

**TOWARDS AN ENHANCED SHARIAH GOVERNANCE
FRAMEWORK (SGF) IN MALAYSIA: HOW THE ISLAMIC
FINANCE INDUSTRY IN ALGERIA CAN BENEFIT FROM IT:
ANALYSIS AND FUTURE OUTLOOK**

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استفادة الصناعة المالية الجزائرية منه- دراسة
تحليلية ورؤية استشرافية**

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Abstract:

Bank Negara Malaysia (BNM) has introduced recently a revised a version of Shariah governance framework (SGF) in 2019 to replace the current SGF that was issued in 2010, the new SGF framework will be implemented in 1st April 2020. The new revised SGF was introduced after a decade of practice, where the old SGF has been tested and as result of that a new revised version took place with the objective to close the gaps, improve upon the old version and address the various concerns that have been in discussion in the market in the last 10 years. Currently the Islamic finance industry is busy to address the gaps and comply with the new SGF requirements along with key responsibilities that have been highlighted in the new revised SGF, whether it is related to the board of directors, Shariah board, management, control function or others. This paper discusses the new version of SGF along with the new additional clauses and sections that have been highlighted included in the new SGF 2019, which come into enforcement on 1st April 2020.

Keywords:

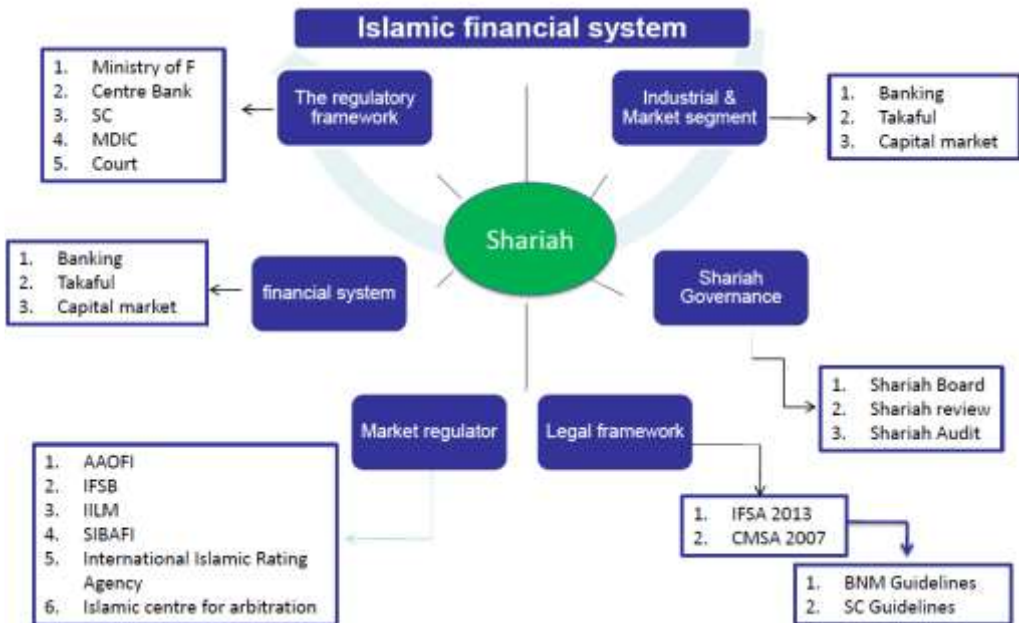
BNM, SAC. SC. Shariah governance, corporate governance, IFI.

1. Introduction

Shariah governance is one of the key components in the structure of the Islamic finance ecosystem. Malaysia was operating within an existing Shariah governance framework that was issued in 2011, and recently in 2019 the Central Bank of Malaysia has issued a new revised version to replace the old one after 10 years of operation in corporate governance. The new version will be enforced on 1st April 2020. The present paper will discuss the new highlights of the new SGF, and try to derive some key take away points for the Islamic finance industry in Algeria and how to benefit from both versions to provide a sound and robust Shariah governance framework in Algeria.

2. The position of the shariah governance in the ecosystem

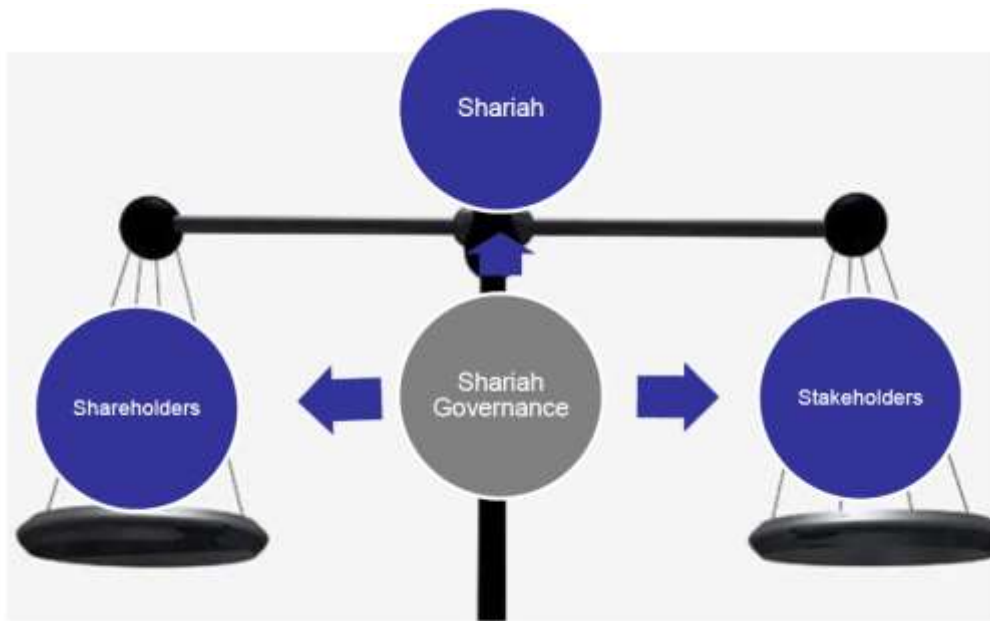
The Shariah governance framework is well position in the ecosystem, it represents one of the key driving components of the Islamic finance industry as described below.



