ISSC members independent despite the existence of one or more of the above relationships, it must transparently disclose those instances and bear the responsibility for clarifying the reason for considering such members independent.

In case of inevitable conflict of interest, member of the ISSC must notify the IFI management thereof in writing. He must also disclose any conflict of interest cases related to his family members or business partners or companies he has interest in. Also in cases where conflict of interest is related to a third party, he has to refrain from participating in the decision. In case of reporting conflict of interests, this must be recorded.

The IFI must immediately notify the central bank if it become aware of any material information that may negatively affect the independence of any ISSC member.

Confidentiality

Member of the ISSC must not disclose Confidential Information of the IFI...
unless such disclosure is required by law or by the Central Bank.

Consistency

8.14 The ISSC members should try to achieve agreement related to fatwas and resolutions, to the extent possible. ISSC shall not resort to majority vote unless members are unable to reach agreement within a reasonable period.

Article (9)

Internal Shari’ah Controls

9.1 The IFI must establish effective internal Shari’ah controls comprising of three lines of defense approach that are independent from each other, which includes:
- The first line of defense, represented by the business line, which should set clear policies, procedures, and controls, approved by ISSC, and execute the business activities in a manner compliant with Islamic Shari’ah at all times,
- The second line of defense, represented by the internal Shari’ah control division or department, which undertakes the functions prescribed in the Article 10, and it should not be organizationally part of any business division or reporting to it,
- The third line of defense represented by internal Shari’ah audit division or department, which undertakes Shari’ah audit and monitors compliance, and it

المادة (9)

الرقابة الشرعية الداخلية

1.9 يجب أن يكون لدى المؤسسة المالية الإسلامية رقابة شرعية داخلية فعالة تراعي منهج خطوط الدفاع الثلاثة مستقلة عن بعضها، وهي تشمل:
- خط الدفاع الأول وهو خط الأعمال الذي يجب أن يضع إجراءات ولوائح وضوابط واضحة، تعتمد من لجنة الرقابة الشرعية الداخلية، من أجل تنفيذ الأعمال بطريقة تلتزم بالشريعة الإسلامية في جميع الأوقات،
- خط الدفاع الثاني المتمثل في إدارة أو قسم الرقابة الشرعية الداخلية، والذي يتولى الوظائف المنصوص عليها في المادة رقم 10 ولا يكون جزءا من أي قسم مسؤول عن الأعمال أو تابعا له،
- خط الدفاع الثالث المتمثل في إدارة أو قسم التدقيق الشرعي الداخلي الذي يتولى التدقيق الشرعي ومراقبة الامتثال ولا يكون جزءا من قسم مسؤول عن الأعمال أو تابعا له.
should not be organizationally part of any business division or reporting to it.

9.2 The IFI must provide sufficient financial and human resources that suit the size and nature of IFI’s activities so that internal Shari’ah control section and internal Shari’ah audit section can carry their work effectively and efficiently, in consultation with the ISSC.

9.3 The internal Shari’ah control division or section and internal Shari’ah audit division or section perform two different tasks, and must stay separate from each other in terms of reporting and human resources in accordance with the three lines of defense approach.

Article (10)

Internal Shari’ah Control Division or Section

10.1 This division or section supports the ISSC in its duties. It is comprised of the number of employees of the size that is commensurate with the size and nature of the IFI operations. The ISSC shall supervise the work of this division or section from the technical perspective.

10.2 The IFI should appoint a head for internal Shari’ah control division or section, who shall report to the Board. The head for internal Shari’ah control division or section must:

a. be a Muslim.
b. have a university degree in Islamic Shari’ah, or relevant specializations,

ج. حاصلًا على مؤهل جامعي في الشريعة الإسلامية أو في التخصصات ذات العلاقة مثيل

c. have a professional certificate in Shari’ah and Islamic Banking Control from one of the organizations that supports Islamic Finance like the Accounting and Auditing Organization for IFIs (AAOIFI) and the General Council for Islamic Banks And Financial Institutions (CIBAFI),

د. حاصلًا على شهادة مهنية في مجال الرقابة الشرعية والمصرفية الإسلامية من إحدى المنظمات الداعمة للمالية الإسلامية مثل هيئة المحاسبة والراجعة للمؤسسات المالية الإسلامية (أيوفي) أو المجلس العام للبنوك والمؤسسات المالية الإسلامية (سيبافي)،

d. have an experience of 10 years (at least), as a minimum, in the field of Shari’ah Supervision,

ه. لديه خبرة لا تقل عن عشر سنوات (على الأقل) في مجال الرقابة الشرعية،

e. not have been sentenced by a court in crimes related to honor or honesty, or was convicted of offences and sentenced to imprisonment,

ه. أن لا يكون قد صدر في حقه حكم قضائي في جريمة مخلة بالشرف أو الأمانة أو تم إدانته بعقوبة مقيدة للحرية،

f. have strong command of English and reasonable command of Arabic.

و. أن يكون متقنًا للغة الإنجليزية ولديه معرفة جيدة باللغة العربية.

