

Session 5

Implementing Shari'ah Governance – awaiting challenges

Dr. Humayon Dar, CEO, BMB Islamic

Introduction

In the wake of growing recognition of a need for regulating Shari'ah advisory services, this session aims at explaining how Shari'ah governance may be implemented at the product, institution, country and global level.

AAOIFI

IFSB

ISRA

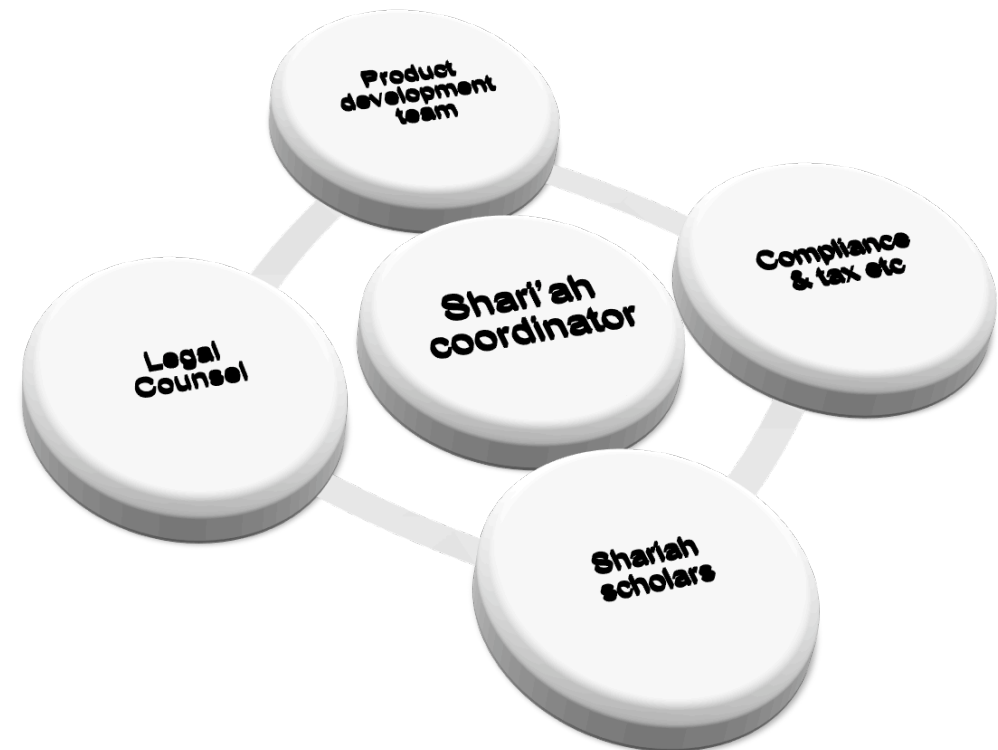
