Legal Framework Challenges To Enhance Islamic Banking

Practical issues: Bahrain Experience As Case Study

Dr. AbdelGadir Warsama Ghalib
Legal Counsel & Professor of Law, Bahrain

Introduction[1]:

Over the globe, Islamic banking has emerged as one of the most important vivid financial industries... Islamic banking since inception has undergone rapid transformation and growth at a high unprecedented rate giving, that special, banking services and special products labeled with Islamic principles.

As clearly shown in many studies, Islamic banking proved itself as one of the fastest growing industries in many countries all over, even though, it started only in the 1970s by a genuine initiative from certain concerned Muslims, to whom the industry and all concerned are grateful..

The General Secretariat of the Organization of the Islamic Conference (OIC) defines an Islamic bank as a "financial institution whose statutes, rules and procedures expressly state its commitment to the principle of sharia, and the banning of the receipt and payment of interest on any of its operations".

Generally speaking, Islamic banks, is that banking business in which the operations do not involve any element that is not approved by Islam directive rules.

However, Islamic banks perform banking services as conventional banks do, with the major exception that Islamic banks need to do their business in accordance with the rules and principles of Islam as appropriately approved by concerned Sharia scholars and advisors. Strict Sharia principles are to be strictly followed, all through.

A cornerstone rule in Islamic banking is based on interest free banking which conforms to sharia divine rules that prohibit interest on all types of banking activities.

We could easily say that, the principle of interest free banking is the "DNA" of Islamic banking. (At an early time, one of the Governors of The Bank of England said

[1] اجتماع الطاولة المستديرة "تحديات الاطار القانوني لتطوير الصيرفة الاسلامية – دراسات عملية – تجربة مملكة البحرين"

that, what is called Islamic Banking is not banking per se as it is free from interest. Thus, it is nor banking from his own perspective).

As we know, at present Islamic Banks are licensed to undertake Islamic Banking activities in the heart of London… You can see, Abu Dhabi Islamic Bank standing facing Harrods Stores. This undoubtedly gives, Islamic Banking an international recognition, if not admiration…

Bahrain: Islamic banking

The Kingdom of Bahrain accommodates many banks from all the world, as well as, banking institutions and prominent organizations. This puts Bahrain as one of the leading places and active hubs that provide up-to-date banking services including Islamic banking with different and diversified Islamic banking products.

There are many Islamic banking institutions, representing piece-of-art industry, operating around the clock in Bahrain serving all the community in many mega projects.

Islamic banks in Bahrain are established and are moving forward to fulfill their genuine objectives and likewise take their presumed active role in the banking sector in Bahrain. However, as the case with any industry and activity, they are not free from the imminent risks and great diversified challenges that are generally facing the Islamic banking sector operations. This is the status quo, in Bahrain and other places.

This matter includes, inter alia, the legal challenges that could hamper or stand in the face of enhancing the development of Islamic banking. Basically, we have to admit that, risk(s) is around in every step and in every industry or venture. However, we have to identify such risks, so as to control them or even to mitigate them, if, and whenever possible.

In the process and pursuit of applying the concepts of Islamic banking, practical problems are apparent. Such problems are to be identified. Here comes, among other things, a legal risk and practical obstacle that we find in the role or effect of applying the English Law or the common law principles under the jurisdiction of English courts i.e. the choice of applying the English law as the governing law on Islamic banks contracts. It’s a major risk.

Ironically, if we could say, this point started from here in Bahrain. As a reference, we quote the famous precedent legal case of:

Shamil Bank of Bahrain V Beximco Pharmaceuticals Ltd

In this case, skipping detailed facts, The Court of Appeal held that Sharia principles did not apply on the subject-matter contract and that the financing scheme, and its related issues, was enforceable based on the English Law that is governing the contract.

Herein, Shamil Bank agreed to finance the Borrowers in the form of Murabaha. The Murabaha agreements are for the sale of goods whereby the seller (Bank) agrees to purchase in its own name, the goods that are specified by the buyer and sells them to the buyer on a deferred payment basis, payable in installments. The difference between the original price and the deferred price is to be taken by the Bank.