10.3 The internal Shari’ah control division or section should not issue fatwas or resolutions. Instead, the internal Shari’ah control division should refer back to ISSC in all matters that it considers and all tasks it carries out, unless there were fatwas or resolutions issued for the matters before.

لا تصدر إدارة أو قسم الرقابة الشرعية الداخلية فتاوى أو قرارات بل ترجع إلى لجنة الرقابة الشرعية الداخلية في كل الأمور التي تنظر فيها والمهام التي تقوم بها إلا أن يكون قد صدر بها فتاوى أو قرارات من قبل.

10.4 In matters related to promotions, bonus, performance assessment, and removal,

لا يخضع رئيس وموظفو إدارة أو قسم الرقابة الشرعية الداخلية في ترقياتهم
the internal Shari’ah control division or section head and staff shall not report to the senior management, but to the Board or its committees in consultation with the ISSC.

10.5 Internal Shari’ah control division or section staff shall not assume any executive powers or responsibilities related to the businesses and activities that may be monitored by themselves.

10.6 The internal Shari’ah control division or section shall assume the following functions:

a. **ISSC Secretariat Function**: undertakes the following:
   - preparing, and organizing the meetings of the ISSC,
   - preparing and drafting the minutes of the meetings,
   - communicating the resolutions to the internal Shari’ah control division and internal Shari’ah audit division in addition to other divisions and sections of the IFI,
   - following up with resolution implementation as per the follow-up list required by ISSC,
   - filing fatwas and resolutions, and
   - follow-up administrative matters related to ISSC.

b. **Shari’ah Consultations Function**: provides consultation based on the ISSC’s fatwas and resolutions in regards to:

5.10 ويكون لموظفية إدارة أو قسم الرقابة الشرعية الداخلية أي صلاحيات أو مسؤوليات تنفيذية تجاو الأعمال والأنشطة التي يقومون بمراعاتها.

6.10 تولى إدارة أو قسم الرقابة الشرعية الداخلية الوظائف الآتية:

أ. - وظيفة أمانة سر لجنة الرقابة الشرعية الداخلية: وتقوم بالآتي:
   - الإعداد لاجتماعات لجنة الرقابة الشرعية الداخلية وتنظيمها،
   - إعداد المحاضر وصياغتها،
   - وتبليغ قرارات لجنة الرقابة الشرعية الداخلية لقسم الرقابة الشرعية الداخلية وباقي أقسام وإدارات المؤسسة المالية الإسلامية,
   - ومتابعة تنفيذ القرارات حسب جدول المتابعتات التي تطلبا لجنة الرقابة الشرعية الداخلية،
   - حفظ وأرشة الفتاوى والقرارات،
   - ومتابعة الأمور الإدارية الخاصة بلجنة الرقابة الشرعية الداخلية.

ب. وظيفة الاستشارات الشرعية: وتقوم بتقديم الاستشارات استنادا إلى فتاوى وقرارات لجنة الرقابة الشرعية الداخلية فيما يخص:
contracts and documents and other aspects related to the IFI’s financial products and services, including products manual, policies, internal procedures,
- IFI’s Shari’ah related inquiries and issues,
- Promotional / advertising materials and publications,
- Customers complaints (related to the compliance with Islamic Shari’ah), and
- other Shari’ah issues faced by the IFI especially the ones related to structuring and products.

The IFI must ensure that persons tasked with this function must have high Shari’ah expertise and qualifications, and must be familiar with Islamic financial products, IT systems, and internal procedures.

c. **Shari’ah Research & Development Function**: undertakes the following:
- conducting researches for related Shari’ah and procedural issues requested by ISSC,
- contributing, with other relevant sections in the IFI, to the development of products and formulation of policies, procedures, contracts, and
- other areas of development in IFIs.

وفيجب أن تحرص المؤسسة المالية الإسلامية على أن يتولى هذه الوظيفة من لديه خبرة وكفاءة شرعية عالية وإطلاع على المنتجات المالية الإسلامية والأنظمة الألية والإجراءات الداخلية.

ج. **وظيفة البحث والتطوير الشرعي**: تقوم بالآتي:
- إجراء البحوث لمسائل الشرعية والإجرائية ذات العلاقة التي تطلبها لجنة الرقابة الشرعية الداخلية،
- المساعدة مع الإدارات الأخرى ذات العلاقة في المؤسسة المالية الإسلامية في تطوير المنتجات وصياغة السياسات والإجراءات والعقود،
- وغيرها من مجالات التطوير في المؤسسة المالية الإسلامية.
d. **Shari’ah Compliance Function**: is responsible to continuously monitor compliance of IFI’s businesses and activities with resolutions, fatwas, regulations, standards, which are issued by the HSA.

The Shari’ah compliance function must not be outsourced to external entities.

The Shari’ah compliance report must be submitted to the ISSC to look at the technical Shari’ah related matters prior to submitting the same to the chief executive officer. The Shari’ah compliance must have a right of direct access to the Board.