Regulators and authorities

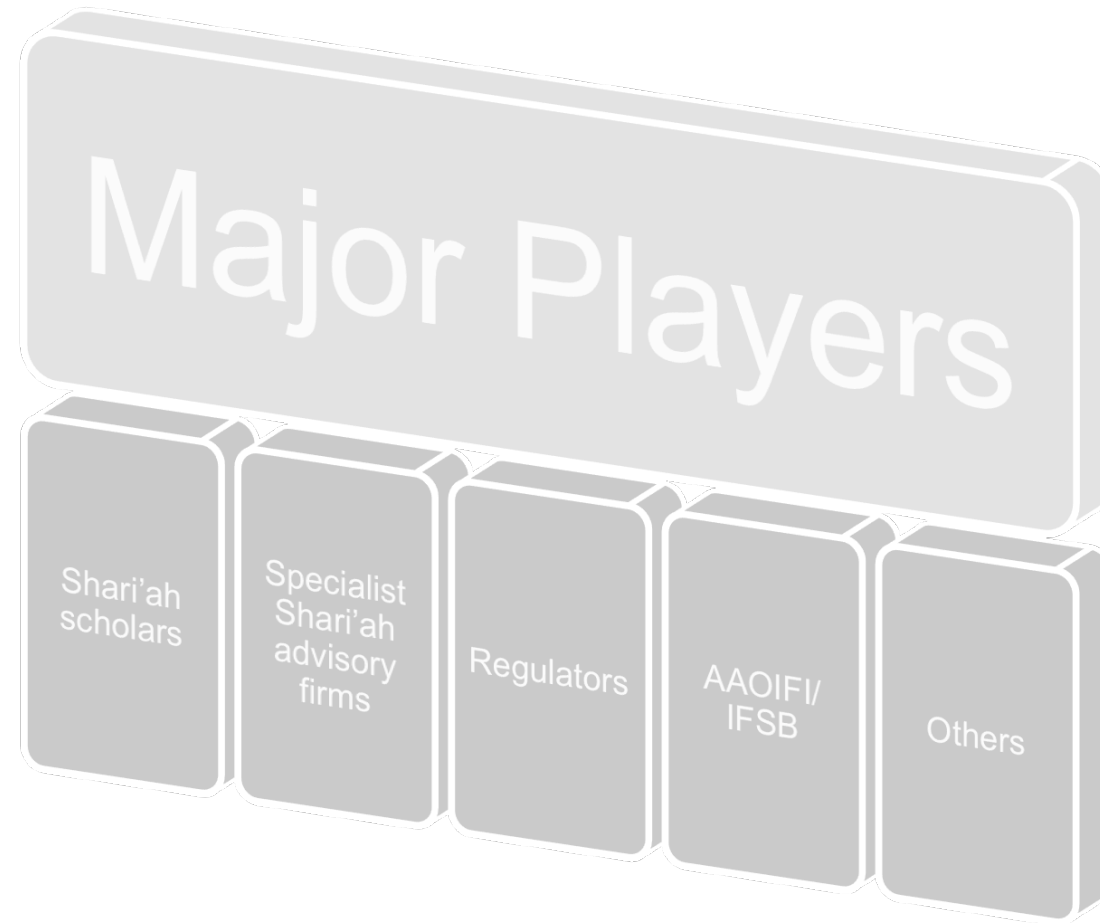
IFSB-3

Principle 3.1: IFS shall have in place an appropriate mechanism for obtaining rulings from *Sharī`ah scholars, applying fatāwā and monitoring Sharī`ah compliance in all aspects of their products, operations and activities.*

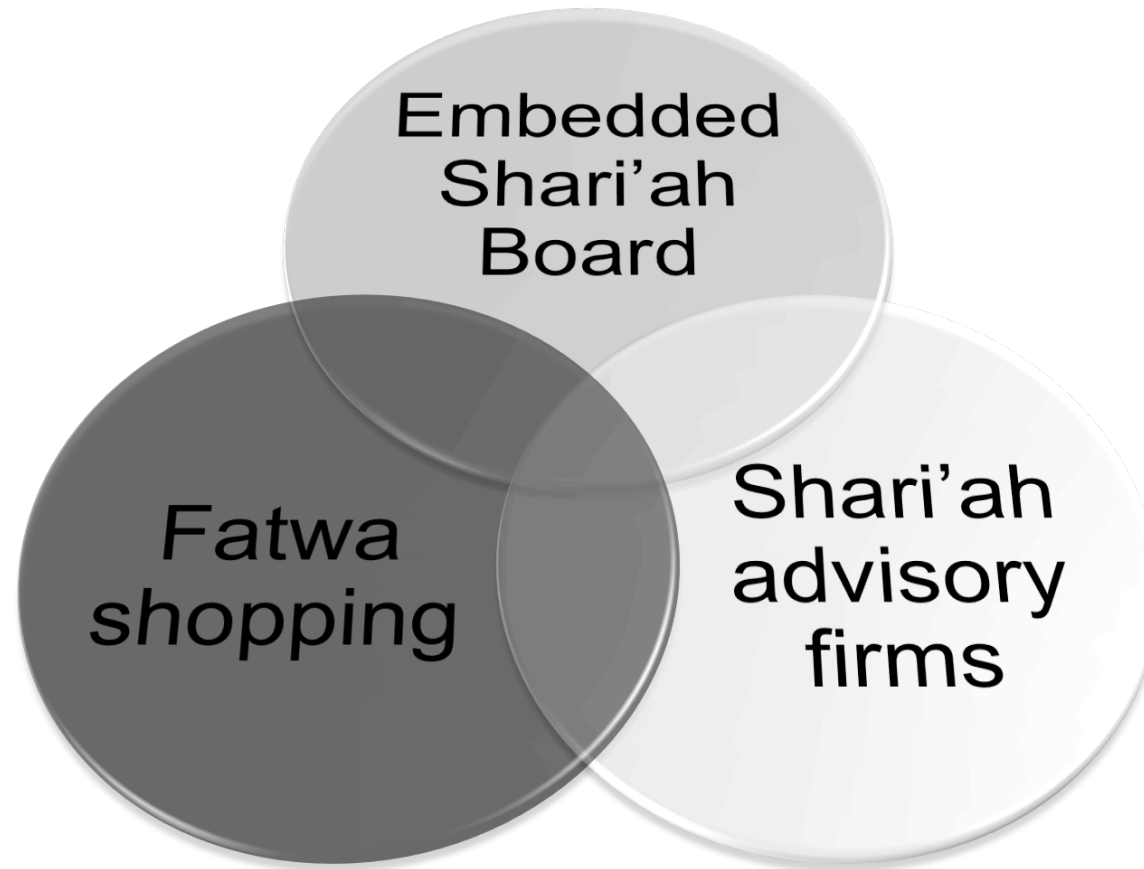
Visualize It!