The above chart shows the Shariah governance as significant component that contribute to the overall structure of the ecosystem in Islamic finance. It includes Shariah board, Shariah review and Shariah audit in addition to other components that will be highlighted in this paper.

3. The check and balance in the context of shariah governance

The existence of the Shariah governance provide a new equation in governance framework where the area of interest has changed compare to the conventional corporate governance, in the context of Islamic finance, there are three areas of interest that form the equation of governance within the IFI, where it should be preserved and protected which are as follows: Shariah, shareholders and stakeholder as illustrated in below chart.

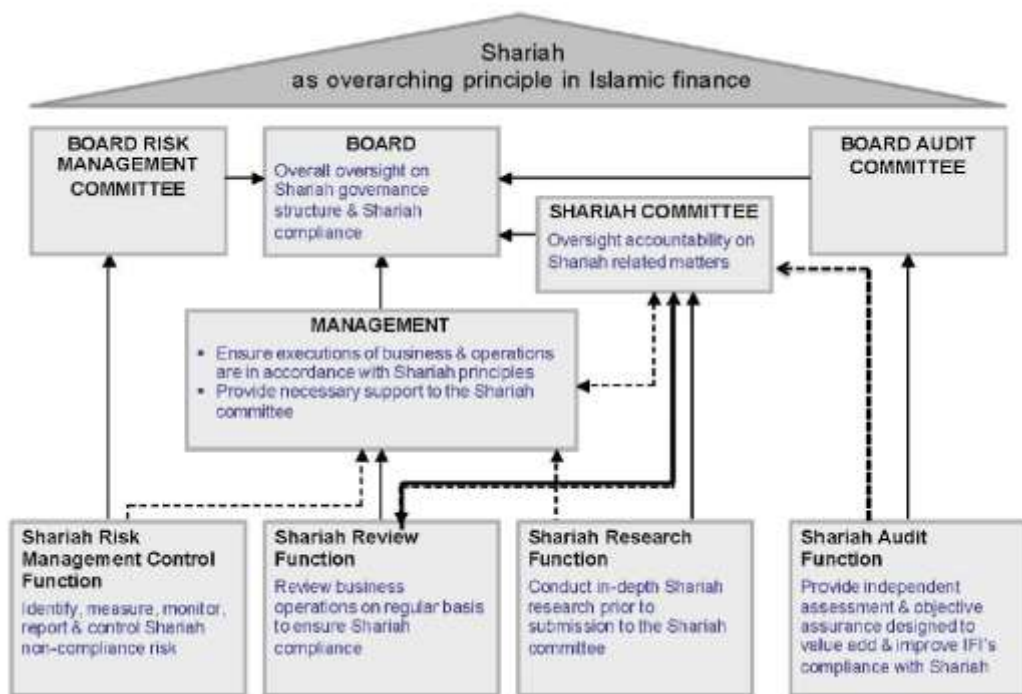


Check and balance

The above chart provides a check and balance equation but from new perspective, that is Shariah perspective, whereby Shariah control and monitor the balance of interest and the nature of relationship between all parties of corporate governance organs based on equity, justice and transparency.

4. The structure of the shariah governance framework

The central bank of Malaysia has provided a Shariah governance framework in 2010 that become a benchmark for the Islamic finance industry in Malaysia and abroad as illustrate below.



The above chart combined all important Shariah corporate governance organs in one single framework and determine the nature of the relationship with each other through accountability, responsibility, transparency and disclosure. The line of reporting and responsibility a regulatory requirement that the IFI must comply with in order to run its operation, to ensure that every key personal has discharge his duty within the guideline provided by the regulator.

5. The new revised shariah governance framework in Malaysia

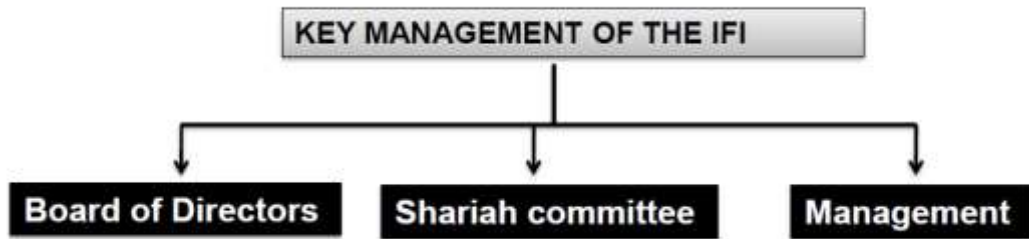
Bank Negara Malaysia (BNM) has introduced a revised version of Shariah governance framework (SGF), to replace the SGF that was issue in 2011, the new SGF framework will be implemented in 1st April 2020.