In this respect, The Murabaha agreements provides as follows:

(Subject to the principles of the Glorious Sharia, this agreement shall be governed by and construed in accordance with the laws of England).

The question of the borrower was whether on a true construction of the governing law clause, the finance agreements were enforceable only if they were valid and enforceable both in accordance with the principles of Sharia and in accordance with English law. The borrower also argued that the effect of the governing law clause was to select English law as the governing law but at the same time stipulating a condition that the contract would be enforceable only if consistent with the principles of Sharia.

While the Borrowers acknowledged that the application of Sharia gave rise to disputes between different jurists as to the content of Sharia itself, they argued that it was uncontroversial that Sharia prohibited interest to be applied on loans. As a consequence, they said, these Murabaha agreements were invalid and unenforceable because they were in truth disguised loans charging an interest…

The High Court and The Court of Appeal gave judgment favorable to the bank, concluding that the principles of Sharia did not apply to the agreements, principally because that had not been the parties intention.

The Court reasoning stated that, ... reference to the "Glorious Sharia" in the governing law clause was merely intended to reflect the Islamic religious principles according to which the Bank held itself out as doing business. It was not a system of law designed to trump the application of English law as the governing law.

It is widely accepted that there could not be two separate systems of law governing a contract. The Rome Convention provided that a contract shall be governed by "the law chosen by the parties" and the reference to a choice of law was to the law of a

country, not to a non-national system of law such as Sharia. Although it was perfectly open to the parties to a contract to incorporate some provisions of a foreign law into an English contract, but where the parties had sufficiently identified specific provisions of a foreign law or an international code or set of rules.

The general reference to principles of Sharia in the governing law clause did not identify those aspects of Sharia which were intended to be incorporated into the contract. It was insufficient for the Borrowers to contend that the basic rules of Sharia applicable in this case were not controversial. Those basic rules were neither identified nor referred to in the contract.

Both sides accepted that there were areas of considerable controversy and difficulty to applying Sharia to matters of finance and banking. Consequently it was "improbable in the extreme, that the parties were truly asking the Courts to get into matters of Islamic religion and orthodoxy."

The fact that there might be general consensus upon the proscription of (Riba) and the essentials of a valid Murabaha agreement did no more than to indicate that if the governing law clause had sufficiently incorporated the principles of Sharia into the agreements, the Borrowers would have been likely to succeed.

The Court also noted that there was no suggestion that the Borrowers had been in any way concerned about the principles of Sharia either at the time the agreements were made or at any time before the proceedings were started.

In the Court opinion, the Sharia defense was "a lawyer's construct." Therefore the Court leant against a construction which would defeat the commercial purpose of the documents.

Therefore:

Due to the fact that the Borrower Sharia defense was found to be a lawyer's construct, the Court's scope to consider the applicability of Sharia was limited. It would have been manifestly unjust for the Borrowers to avoid their liability to the Bank by raising the Sharia defense having previously been indifferent to the form of the agreements or the impact of Sharia on their validity. If the parties had wanted compliance with Sharia to be a condition precedent, they should have said so.

This case was decided on the construction of the governing law clause which incorporated English law and the Court did not need to consider and apply Sharia. However, the Court said that had the relevant Sharia principles been validly incorporated in this case, the borrowers might have succeeded in their application.

Another case:

Islamic Investment Company of Gulf (Bahamas) v. Symphony Gems N. V and Others

A murabaha contract for the sale & purchase of gold and gems. The Deft., failed to repay loan installments in due course and accordingly, the Plaintiff took the case to the English Courts according to the terms of the contract. Before the English Court, the experts explained that the performance of the contract was not in line with Sharia rules. However, irrespective of this the court ruled that the contract is acceptable and enforceable as it is in line with the English Law. The court, irrespective of reference to Sharia rules, only took in consideration the English law as the governing law in the contract.