Shari'ah advisory is a process through which an institution (bank, fund, transaction etc.) seeks to procure a certificate of Shari'ah compliance from a qualified Shari'ah institution or a group of Shari'a scholars on its structures and operations. Such a Shari'ah institution or scholars also monitor Shari'ah performance of the financial institution on an on-going basis.





Models of Shari'ah advisory (Micro)



Embedded Shari'ah Supervisory Board

- Almost all Islamic banks in the world have their own SSB
- May comprise between 1 to 7 members (3 is a common number)
- Most members are “recognized” scholars of matters related with Shari'a
- Distinction between “recognized” and “qualified”
- Serve as external consultants rather than employees

Shari'ah Advisory Firms

- This is about Shari'ah intermediation
- Difference between “Shari'ah intermediation” and “Shari'ah coordination”
- May Shari'ah advisory firms are owned by Shari'ah scholars
- Such firms tend to help in product development
- Not all Shari'ah advisory firms have their own Shari'ah boards

Independent

Owned by scholars

Owned by banks

Owned by multiple institutions

Banks

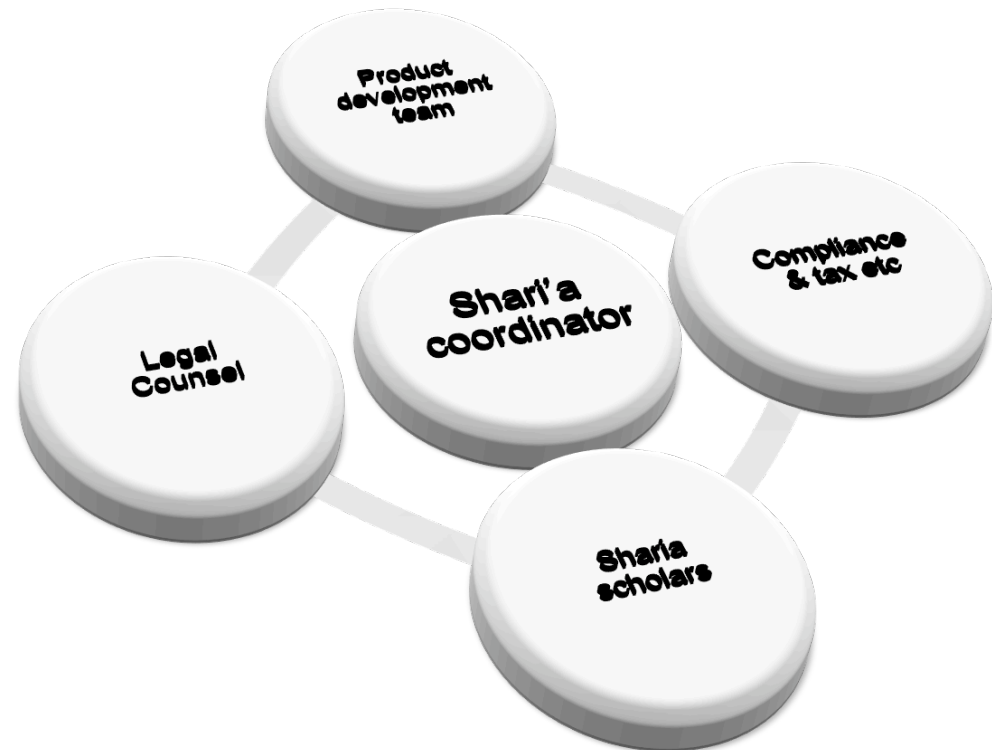
Law firms

Fatwa Shopping

- **Benefit of not having to retain a SSB**
- **Flexible**
- **Non-committal**
- **Preferred by many Western institutions**
- **“Free riders”**