The new SGF that has been issued by Bank Negara Malaysia (BNM) covered few key sections as follows: PART A OVERVIEW, which covered Applicability, Legal provisions, Effective date, Interpretation, related legal instruments and policy documents and Policy documents superseded. PART B THE BOARD, which covered Key responsibilities and Interaction with the Shariah committee. PART C SHARIAH COMMITTEE which covered Key responsibilities, Shariah committee meetings, Appointment, cessation and disqualification, Composition, and Secretariat to the Shariah committee. PART D SENIOR MANAGEMENT which covered Key responsibilities. PART E CONTROL FUNCTIONS which covered Control functions under Shariah governance, Shariah risk management, Shariah review and Shariah audit. PART F SHARIAH COMPLIANCE CULTURE AND REMUNERATION which covered Shariah compliance culture and Remuneration. PART G TRANSPARENCY AND DISCLOSURES which covered Disclosures by the board and Shariah Committee. There are some key aspects that represent new highlighted in the revised Shariah governance framework. Below, represent the key updated clauses and sections in the new SGF. Only the relevant clauses and key points will be highlighted in the discussion. The objective of the SGF is to provide a sound framework that contribute to the Islamic finance industry. The key features of the new revised version are as follows:

6. The board of directors

6.1. Key responsibilities

Among the important clauses mentioned under this section are as follows: In Part B under the board key responsibility. In clause 8.1. As part of the responsibility the board upon the consultation with the shariah committee shall approve all policies relating the Shariah to ensure that such policies are implemented effectively. On the other hand, it is the responsibility of the management to develop and adopt a holistic culture of shariah compliance within the organization. The board has also the responsibility to oversee the implementation of the SAC ruling and decision, and to oversee the implementation of the internal control framework to prevent any potential shariah non-compliance along with any rectification measures. And also, to oversee the performance of the senior management.



6.2. *Interaction with the Shariah committee*

In the interaction between the board and Shariah committee. The SGF highlighted the following: In clause 9.1. “The board must have due regard to any decisions or advice of the Shariah committee on any Shariah issues relating to the operations, business, affairs or activities of the IFI”. This is in order to have a separation in the responsibilities and functions, where the Shariah matter are still under the scope and purview of Shariah committee but accountability and responsibility wise still with the board from governance stand point.

Hence the BOD should a degree of knowledge and competency in case they want to challenge the decision of the Shariah committee, and it is within their rights and responsibility to understand the Shariah resolutions/ decision and challenge it because they have the final responsibility and accountability on any specific implementation of the Shariah decision issued by the Shariah board. The SGF highlighted that the duty requires “the board to: (a) give sufficient attention to the facts, rationale and basis for any decisions or advice of the Shariah committee before arriving at its own decision. (b) give fair consideration to the implications of implementing any decisions or advice of the Shariah committee. (c) put in place conflict resolution mechanism to deal with any differences in views between the board and the Shariah committee; and (d) maintain a record of deliberations between the board and the Shariah committee in matters where the differences in views exist, and its resolution”. This is clear mandate to appreciate the decision of the Shariah committee through fair implementation, also there is a projection of potential conflict between the Board and Shariah committee where a mechanism to deal with such conflict differences should be in place to ensure proper management of conflict is well managed. Hence the deliberations on those potential matters should be properly recorded and captured to be made as reference point.

It is important that the IFI come up with specific policy or guideline to manage the potential conflict between the BOD and SC of the IFI.

The SGF in 9.3. mentioned that “The board must establish a written policy to identify, assess and manage any conflicts of interest arising from any additional activities or services performed by the Shariah committee member for the IFI, or his other external professional commitments. This shall include policies relating to the involvement of a Shariah committee member in the provision of consultancy services to any clients of the IFI, with or without remuneration”. This clause is a supporting of the previous clause where a policy should be in place as part of the Shariah governance required documents, and to be used and apply upon the event of conflict.

In the clause of 9.6. it is mentioned that “The board must establish a formal process to assess, at minimum annually, performance and effectiveness of the Shariah committee and every Shariah committee member.

The assessment must consider the competence, knowledge and contribution of each Shariah committee member to the overall functioning of the Shariah committee”. This is the annual assessment of the Shariah committee. Similar to other key personal in the IFI, the SC members are also subject to the annual assessment to evaluate their performance in discharging their duties. The assessment will be through self-assessment, peer assessment and management assessment through the Shariah department. The assessment will contribute to the enhancement of the performance of the SC members and also identify the possible gaps within the SC members to put a plan for improvement and enhancement of the knowledge and competency of the SC members, the assessment is also important to the BOD, regulators, and to the chairman as well because he has the responsibility to drive the SC of the IFI and develop the competency of the SC members.