In the above two cases, almost, the English Courts go in the same direction and gave a ruling based on the English Law (Common Law) irrespective of the Sharia rules provided for in the contract…

Also, there are many other judicial rulings going in the same direction, in many places…

Point of Issue

As clear from above, the point of issue is reference in the contracts signed by Islamic banks, to the choice of applying The English Law (The Common Law), subject to the provisions of Glorious Sharia rules…(… This agreement to be governed and construed in accordance to The English Law…). There is a fragile and tiny string, here, that ties between the Islamic banking and The Common Law of England… A Devine Law, in one hand & a substantive law, at the other hand.

(Subject to the principles of the Glorious Sharia, this agreement shall be governed by and construed in accordance with the laws of England).

What are the repercussions of this clause in the contracts signed by Islamic banks in Bahrain? Or otherwise..

What are the consequences for this provision vis-à-vis Islamic banking in Bahrain? Or otherwise…

Are there any risks that could affect the enhancement, development and growth of Islamic banking? Or otherwise..

What to do so as to overcome the repercussions and associated risks, to successfully pave the way for stable and steady existence of Islamic banking industry in Bahrain.. Or otherwise..

To mention “Sharia” and “Common law” and to tie them together in Islamic banking contracts….. I believe, it would be better to refer to the meaning and basic concepts of both, Sharia & Common law. Reference to such meaning, will undoubtedly, help in giving a general understanding of the concepts derived from them.

Common Law

From Black’s Law Dictionary (Revised 4th Edition):

Common Law: As distinguished from the Roman Law, the modern civil law, the cannon law, and other systems the common law is that body of law and juristic theory which was originated, developed and formulated and is administered in England and has obtained among most of the states and peoples of Anglo-Saxon stock.

As distinguished from law created by the enactment of legislatures, the common law comprises, the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs, and in this sense, particularly the ancient unwritten law of England…

As distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and con not be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority.

Common law:

From Wikipedia, the free encyclopedia

Common law (also known as case law or precedent) is law developed by judges, courts, and similar tribunals, stated in decisions that nominally decide individual cases but that in addition have precedential effect on future cases. Common law is a third branch of law, in contrast to and on equal footing with statutes which are adopted through the legislative process, and regulations which are promulgated by the executive branch. In cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is usually bound to follow the

reasoning used in the prior decision (a principle known as stare decisis). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), and legislative statutes are either silent or ambiguous on the question, judges have the authority and duty to resolve the issue (one party or the other has to win, and on disagreements of law, judges make that decision)..

Resolution of the issue in one case becomes precedent that binds future courts. Stare decisis, the principle that cases should be decided according to consistent principled rules so that similar facts will yield similar results, lies at the heart of all common law systems.

A "common law system" is a legal system that gives great precedential weight to common law. Common law systems originated during the Middle Ages in England, and from there propagated to the colonies of the British Empire. Today, one third of the world's population live in common law jurisdictions or in systems mixed with civil law.

Common law legal systems as opposed to civil law legal systems.

Black's 10th Ed., definition 2, differentiates "common law" jurisdictions and legal systems from "civil law" or "code" jurisdictions. Common law systems place great weight on court decisions, which are considered "law" with the same force of law as statutes—for nearly a millennium, common law courts have had the authority to make law where no legislative statute exists, and statutes mean what courts interpret them to mean.

By contrast, in civil law jurisdictions (the legal tradition that prevails, or is combined with common law, in Europe and most non-Islamic, non-common law countries), courts lack authority to act if there is no statute. Judicial precedent is given less interpretive weight, which means that a judge deciding a given case has more freedom to interpret the text of a statute independently, and less predictably. For example, the Napoleonic code expressly forbade French judges to pronounce general principles of law. The role of providing overarching principles, which in common law jurisdictions is provided in judicial opinions, in civil law jurisdictions is filled by giving greater weight to scholarly literature, as explained below.

As a rule of thumb, common law systems trace their history to England, while civil law systems trace their history through the Napoleonic Code back to the Corpus Juris Civilis of Roman law..