Shari'ah Coordination

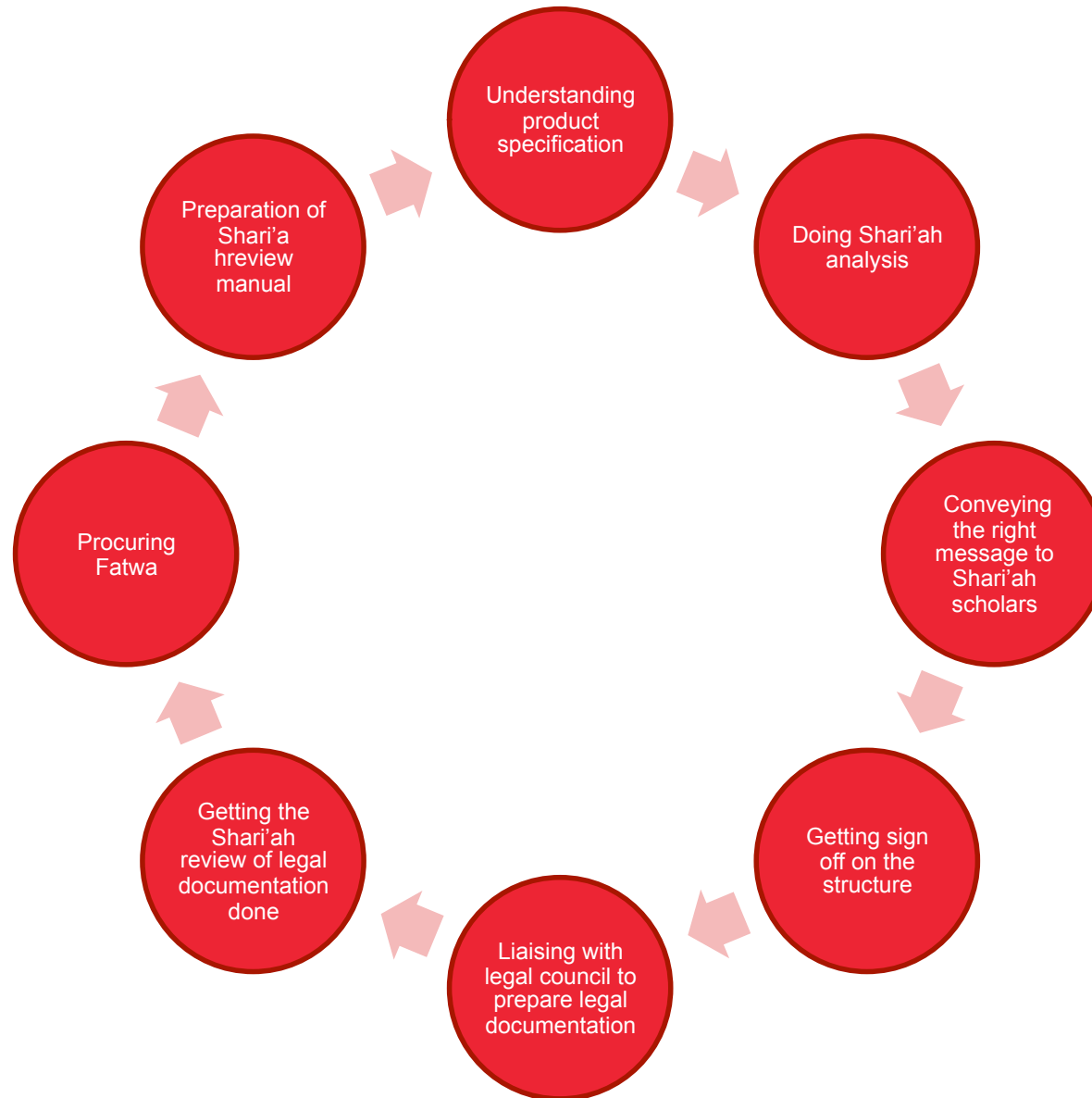
- Irrespective of whatever model a bank or institution may use, Shari'ah coordination remains vital for Fatwa issuance and monitoring
- It is all about managing Shari'ah advisory function
- It involves “remaining in touch” with Shari'ah scholars and conveying them the right message
- It is important to keep record of meetings with Shari'ah scholars individually and of course taking correct minutes of the SSB meetings