The work of the Shari’ah compliance function must be integrated within the overall compliance function of the IFI. It must have a dotted reporting line to the head of compliance of the IFI to submit reports regarding the compliance with Islamic Shari’ah.

e. **Shari’ah Training Function**: conducts training for IFI’s staff on those aspects of their duties related to IFI’s compliance with Islamic Shari’ah. This function also provides adequate trainings for the staff on what they need to be equipped with information and skills, depending on nature of work of each employee, to ascertain that the IFI
The internal Shari’ah audit division or section undertakes Shari’ah audit and monitors IFI’s compliance with Islamic Shari’ah. This is conducted through an annual plan to collect and assess evidence of IFI’s activities and transactions to ensure their compliance with Islamic Shari’ah and ensure the adequacy of internal procedures and Shari’ah governance frameworks.

The Board should appoint a Shari’ah controller to serve as head for internal Shari’ah audit division or section. The head for internal Shari’ah audit division or section must:

a. be Muslim,
b. have a university degree in Islamic Shari’ah, or relevant specializations,
c. have a professional certificate in Shari’ah and Islamic Banking Audit from one of the organizations that support Islamic Finance like the Accounting and Auditing Organization for IFIs (AAOIFI) and the General Council for Islamic Banks And Financial Institutions (CIBAFI). It is also preferable to have a professional certificate in the Shari’ah and Islamic Banking Audit from one of the organizations that support Islamic Finance like the Accounting and Auditing Organization for IFIs (AAOIFI) and the General Council for Islamic Banks And Financial Institutions (CIBAFI). It is also preferable to have a professional certificate in
auditing issued by an international organization,
d. have an experience of 10 years (at least), as a minimum, in the field of Shari’ah audit,
e. not have been sentenced by a court in crimes related to honor or honesty, or sentenced by imprisonment, and
f. have strong command of English and reasonable commend of Arabic.

11.3 The head of internal Shari’ah audit division or department shall report to the Board. The head of internal Shari’ah audit division or section shall submit the reports to the ISSC for resolutions on Shari’ah matters mentioned in his/her reports. He/She shall then report with the ISSC resolutions to the Board’s audit committee for the implementation of their content and follow-up of their requirements.

11.4 The internal Shari’ah audit division or section submits its reports to the ISSC and to the Board audit committee biannually (at minimum).

11.5 The internal Shari’ah audit division and the internal audit division must coordinate and exchange their findings and reports.

2 The frequency of reports submitted by the internal Shari’ah audit division or section depends on the size and nature of the IFI’s works, which might require submitting more reports.
11.6 In matters related to promotions, bonus, performance assessment, and removal, internal Shari’ah audit division or section head and staff shall not report to the senior management they are auditing, but to the Board, through the audit committee, and in consultation with the ISSC.

11.7 Internal Shari’ah audit division or section staff shall not assume any executive powers or responsibilities related to the businesses, activities, and contracts that may be audited by them.

11.8 Internal Shari’ah audit division or section must carry out its duties in line with specified work procedures.

11.9 The internal Shari’ah auditor must meet the requirements mentioned in (11.2) above, except for the condition of experience; where the internal Shari’ah auditor must have a minimum practical experience of five years in Shari’ah internal audit.

11.10 Internal Shari’ah audit division or section shall carry out the following duties:

a. Development of internal Shari’ah audit manual, and to undertake review and update of the manual on a regular basis.

b. Prepare the annual Shari’ah audit plan, which must be approved by the ISSC in coordination with the audit committee.
while upholding the best practices in this process (e.g. Risk based Shari’ah Audit).

c. Undertake assessment of businesses and activities of IFI to ensure the IFI’s compliance with Islamic Shari’ah.

d. Assess effectiveness of the internal Shari’ah supervision to ensure that the IFI’s compliance with Islamic Shari’ah.

e. Ensure that the products, services forms, contracts, agreements, activities and transactions execution procedures, and other related matters are approved by ISSC.

f. Ensure the IFI’s branches, its internal and external departments, and affiliates comply with Islamic Shari’ah.

g. Conduct regular field audit to the IFI’s internal and external departments, and branches (if any).

h. Prepare internal audit forms and programs required for conducting inspection, and to verify and documents the sound execution of transactions in light of the ISSC’s fatwas and HSA’s resolutions.

i. Conduct meetings with IFI’s departments and branches to discuss the Shari’ah observations and request
putting in place appropriate measures to prevent recurrences of similar issues, and in cooperation with relevant entities inside the IFI.

j. Prepare a report of the outcomes of the Internal Shari’ah audit.

11.11 The internal Shari’ah audit must not be outsourced to external entities. The internal Shari’ah audit division may be assisted by additional external bodies after the approval of the CBUAE.

Article (12)  
External Shari’ah Audit

12.1 IFI may appoint a specialized external body to conduct external Shari’ah audit.

Article (13)  
Compliance with the standard

13.1 The IFI must set a Shari’ah governance framework in accordance to this standard within 180 days from issuing this standard. The same must be submitted to the CBUAE for approval.

13.2 The IFIs should comply fully with these standard requirements within one year from publishing this standard.
13.3 The Regulatory Development Division of the Central bank shall be the reference for interpretation of the provisions of this standard.

Abdulhamid Saeed Governor

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