Sharia:

From Wikipedia, the free encyclopedia:

Sharia, Sharia law, or Islamic law (Arabic: شـــريـــعة) is the religious law forming part of the Islamic tradition. It is derived from the religious precepts of Islam, particularly the Quran and the Hadith. In Arabic, the term sharia refers to God's divine law and is contrasted with fiqh, which refers to its scholarly interpretations. The manner of its application in modern times has been a subject of dispute between Muslim traditionalists and reformists.

Traditional theory of Islamic jurisprudence recognizes four sources of sharia: the Quran, sauna (authentic hadith), qiyas (analogical reasoning), and ijma (juridical consensus). Different legal schools—of which the most prominent are Hanafi, Maliki, Shafii, Hanbali and Jafari—developed methodologies for deriving sharia rulings from scriptural sources using a process known as ijtihad.

Traditional jurisprudence distinguishes two principal branches of law, ʿibadat (rituals) and muamalat (social relations), which together comprise a wide range of topics. Its rulings assign actions to one of five categories: mandatory, recommended, permitted, abhorred, and prohibited. Thus, some areas of sharia overlap with the Western notion of law while others correspond more broadly to living life in accordance with God’s will.

Historically, sharia was interpreted by independent jurists (muftis). Their legal opinions (fatwas) were taken into account by ruler-appointed judges who presided over qaḍi courts, and by mazalim courts, which were controlled by the ruler's council and administered criminal law. Ottoman rulers achieved additional control over the legal system by promulgating their own legal code (qanun) and turning muftis into state employees. Non-Muslim (dhimmi) communities had legal autonomy, except in cases of inter-confessional disputes, which fell under jurisdiction of qadi courts.

In the modern era, sharia-based criminal laws were widely replaced by statutes inspired by European models. Judicial procedures and legal education in the Muslim world were likewise brought in line with European practice. While the constitutions of most Muslim-majority states contain references to sharia, its classical rules were largely retained only in personal status (family) laws. Legislative bodies which codified these laws sought to modernize them without abandoning their foundations in traditional jurisprudence.

The Islamic revival of the late 20th century brought along calls by Islamist movements for full implementation of sharia, including reinstatement of hudud corporal punishments, such as stoning. In some cases, this resulted in traditionalist legal reform, while other countries witnessed juridical reinterpretation of sharia advocated by progressive reformers.

The role of sharia has become a contested topic around the world. Attempts to impose it on non-Muslims have caused inter-communal violence in Nigeria and may have contributed to the breakup of Sudan. Some Muslim-minority countries in Asia (such as Israel, Africa and Europe recognize the use of sharia-based family laws for their Muslim populations. There are ongoing debates as to whether sharia is compatible with secular forms of government, human rights, freedom of thought, and women's rights.

Meaning of Islamic bank & Islamic bank activities

After highlighting, the meaning of Sharia, it would be appropriate to give an idea about the meaning of Islamic banks and the activities they perform. No doubt, having a clear concise meaning and definition will help in understanding the matter. A legislation, is needed to give the required meaning.

Uncertainty and ambiguity will be erased.. THIS WILL FACILITATE THE JOB FOR ALL INCLUDING COURTS..

In the last Draft of The model Islamic Banking Law exchanged and discussed between me & Dr. Izz-eldin Khoja, the Secretary General of CIBAFI (at that time), there was an attempt to define Islamic Banks in the draft Model Islamic Banking Law, which provides:

ISLAMIC BANK:

“Is a company licensed to undertake banking activities according to Islamic Sharia rules and principles and any other business or activity as provided in this Law”.

ISLAMIC BANKING ACTIVITIES

“Is the banking activity undertaken on non-interest basis in the area of accepting deposits and other banking services and in the area of credit finance and investment according to Islamic Sharia rules and principles”.

In most countries, we have observed that, there is no standard definition for banks. Where, instead, there is reference to the activities that banks normally undertake and from this to classify the undertaker of such activities as a bank. An entity that, accepts deposits, opens accounts, gives cheques book, gives loans.. is a bank.

However, we believe that, it would be better to have a clear-cut definition for Islamic bank and the activities of Islamic banks. This will help laymen, particularly Sharia illiterate, and likewise will help in mitigating some of the problems Islamic banks are encountering now.

