

THE ROLE OF THE SHARIAH BOARD IN PROTECTING AND PROMOTING THE STAKEHOLDERS' RIGHTS IN BAHRAIN

Mazin Abdulhameed Dawood Hassan (Corresponding Author),

Ph.D. Candidate, Institute of Policy Studies,

Universiti Brunei Darussalam,

Brunei Darussalam

20H8850@ubd.edu.bn

Mohd Hairul Azrin Haji Besar

Assistant Professor, School of Business and Economics,

Universiti Brunei Darussalam,

Brunei Darussalam

azrin.besar@ubd.edu.bn

Jainatul Halida Jaidin

Senior Assistant Professor, Sultan Hassanul Bolkhiah Institute of Education,

Universiti Brunei Darussalam,

Brunei Darussalam

halida.jaidin@ubd.edu.bn

ABSTRACT

Islamic corporate governance (ICG) is aimed at maintaining Shariah compliance in the Islamic finance industry. Thus, it seeks to achieve the strategic objectives of Shariah, that are maqāṣid al-Shariah. Accordingly, it should protect and promote the stakeholders' rights if these rights are recognized by Shariah. However, the literature on the role of Islamic corporations in protecting and promoting the rights of the stakeholders is not sufficient in contrast to conventional corporate governance (CCG). This paper fills this gap by looking into how far the Shariah board in the Kingdom of Bahrain protects and promotes the rights of the bank, customer, and state with reference to the maqāṣid of Shariah, specifically, the maqāṣid of wealth as well as the laws of the Kingdom of Bahrain. After the discussion, it can be concluded that the Shariah board in the Kingdom of Bahrain significantly protects and promotes the financial rights of the

bank, the customer, and the state but it failed in some aspects of law and maqāṣid of Shariah specifically the circulation, and specification of wealth under the wealth maqṣad.

Keywords: *Shariah board, rights, Islamic bank, customer, state, maqāṣid of wealth, Bahrain*

INTRODUCTION

The Bahraini corporate governance seeks to protect the stakeholders' rights in order to enhance investment and enhance companies' value.¹ As far as Islamic corporations are concerned, the protection extends to the stakeholders' right to offer or obtain Shariah-compatible products or services. To ensure this right, the system commands Islamic banks to establish a Shariah Supervisory Board (SSB) consisting of at least three Shariah scholars who are, collectively, responsible for checking the permissibility of the banking products from a Shariah perspective.² SSB works towards guaranteeing the rights of the bank, the customers, and the state to acquire legitimate (*ḥalāl*) property or earnings according to *maqāṣid al-Shariah* (Al-Shaikh, 2019: 10). It also intends to make the contents of the contracts known to the bank and customers (Al-Shaikh, 2019: 8 and 18).

This paper aims to assess the role of SSB in protecting and promoting the stakeholders' rights within the country of Bahrain by benchmarking it with *maqāṣid al-Shariah* specifically wealth *maqṣad* and the Bahraini law. The stakeholders addressed in this discussion include the bank, the customers, and the state. The paper is divided into the following core sections; (i) the role of SSB in protecting and promoting the rights of the bank and the customers before the conclusion of the contract, (ii) the role of SSB in protecting and promoting the rights of the bank and the customers after the conclusion of the contract in deposit and financing products, and (ii) the role of SSB in protecting and promoting the state's rights.

LITERATURE REVIEW

Literature shows that researchers of ICG agree that the ICG takes into account the welfare of the whole Islamic society (Fatima et al., 2019). The Islamic society in the context of an Islamic bank consists of the SB in addition to

¹ Corporate Governance Code, 2010.

² Shariah Governance Module, section 2.1.1.

the BOD, management, shareholders, customers, and regulators (Al-Nasser Mohammed & Muhammed, 2017). According to (Iqbal & Mirakhor, 2004), the relationships between these stakeholders are based on concepts of the right of property and contract. The former principle requires the stakeholders to acquire property through lawful means and not to waste or squander it. It also gives them the right to jointly own it. Under the latter principle, the managers should fulfill their explicit and implicit obligations toward other stakeholders under partnership contracts, namely, *mushārah* (joint partnership) and *mudārah* (dormant partnership) (Besar, 2019).

In addition, (Alnofli, 2021) discussed the general principles that protect and promote the rights of the stakeholders such as *shūra* (consultation), accountability, transparency, and adequate disclosure. But instead of SSB's obligations to stakeholders, these standards place obligations on managers.

When it comes to the SSB, the literature emphasizes how important it is to the stakeholders. The SSB is required to ensure that banking products comply with Shariah for other stakeholders. Hidayat and Al-Khalifa found out that the SBs in Bahrain pledged themselves to Shariah supervisory and advisory roles and that the SSB *fatwas* have a forceful effect as per the AAOIFI governance standards (Hidayat & Al-Khalifa, 2018). In addition, Safian (2018) stressed the importance of the SB in innovating Islamic-compatible products that meet the needs of the modern market.