In the clause 9.8. the SGF highlighted “In the event that the board delegates any of its responsibilities to the Shariah committee, the board must: (a) ensure that the mandate, areas of delegated authority and operating procedures are set out clearly in the board and the Shariah committee’s charter.

(b) establish reporting arrangements to be kept informed of the Shariah committee's work, key deliberations and decisions on delegated matters; and (c) remain fully accountable for the decisions and any ensuing implications arising from the delegated responsibility”.

The SGF is clear that the delegation by the Board to the Shariah committee does not release the responsibility from their shoulders. In the context of Shariah governance and regulation the board will remain fully accountable, hence a clear board and Shariah committee charter should be in place in the area of delegated authority.

7. The shariah board/ committee

7.1. Key responsibility

In the Shariah committee section the SGF highlight important clauses. In the clause 10.1. the SGF mentioned that “The Shariah committee must have a charter that sets out the mandate, responsibilities and procedures of the Shariah committee including matters reserved for its decision or advice”. Hence, the charter is important aspect regarding the mandate, responsibility and proceeding, whereas in clause 10.7. “In the event where the Shariah committee decides or advises to place additional restrictions on the operations, business, affairs and activities of the IFI in applying the SAC rulings, the IFI must: (a) document the deliberations and justifications of the Shariah committee decision or advice; (b) ascertain the board's views on the decision or advice made by the Shariah committee with regards to the SAC ruling; and (c) ensure immediate notification to the Bank of such decision or advice”. This is additional measurement to manage the potential conflict between the IFI and the Shariah committee in case the Shariah committee place additional restrictions on the operations and business of the IFI, hence clear justification by the Shariah committee should be provided and proper communication should take place between the Shariah committee, the Board and the BNM, where the views of the board should be ascertained and BNM should be notified.

In clause 10.9. the SGF mentioned that “In the event that the Shariah committee delegates any of its responsibilities to any persons or functions: (a) an IFI must ensure that the mandate, areas of delegated authority and operating procedures are set out clearly in the Shariah committee's charter and IFI's internal policies.

(b) an IFI must establish reporting arrangements to keep the Shariah committee informed of the work, key deliberations and decisions on the delegated matters; and (c) the Shariah committee must remain fully accountable for the decisions and any ensuing implications arising from the delegated responsibility”.

This is in the case where the Shariah committee delegates any of its responsibilities to any Shariah officer such as the head of Shariah department or his deputy, the mandate and delegation should be captured clearly in the charter of the Shariah committee, however in doing that the IFI must establish reporting arrangements to keep the Shariah committee informed, those mandated matters should be presented in the regular Shariah committee meeting for notification and formalization of approval. The Shariah committee has the right to revise the mandate any time, to restrict its scope or expend it, however in all cases the Shariah committee must remain fully accountable for its resolutions and the decisions. In clause 10.11. SGF highlighted “A Shariah committee member must devote sufficient time to prepare for and attend Shariah committee meetings” and in clause 10.14. SGF says: “A Shariah committee member must continuously develop a reasonable understanding of the business and operations of the IFI and keep abreast with relevant market and regulatory developments. The chairman of the Shariah committee must lead efforts to manage the Shariah committee’s developmental plans”. This is part of the commitment of the Shariah committee towards their duty, on the chairman of the Shariah Committee additional requirement was added to put on his shoulder the responsibility to manage the Shariah committee’s developmental plans, because enhancement and development in different areas within the Shariah committee is needed. This development plan should be discussed with the SC members where an appropriate plan should be developed based on the various needs of the SC members with the objective to reach a level of satisfaction and standards that commensurate the level of responsibility upon the Shariah committee.

7.2. Shariah committee meetings

In the clause of 11.1. the SGF addressed the chairman with some additional responsibilities. “The chairman of the Shariah committee, in leading the Shariah committee is responsible for the effective functioning of the Shariah committee.

In fulfilling this role, the chairman of the Shariah committee must: (a) ensure appropriate procedures are in place to govern the Shariah committee's deliberations and proceedings; (b) act as a direct liaison between the board and Shariah committee to foster greater understanding between both organs, (c) ensure that Shariah decisions or advice are made on a sound and well informed basis, including based on a robust decision-making methodology which ensures that all business, operations and risk implications are considered by the Shariah committee; (d) encourage healthy discussion, participation and contribution, and ensure that dissenting views can be freely expressed and discussed; and (e) ensure sufficient records of the discussion leading to formulation of the Shariah committee's decision or advice are maintained". The chairman of the Shariah committee has an important responsibilities to drive the Shariah committee towards efficiency and effectiveness in discharging its duties and responsibilities, such as Proper SOP on Shariah committee's deliberations, co-ordination between the board and Shariah committee, soundness of Shariah resolutions, appropriate process and methodology in Shariah decision making, build culture of discussion and participation, freely expressed views, ensure sufficient and healthy discussion of the various issues during the meeting and the engagement sessions with the Board and management, proactive in initiating new proposal and innovative ideas.

With regards to the decision of Shariah committee, the SGF in clause 11.7. says that "In respect of the quorum for Shariah committee meetings, an IFI must ensure that there is a majority of Shariah qualified members to be present at each meeting". And clause 11.8. "An IFI shall ensure that any decision of the Shariah committee must be made on the basis of simple majority". The decision will be based on the simple majority regardless whether the members are from Shariah background or not. The previous SFG 2010 required that the majority must be from the members who have a Shariah background.