Models of Shari'ah Coordination

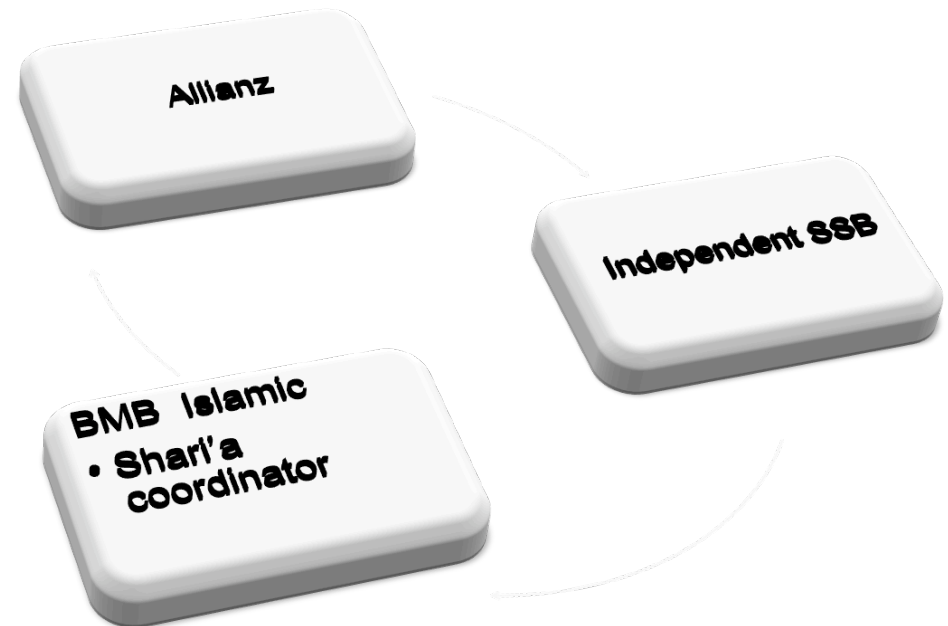
- Secretary of the SSB serves as Shari'ah coordinator
- Internal Shari'ah coordinator
- Shari'ah compliance officer
- Shari'ah coordination department
- External Shari'ah coordination
- Shari'ah advisory firm as external Shari'ah coordinator
- Internal Shari'ah liaison officer





An Innovative Shari'ah Coordination Model

- Allianz Global Investor appointed BMB Islamic as its Shari'a coordinator and monitor
- Allianz also appointed a three-member independent Shari'a Supervisory Board
- While Fatwa is issued by the SSB, BMB Islamic serves as Shari'a monitor
- There is clear specialization and independence of the two roles



Models of Shari'ah Advisory (Macro)

- There are at least three approaches to regulation of Shari'ah advisory services
- Laissez faire
- Central regulation
- Hybrid



Laissez Faire

- **Most of the GCC countries**
- **Institutions must ensure Shari'ah compliance by themselves**
- **Shari'ah compliance is at best a reputational issue**
- **Same is true for UK and other non-Islamic jurisdictions**

Central Regulation

- **Malaysia**
- **Indonesia**
- **Brunei**
- **Guidelines on the Governance of Shari'ah Committee (SC) for the Islamic Financial Institutions**
- **Issued by Bank Negara Malaysia**
- **Applicable to Islamic banks, Takaful companies and Islamic development institutions**



Hybrid

- Pakistan
- **SBP Shari’ah Board has a supervisory role**
- **Instruction & Guidelines for Shari’ah Compliance in IBIs**
- **Issued by State Bank of Pakistan**
- **Applicable to Islamic banks**



Voluntary

- **United Arab Emirates**
- **National Council of the Shari'a Supervisory Committees of Islamic Financial Institutions in the UAE**

Way Forward

- **Shari'ah governance is a national issue (not an international one)**
- **The regulators must play an active role in ensuring Shari'ah compliance**
- **Shari'ah governance regime must be developed on the national level**
- **Case for regulation of Shari'ah advisory services**

Q & A