This is one of the practical points to be addressed so as to pave the way for the enhancement, promotion and sustainability of Islamic banking. No body or entity will say, what is Islamic banking ? What is Sharia ???

A law for Islamic banks and Islamic banking activities derived from Sharia glorious divine rules, will address some of the issues raised by The English Courts. What is Sharia law ? What is Islamic banking ?

Absence of a law or regulation, is a practical problem and causes a legal risk. We need to take action. The Model Draft Law, initiated and started by CIBAFI, is needed to fill the vacuum.

THE REASONING, JUSTIFICATION, RATIONAL AND CONTENTS OF THE MODEL DRAFT LAW FOR ISLAMIC BANKING…. WHAT HAS BEEN COVERED IN THE PROPOSED DRAFT… THIS IS A BIG ISSUE… I BELIVE WE NEED SPECIAL ROUND TABLE MEETING FOR THAT…

ADDITIONAL OPTIONS TO FACE THE POINT OF ISSUE:

ARBITRATION

Arbitration, is a very useful alternative for disputes resolution (ADRs)..

We strongly believe that, if we opt for arbitration rather than litigation, this will enable Islamic banks to stay away from English Courts and all judicial courts everywhere. Arbitration is a private court and if chosen, it indicates the will of the contracting parties. The contracting parties can agree on arbitration and by law, in such instance, Courts will have no jurisdiction to look into the dispute as the parties have already by their own free will opted for arbitration for the of settlement of disputes, if any.

Bahrain enacted a new Arbitration Law, of 2015, which adopts the UNCITRAL Model Arbitration Law of 1985. The UNCITRAL Arbitration Law is a very comprehensive legislation putting arbitration as the best available alternative dispute resolution. It's a worldwide respectful legislation that has been applied all over the globe to maintain and pursue justice as agreed by the contracting parties.

All the world is heading now and marching for arbitration to settle all kinds of disputes particularly banking and financial issues. Many prominent international

arbitration centers were established including the LICA in London, the capital of the Common Law.

We have to follow suit.. In Bahrain since we have an up-to-date legislation for arbitration that adopts the international standards, why not to benefit from this very practical opportunity. Why not to skip the litigation process since it may create some risks… Opting to arbitration, if chosen by the contracting parties, is a practical approach.

In BBK, for example, we have included arbitration for settlement of disputes in many contracts.

A clear-cut clause in all Islamic banking contracts, to provide for arbitration (institutional arbitration) will give a very good solution for the risks and challenges that could emerge as a result of litigation before judicial courts.

Dubai Center for Arbitration in Islamic Disputes, is already there. We need to benefit from their presence, expertise and, moreover, to help this Center to grow more and give all support to Islamic banking.

Basically, the arbitration tribunal is to be appointed by the contracting parties. While, before judicial courts no one is given the opportunity to appoint or choose the judge. The arbitrators in such cases are experts in Islamic banking and finance, while, the judge may not be an expert in this field. All appointed arbitrators, have the know-how, expertise and necessary qualifications to look into all Islamic banking disputes.. No one will say, what is Sharia ?? And or, raise other unsubstantiated questions?? The arbitration award is to be given within certain time as mentioned in the arbitration law, whereas, there is no fixed time for litigation.. Litigation is an open-ended process… Many other reasons...

The matter is clear for me to go for arbitration as an alternative for settlement of disputes particularly for Islamic banks, however, more details may require a more detailed special paper… Could be in the near future…

ISLAMIC BANKS CONTRACTS:

As we have noticed in the above mentioned cases, the English Courts intentionally applied the English law (Common Law) on the subject-matter contracts.

This happened, because the contracting parties agreed on the English law as the applicable law and the jurisdiction to English courts. Legally, the contracting parties are free to put the terms they deem fit and appropriate for their contract. Moreover, the English Courts in their judicial dictum, stated that the parties in their contract

didn't give enough guidance to explain or to interpret "the principles of the Glorious Sharia" incorporated in the contract.