Whereas in clause 11.9. it talked about the conflict of interest it says: "In relation to paragraph 10.13, if a matter to be brought before the Shariah committee gives rise to a conflict of interest to any Shariah committee members, the Shariah committee must excuse himself from the discussion and abstain from voting on that particular matter" hence the Shariah committee members should abstain from making decision or even contributing to the discussion.

The practice is that the concern Shariah committee member will leave the meeting room until the discussion is over, he cannot be part of the discussion, and has no right to vote and it is not recommended to stay in the meeting room. The clause 11.11. highlighted the outsourcing issue, where the SGF says: “An IFI must provide the Shariah committee with access to advice from third party experts on any matters deliberated by the Shariah committee as and when required, and the cost of such advice shall be borne by the IFI”. This clause provides the right to Shariah committee to access to external party advice. And the clause 11.1.2. says: “In relation to paragraphs 11.10 and 11.11, any party with the knowledge or awareness of a Shariah committee’s access to any relevant information or request for third party expert advice being declined, denied or withheld by any officers or employees of the IFI, must inform the board of the situation. The board shall take appropriate action to rectify the situation. For avoidance of doubt, reference to “any party” in this paragraph shall include a Shariah committee member. and clause 11.1.3. says: “While the board or senior management may provide useful insights on any business, technical or operational matters discussed during a Shariah committee meeting, the board and senior management must not exercise undue influence that could hinder the Shariah committee in exercising objective judgment in its deliberations and decision-making”. In the above case scenario independency should be observed and maintained where the board and management must not exercise any influence that may impact the Shariah committee decision in the matters presented. On the other hand, the Shariah committee should be brave enough to express their views freely despite the possible influence or pressure that they might be exposed to from the IFI personal though their work.

In clause 11.14. the SGF highlighted the importance of recording the dissenting views of the Shariah committee, where the SGF says: “An IFI shall ensure that clear and accurate minutes of Shariah committee meetings are maintained to record the decisions or advice of the Shariah committee, including the key deliberations, rationale for each decision or advice made, and any significant concerns and dissenting views”. This clause encourages the deliberation and the health discussion of the Shariah committee, where the Shariah committee can express freely their views and in case there is a diversity in the opinions of the Shariah committee the decision will be based on majority and the minority or whoever has a dissenting view will be recorded.

7.3. *Appointment, cessation and disqualification*

This section is related to the appointment of Shariah committee and their qualification, where in clause 12.2. the SGF highlighted “In determining a Shariah qualified person under paragraph 12.1(c)(i), an IFI must assess whether the person fulfils the following: (a) holds, at minimum, a bachelor’s degree in Shariah, which includes study in *Usul Fiqh* (principles of Islamic jurisprudence) or *Fiqh Muamalat* (Islamic transaction/commercial law); (b) possesses solid knowledge in Shariah with reasonable Islamic finance knowledge and experience of the relevant industry; and (c) demonstrates strong proficiency and knowledge in written and verbal Arabic, with good command in the preferred language of the IFI, either Bahasa Malaysia or English language”. This qualification is required in the Shariah committee, where a combination of Shariah knowledge and finance knowledge are needed to ensure competency in the Shariah committee members and ensure proper understanding of the issue and sound decision or resolution has been issued.

With regards to the clause 12.3. that highlighted the appointment, reappointment and disqualification of Shariah committee, the clause says: “Pursuant to section 33(1)(c) of the IFSA, a person is disqualified from being appointed or reappointed, accepting any appointment or reappointment or holding office as a Shariah committee member of an IFI if: (a) he is an undischarged bankrupt, has suspended payments or has compounded by his creditors whether in or outside Malaysia; (b) a charge for criminal offence relating to dishonesty or fraud under any written law or the law of any country, territory or place outside Malaysia, has been proven against him; or (c) under any law relating to prevention of crime, drug trafficking or immigration: (i) an order for detention, supervision or deportation has been made against him; or (ii) any forms of restriction or supervision by bond or otherwise, has been imposed on him”. New additional points have been added such as under any law relating to prevention of crime, drug trafficking or immigration: an order for detention, supervision or deportation has been made against him; or any forms of restriction or supervision by bond or otherwise, has been imposed on him, these will be regarded as part of the disqualification of the Shariah committee.

In clause 12.5. SGF highlighted the specific tenure of the Shariah committee, where the SGF says: “A Shariah committee member must not serve the same IFI for more than nine (9) years”.

Hence this is the limit that the Shariah committee can serve in any IFI, where after 9 years of service the Shariah committee member will be retired and he may join another IFI for another term of 9 years. With regards to the commitment and time available for Shariah committee service the clause 12.6. highlighted “A Shariah committee member must not have competing time commitments that may impair his ability to discharge his duties effectively. In respect of multiple appointments, a Shariah committee member is required to manage his commitments effectively, observe professional objectivity and confidentiality in carrying out his duties”. This is to ensure that the IFI business and operation is not disturbed. Clause 12.8. in the SGF says: “A Shariah committee member must not be an active politician”. Hence no politician should be involved in Shariah committee membership.