In other words, the English Courts, say they are left in dark and they are left in uncertainty, particularly as to the intention of parties when they have inserted the Sharia portion along with the English Law, in the governing law clause...

And, also, the subject-matter contract didn't include necessary details about the Sharia rules and principles.. How, to go around the different schools of fiqh and interpretations..

The contract was silent in this respect and didn't elaborate to show the real intention of the contracting parties. An almost deaf-mute, if we can say and sorry to say, document. This creates a practical problem for Islamic banks & this is why the English Courts were left in no way than to ignore looking into the Sharia portion in the governing law clause.

I am very aware that, many Sharia advisors and Sharia Boards in Islamic banks in Bahrain are not happy in giving the jurisdiction, in the Islamic banking contracts, to substantive law Courts since they are not conversant in Sharia issues.

However, it seems that the intention of the contracting parties is to be respected and taken in consideration. From here, there is reference to English Law or other substantive laws… However, Islamic banks, are to be vigilant..

It is a practical point of issue that is to be taken in consideration, very carefully, for the simple reason of looking to the existence and sustainability of Islamic banking. Otherwise, business will diminish and the Islamic banking industry may be in grave troubles.

STREAMLING ISLAMIC BANKING CONTRACTS

Islamic banking contracts, to be in line with the English court negative observations, are to be more qualified and streamlined to specifically include certain points.

Such as, inserting a provision that, all AAOIFI standards or very specific ones are to be applicable in Islamic banks contracts. AAOIFI standards represent, the Sharia rules accepted by qualified Sharia jurists and experts, and are applied by Islamic banks in their transactions and products.

Moreover, in Bahrain, Islamic banks are obliged to adhere to and follow AAOIFI standards. It's a regulatory rule.

AAOIFI standards represent the codified rules accepted and applied by Islamic banks and they find enough consensus among the industry.

We believe, that reference in Islamic banks contracts to application of AAOIFI standards will streamline and qualify the contracts. The contracting parties will be aware of the application of AAOIFI standards, also, related third parties as Courts or otherwise will be aware of such application and they will be guided accordingly according to the merits of each case.

I have noticed that, some Islamic banks in Bahrain have already included reference to AAOIFI standards, in their contracts. This is a positive action towards meeting and solving the practical issues we face in Islamic banks in Bahrain..

For more precision and positive practical standard, the same rule regarding application of AAOIFI standards, is to be applicable also regarding all standards that are issued or to be issued by CIBAFI, IFSB, IIRA, IICRA……, etc.,.. as and whenever necessary.. This will even give an extra qualification for Islamic banking contracts.

INTEREST WAIVER CLAUSE:

Islamic banks in Bahrain, have adopted steps to control the risks, particularly from the perspective of the risk that may occur in case of applying the English Law as the governing law of the contract.

This is classified, as a legal risk, that may endanger the enhancement and progress of Islamic banks. Risks are possible in every activity, however, certain counter-efforts are required to face or mitigate such risks. A prudent banking industry will have proper risk control measures in place and action, otherwise failure is the result..

Some of the steps taken by Islamic banks in Bahrain include, inter alia, inserting a specific clause in their contracts providing for the waiver of interest. The “interest waiver clause – IWC”, explains that the transaction is purely Islamic transaction and is purely Islamic product.

This ultimately, will lead the concerned parties including courts, if need arises, to interpret the contract as “Islamic contract” i.e. a contract that goes in line with Islamic principles and glorious rules. Here, we could say, inserting this clause will lead to what we may call “Islamization” of the contract.

ISLAMIZATION OF ISLAMIC BANKS CONTRACTS:

In their pursuit to face the practical problems they are encountering in Bahrain, particularly with reference to addressing the risk of applying the English Law in their contracts, some Islamic banks in Bahrain are adopting a methodology that we may call “Islamization of contracts”.

Herein, the contract shall be drafted in a way to show that it is intended to be classified as a legal document that follows Sharia rules \ law. For, example, if the contract is for "ijarah" or "salaam", this Islamic product should be clearly defined. Such definition, if included in the contract, it will help and or guide the court, if any, to interpret the contract in line with the intention of the parties.

CONCLUSION:

Islamic banks in Bahrain, and other places, are facing certain risks and challenges that may affect their existence, promotion and sustain ability. A major issue, comes from applying the English Law (Common Law) as the governing law of the contract and giving jurisdiction to the English courts. There is a risk and practical problem for Islamic banks..

In precedent cases, the English courts applied the English Law on the contract without considering the proviso stating that …."subject to the principles of glorious Sharia"…. The English courts, quoted many reasons including that Sharia principles are not a law per se, not a law of a nation as provided for in Rome Convention, there are different schools of interpretation, the intention of the contracting parties didn't show that they intend to apply Sharia on the subject-matter contract…… etc.

To overcome, such major legal risk, there are many practical legal alternatives to be pursued by Islamic banks including:

- Promulgation of a law to regulate Islamic banks in Bahrain, as the case in other countries.
- Choice of referring the disputes to arbitration, as the best alternative dispute resolution – ADRs. The new Arbitration law of Bahrain 2015, is in line with the UNCITRAL Model arbitration law and this will be accepted by foreign investors due to the international characteristics and features stipulated therein.
- Streamlining and qualifying the Islamic banks contract to be signed with other parties, this is to be achieved, by referring to AAOIFI, CIBAFI,IFSB…., standards in the contracts.
- Other steps including, reference to the "interest Waiver Clause – IWC". This will clearly and explicitly explain that the contract is of Islamic banking nature and to be treated accordingly.
- Another step, is to make all provisions in the contract, clearly stating the Islamic banking \ Sharia rules. In other words, to go for "Islamization" of Islamic banking contracts. This is to be achieved, by reference to Sharia rules

and principles and explaining their necessary details in the contract to be signed with other parties.

This will make, the application and the interpretation of the contract, very easy for all concerned parties. The intention of the parties, that the contract is in line with Sharia rules, will be very clear.

- Another point, that I need to mention for the study purposes, as its application may not be welcomed for different reasons.

It is noticed that, all Islamic banks were incorporated as companies according to the provisions of the current substantive Company laws. In other words, Islamic banks as corporate entities are not incorporated the way companies are incorporated according to Islamic principles\ Sharia rules.

The shareholders in “conventional” or “western” companies are linked to the company by their equity shareholding. All the relation between the company and the shareholder is through the shares he owns. Whereas, this is not the methodology companies are formed according to Islamic principles, herein, the relationship is with the shareholder himself not the shares.

- If, Islamic banks are to be incorporated the same way companies are incorporated in the Sharia principles, they may make real difference between the juristic legal entity of Islamic banks and that of non-Islamic conventional banks.

There is a clear difference, if we opt for the Islamic juristic entity, this will make all concerned parties to deal with Islamic banks as pure Islamic corporate entity. Most probably, no court or others will presume that the intention of the parties does not show that the deal is of Islamic nature and it should be treated and dealt with accordingly i.e. Islamic entity. In practice, it may be difficult or unpractical for existing Islamic banks to change their corporate structure taking in consideration their de facto situation.

Adopting other suggested options may suffice to give the message about the Islamic banking entity.

- As last practical point, we recommend that, a standard model contracts are to be prepared by a special committee, from Sharia and legal experts along with business depts. and executives. Such standard model contracts are to be strictly followed and implemented by all Islamic banks. The draft model contracts, are to take in consideration all risks and challenges facing the Islamic

banking industry and are against the promotion, development and existence of the Islamic banking industry. Let's benefit from our good and bad experience, for good future.

In Bahrain, lately, there is a law for the formation of the Central Unified Sharia Board at CBB. This is a very good step as this Board will have its expertise in streamlining the Islamic banking in Bahrain. This Board, for sure, could help in all matters we have raised, such as the Islamic Banking Law, the Model Contracts for Islamic banks… and others.

We believe also, this Central Sharia Board, could help in training all concerned to achieve stat-of-the-art Islamic banking business that should be respected by all in every corner.

A good budget, should be covered by Islamic banks, as the human source is the asset that will take Islamic banking industry to the sky and beyond.