In clause 12.13. SGF mentioned that “An IFI must submit an application in writing to the Bank for the purpose of appointment and reappointment of Shariah committee members and chairman of the Shariah committee at least three (3) months before it expects a proposed candidate to assume his responsibilities. In the case of reappointment, the application must be submitted three (3) months prior to the expiry of the Shariah committee member’s tenure. All applications shall be made using the form enclosed in FI@KijangNet portal”. Hence processing for appointment and re-appointment to BNM should observe the timing process to obtain the approval from BNM on time.

With regard to the assessment of the Shariah committee 12.14. in the SGF highlighted that “An IFI must not make an application to the Bank to appoint or reappoint a Shariah committee member or chairman of the Shariah committee unless the IFI is fully satisfied, based on its objective assessment, that the candidate meets the minimum requirements set out in paragraphs 12.1 to 12.8, can perform his expected roles and responsibilities and will be able to meaningfully contribute to the Shariah committee”. This is a requirement of the proper assessment of the Shariah committee members before coming on board to ensure a proper assessment and due diligence has been conducted to ensure performance and role are performed as expected. To ensure independence in the role of the Shariah committee the clause 12.15. in the SGF highlighted that “For the purpose of the application for reappointment and termination of the Shariah committee members and chairman of the Shariah committee, an IFI must provide justifications for the application, as well as assessment on the performance of such member to the Bank”.

Hence proper justification must be provided by the IFI to BNM on either reappointment or termination of the Shariah committee or the chairman of the Shariah committee, this is to ensure objectivity and sound governance process in the SOP. The clause 12.16. SGF mentioned that “A Shariah committee member whose tenure has expired and is being proposed for reappointment must immediately cease to hold office and act in such capacity, including by participating in any Shariah committee meetings or holding himself out as a Shariah committee member of the IFI”. This is including the existing Shariah committee members in case his tenure is expired, and his reappointment is not yet approved by BNM, he has to cease operation and contributing as a Shariah committee member until his approval as a Shariah committee member is issued by BNM.

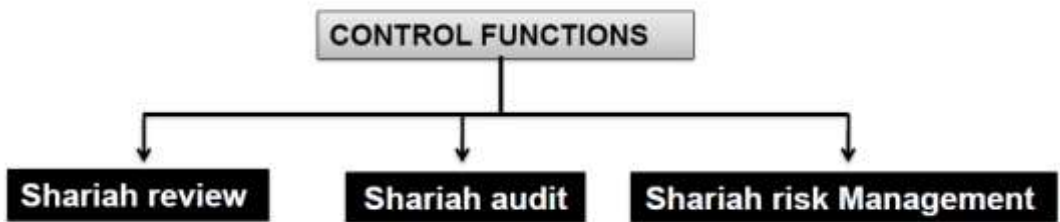
7.4. Secretariat to the Shariah committee

The SGF covered also key points on the secretariat of the Shariah committee, where clause 14.1. highlighted that “An IFI shall appoint a secretariat to serve the Shariah committee. The secretariat has the responsibility to provide operational support for effective functioning of the Shariah committee, which includes (b) performing in-depth research and studies on Shariah issues; (c) providing day-to-day advice to relevant parties within the IFI on Shariah matters based on the rulings of the SAC and decisions or advice of the Shariah committee”. Hence is it highly expected from the secretariat team to give support to the Shariah committee especially in the area of performing in-depth research and studies on Shariah issues pertaining the IFI operation based on the guidance and advise of the Shariah committee, and also to provide daily advice to relevant parties within the IFI on Shariah matters and in case of doubt they have to refer to the Shariah committee for guidance and advise. With regards to ensure adequate time to review the proposal and ensure proper deliberation and discussion and achieve a sound decision pertaining to the proposals and issue submitted to the Shariah committee, the SGF in its clause 14.3. mentioned that “An IFI must give the Shariah committee adequate time to deliberate all Shariah matters. In this regard, the secretariat has the responsibility to plan and coordinate Shariah committee meetings in a manner that promotes sound decision-making by the Shariah committee”.

Hence the secretariat is required to have a proper planning and co-ordination with the management and Shariah committee to ensure adequate time is given to the Shariah committee to ensure sound decision is made. In some practices a gap of one week is needed as closing time or deadline for SC submission before the meeting take place.

8. The control functions

This section is related to the control function, which is one of the very important aspects in ensuring Shariah compliance operation within the IFI.



According to SGF in clause 16.1. it says: “The effective management of Shariah non-compliance risk is largely dependent on: (a) a comprehensive and integrated approach to enterprise-wide risk management, which integrates risks arising from Shariah non-compliances alongside other risks such as credit, market, operational and liquidity; and (b) the effective integration of control functions under Shariah governance and oversight arrangement of the risk management, compliance and internal audit at the entity-level and group-level”. With the comprehensive and integrated approach to enterprise-wide risk management and the effective integration of control functions, the risk management including Shariah non-compliance risk will be effective and efficient. With regards to clause 16.5. SGF it says” “Senior officers undertaking control functions under Shariah governance shall have direct and unimpeded access to the Shariah committee for effective performance of such control functions”. And clause 16.6. “While it is common for the control functions to work closely with individual business units, the control functions must be sufficiently independent of the business lines and must not be involved in revenue generation activities” and clause 16.7.

“The control functions must have access to all business lines that are exposed to Shariah non-compliance risk to perform its functions”. These clauses provided insights on how to undertake the control function and its sufficient independency.

8.1. Shariah Risk Management

Shariah Risk Management is one of the important corporate governance organ in the control function, this aspect has been highlighted in the SGF in clause 17.2. SGF highlights the risk management function, with some minimum features, where the SGF says: “The Shariah risk management function, at minimum, must: (a) integrate Shariah non-compliance risk considerations with enterprise-wide risk management. (b) identify Shariah non-compliance risk exposures in the business operations and activities of the IFI; (c) assess Shariah non-compliance risk and measure the potential impact of the risk exposures to the IFI; (d) establish appropriate risk mitigation measures; (e) monitor Shariah non-compliance risk exposures and effectiveness of the risk mitigation measures; (f) report to the board, Shariah committee and senior management on the Shariah non-compliance risk exposures in relation to paragraph 17.2(b) to (e); and (g) constructively challenge decisions that may give rise to Shariah non-compliance risks”. Among the new important features is the emphasize on the establishment of the appropriate risk mitigation measures; monitor Shariah non-compliance risk exposures and effectiveness of the risk mitigation measures; meanwhile report to the board, Shariah committee and senior management on the Shariah non-compliance risk exposures and challenge decisions that may give rise to Shariah non-compliance risks to ensure soundness on the funding and decision made.

8.2. Shariah review

This section is under the Shariah compliance, where the review function under the control function has been highlighted. According to SGF clause 18.2. “The Shariah review function, at minimum, must: (a) identify, assess and monitor the compliance of the IFI’s business operations and activities with Shariah. (b) report to the board, Shariah committee and senior management regularly on Shariah non-compliance issues and findings; (c) inform and provide updates to the board, Shariah committee and senior management on the latest developments in legal and regulatory requirements in Islamic finance, especially in relation to issuance of the SAC rulings.

(d) ensure adequate training and guidance are provided to the officers of an IFI on relevant Shariah requirements governing the IFI's operations, business, affairs and activities". Hence the Shariah review scope will be looking at: identification, assessment and monitoring of the risk, to ensure the Shariah compliance of the IFI's is preserved and safeguarded, the finding of the Shariah review will be reported to the board, Shariah committee and senior management regularly in order to address those issues because some of them may require rectification or decision by the relevant authority in the IFI. The Shariah review has also another important role that is the role of updating the relevant parties on the latest developments in legal and regulatory requirements in Islamic finance including the SAC rulings; they have also the role of ensuring the adequacy of the training to IFI to ensure the level of knowledge and competency is meeting the industry standards and expectation of the regulators.

With regards to the clause 18.3. "The senior officer principally accountable and responsible for compliance shall be responsible for Shariah review which forms part of the IFI's overall compliance responsibilities in ensuring sound management of compliance risk". And clause 18.4. "An IFI shall ensure that officers who perform the Shariah review function are qualified to undertake compliance function responsibilities and have sound understanding of relevant Shariah requirements applicable to Islamic financial business". And clause 18.5. "Pursuant to paragraph 18.4, officers qualified to perform compliance function responsibilities may include officers with Shariah qualification".

These clauses highlighted the important of the Shariah compliance officer who is responsible for compliance in the IFI the personal of the Shariah compliance should be qualified to undertake compliance function responsibilities, the qualification include as well the Shariah knowledge and qualification. This is to ensure that Shariah compliance is well observed and managed within the IFI.

8.3. Shariah audit

The SGF mentioned the Shariah audit which is very important control function within the IFI. The clause 19.2. highlighted the expected function of Shariah audit and its scope by saying: "The Shariah audit function, at minimum, must: (a) establish an audit methodology to assess the risk profile and vulnerabilities of each auditable area.

(d) communicate results to the board and Shariah committee through an audit report, detailing the audit findings and recommendations for rectification measures, as well as the auditee's responses and action plans". These activities represent the core function of the daily filed work of Shariah audit, where the Shariah audit is required to establish an audit plan supported by sound methodology and approach in order to identify the risk and assess its profile along with its rating and how it may impact the Shariah compliance and finance status in the IFI, it is within the responsibility of the Shariah audit to communicate the finding and the results to the board and Shariah committee through a Shariah audit report, where all the details and finding along with the recommendations will be provided, presented and discussed to in order to address them through the appropriate measurement such as rectification or other measures.

With regard to the clause 19.3. the SGF says: "The senior officer principally accountable and responsible for internal audit shall be responsible for Shariah audit which forms part of the overall internal audit function in an IFI". It emphasized on the accountability and responsibility of the senior officer in charge. Whereas the clause 19.4. focused on the qualification of the Shariah auditor, the clause says: "An IFI must ensure that its internal auditors who perform the Shariah audit function are qualified to perform internal audit and have the requisite knowledge on Shariah requirements applicable to Islamic financial business".

The qualification of the Shariah auditor is important and significant matter to ensure the Shariah audit is performing his duty at the high standards. In the clause 19.5. "The board may appoint any persons to conduct an independent external Shariah audit on the operations, business, affairs and activities of the IFI to provide objective assurance on the effectiveness of Shariah governance implementation within the IFI". This is another measure that might be needed to be performed if needed to ensure Shariah compliance of the IFI.

9. Transparency and disclosures

This section is related to the transparency and disclosures, where few clauses in the SGF have highlighted this concern. Clause 22.5. "For the purposes of paragraph 22.1, the board and Shariah committee shall not disclose any information in the IFI's annual report which is false, misleading, inaccurate or incomplete".; clause 22.6.

“In relation to paragraph 22.1(b), the disclosure must be signed by not less than two (2) Shariah committee members”; clause 22.7. “In relation to paragraph 22.1(b)(ii), an IFI must develop a written policy that is endorsed by the Shariah committee and approved by the board to ensure effective and structured processes are undertaken by the Shariah committee in deriving its opinion on the state of the IFI’s compliance with Shariah”; clause 22.9. “The Shariah committee’s opinion on the state of an IFI’s compliance with Shariah under paragraph 22.1(b)(ii) shall be expressed as follows: (a) nothing has come to the Shariah committee’s attention that causes the Shariah committee to believe that the operations, business, affairs and activities of the IFI involve any material Shariah non-compliances; or (b) the overall operations, business, affairs and activities of the IFI are in compliance with Shariah but it has come to the Shariah committee’s attention that a material Shariah non-compliance event(s) has occurred and has been or in the process of being rectified”. Clause 22.10. “In relation to paragraph 22.9(b), the Shariah committee’s disclosure must include the nature, status and measures undertaken to address the material Shariah non-compliance events reported”. The board and Shariah committee shall not disclose any false information, furthermore the disclosure must be signed by not less than two (2) Shariah committee members. For proper governance the IFI must develop a policy to ensure effective and structured processes and methodology for the Shariah committee in deriving its Shariah opinion and resolutions.

The SGF suggested the that expressed opinions should be as follows: nothing has come to the Shariah committee’s attention that causes the Shariah committee to believe that the operations, business, affairs and activities of the IFI involve any material Shariah non-compliances; or the overall operations, business, affairs and activities of the IFI are in compliance with Shariah but it has come to the Shariah committee’s attention that a material Shariah non-compliance event(s) has occurred and has been or in the process of being rectified.

10. Recommendation for shariah governance framework in Islamic finance industry in Algeria

The from the above discussion and in the context of the Shariah governance framework of Malaysia version 2010 and 2019, we can derive some key points as take away and recommendation to the Islamic finance industry in Algeria, which are as follows:

- Establishment of the Shariah Advisory council at the national level. It could be at the central bank level or sub-council of the Islamic religion council. Where a special scholars and expert in Islamic finance form its membership.
- The council should be initiated by the central bank of Algeria and the mandate could be given to other authority such as the Islamic religion council
- Their resolution will be published to guide the Islamic finance industry
- Their decision will be on the key components that driving the Islamic finance at the national level, the nature of the resolution is Marco level in nature
- Their resolution must be binding
- SOP of this council and term of reference (TOR) should rafted to provide transparency and create consistency in the market
- Among the responsibility of the national council:
 - To create a harmony in the Shariah resolutions
 - Assist the central bank in issuing Shariah governance framework for the Islamic finance industry
 - Assist the central bank in issuing guidelines, Shariah standards and other related regulation pertaining to Islamic finance activities
 - To act as a Shariah advisor for the central bank and other related government agency
- The shariah governance should have the following criteria:
 - Clear structure of the Shariah governance
 - Determination of the main Shariah governance corporate organ in the IFI
 - Clear line of reporting between the different parties in the structure
 - The mode and culture of communication between the different parties
 - The scope responsibility and accountability of each party in the structure
 - The recommended parties that should be captured in the structure are: BOD, Shariah Board, Senior Management, and the Control function.

- For the BOD amount the keys points are: Responsibility, accountability, interaction and communication with the other parties, SOP in case of conflict in decision, policy on the bridge between the BOD and SB.
- For the Shariah board among the key points are: Responsibility, accountability, meeting, appointment, qualification, composition, and secretariat.
- For the Management among the key points are: Responsibility, accountability, and mode of interaction with other parties in the governance structure.
- For the control function which are Risk management, Shariah compliance review and Shariah audit.
- Among the key points are: Responsibility, accountability, interaction with the different parties in the governance structure, line of reporting and escalation, mechanism to ensure independency and transparency, Shariah non-compliance reporting.
- Among the ley highlights in the Shariah governance framework are: independency, transparency, disclosure, and culture of Shariah compliance.

11. Conclusion

The new revised version of the Shariah governance framework of Malaysia, provided additional milestone in the area of corporate governance, it is the third revision in Malaysia that contributed to make the Shariah governance framework well regulated, strong and robust. Other jurisdiction like Algeria should take the opportunity on this advanced infrastructure in corporate governance to start where other ended. Algeria could develop its Shariah governance by benefiting from the Shariah governance framework of Malaysia 2011 and the revised one of 2019 that is going to be implemented on 1st April 2020. Together could represent a sound platform to build an advance Shariah governance framework in Algeria to contribute to the Islamic finance industry in Algeria.

12. References

- Shariah Governance Framework Malaysia, Bank Negara Malaysia. 2019,
- Shariah Governance Framework Malaysia, Bank Negara Malaysia. 2010,