However, these writers did not investigate how far SB protects and promotes the rights of the key external players while practicing these roles. This is important since the literature indicates that several challenges hinder the Shariah governance effectiveness. These challenges are as follows; first, several SB members in Bahrain serve on numerous SBs which put their independence at risk (Hidayat & Al-Khalifa, 2018). Second, according to (Hasan, 2009) the central SB in Bahrain is not authorized to verify private SBs unless their opinions diverge. Again, this negatively affects their independence (Hamza, 2013). Third, (Samra, 2020) pointed out that customers are not allowed to challenge SB's decisions. Fourth, according to (Rodrigo Magalhães et al., 2013) Unrestricted Investment Account Holders (UIAH) in Bahrain are not allowed to obtain financial information that could jeopardize their interests.

The most relevant work is prepared by (Hassan et al., 2022) which evaluated the role of the SB in protecting and promoting the stakeholders' rights in Brunei Darussalam. Yet, it focuses only on the jurisdiction of Brunei Darussalam and gives no attention to the customers' complaints. This paper digs further into the actual role of the SB in protecting the stakeholders' rights together with the customers' complaints within the jurisdiction of Bahrain.

RESEARCH METHOD

This study uses qualitative content analysis to examine the stakeholders' rights and the SSB's methods of protecting and promoting these rights. Texts from secondary sources are categorized into the rights of the bank and methods protecting and promoting the bank's rights, the rights of the customers and methods protecting and promoting the customer's rights, the rights of the state, and methods protecting and promoting the state's rights.

This study also makes use of doctrinal analysis for understanding the relevant legal rules (Hutchinson and Duncan, 2012). These legal rules are used as a yardstick for benchmarking the role of SB in protecting and promoting the stakeholders' rights. The role of the SB in protecting and promoting the stakeholders' rights is inferred from secondary sources. These secondary sources consist of the resolutions/ *fatwas*, terms and conditions of the banking products, annual reports, and official websites of the Bahrain Islamic Bank (BISB) because it is the leading provider of *Shariah*-compliant in Bahrain (*About BisB | Bahrain Islamic Bank*, n.d.). The legal rules are obtained from legislation and central banks' guidelines. This paper also conducts social media research by looking into customers' complaints posted on the Instagram, Facebook, and YouTube official pages of the BISB within the period from 2016-2022.

Furthermore, this paper makes use of the wealth *maqāṣid* framework according to the view of Ibnu 'Āshūr as a tool for evaluating the role of the SB in protecting and promoting the stakeholders' rights from an Islamic perspective. Ibn 'Āshūr broke the wealth *maqṣad* down into the circulation of wealth, promotion of ownership, specification of wealth, protection of wealth, and legitimate wealth (Ibnu 'Āshūr, 2001: 464).

RESULT AND DISCUSSION

The Role of the Shariah Supervisory Board in Protecting and Promoting the Rights of the Bank and Customer

SSB took different methods for protecting and promoting the rights of the bank and customers. These methods vary with the time of the communication between the two parties and product type as follows.

1. The Role of the Shariah Supervisory Board in Protecting and Promoting the Rights of the Bank and Customer Before the Conclusion of the Contract

SSB strove to make the property exchanged by the bank and customer clear, safe, and legitimate before the conclusion of the contract between the two parties with the hope that their rights are protected and promoted. Particularly, SSB sets the requirements and preferences of the contract. These requirements and preferences are related to the capacity of the parties to the contract, the contents of the contract, and the subject matter of the contract.

Regarding the capacity of the parties to the contract, SSB agreed that only customers who provide the bank with proof of identity, required information, and documents can make a contract with the bank. This enables the bank to know the customer and verify their information which would direct the bank toward securing its property (BISB General Terms and Conditions of Accounts, section 3). In connection with this, the law requires that the offer should be addressed to a definite person so the offeror (bank) can treat the offeree (customer) according to the contract.³ SSB also approved that the minimum age is 21 years for the current account and credit card facility and 15 for the investment saving account in order to protect the customer's property (BISB Terms and Conditions of Current Accounts, section 2; BISB Credit Card Terms and Condition, section 3; BISB Terms and Conditions of Investment Saving Account, section 1).

This makes certain that the customer can fully comprehend the contents of the contract and inhibit imprudent and reckless behavior of infants leading to waste of property. From a legal point of view, generally, a person can enter into a banking contract if he reaches the age of 18. Those who are below this age, and at or above the age of 7, still can make a contract with a right to rescind it at any time before they attain the age of 18 years.⁴ Furthermore, SSB allowed non-*Shariah*-compliant companies to open an account at the bank in order to promote their freedom of contract. On the other hand, it banned them from obtaining funds or renting a property from the bank to block the doors to invalid dealings and illegitimate possession of assets (BISB, 2016: 113 and 145). The law, on the other hand, considers every person capable of making a contract except infants and people with a mental disorder.⁵

As for the contents of the contract, SSB, firstly, prefers it to be in writing and in clear and simple language (Al-Shaikh, 2019: 15). Secondly, it requires

³ Civil Code 2001, article 37.

⁴ Ibid, article 74.

⁵ Ibid, article 71.

the bank to print out account opening terms and conditions for potential customers and give them enough time to read them before the agreement (Al-Shaikh, 2019: 15). According to SSB, the bank should clarify the profit ratio for all types of investment accounts, the administrative fees, credit card limit, and any amendment thereof if any (BISB, 2016: 263 and 388). These measures aim to ensure that the customer fully comprehends them, and, thus, knows what property is to be acquired or delivered to the bank. It is for this reason; that the bank makes the opening account terms and conditions accessible online in both Arabic and English languages. To help the customer understand the implications of the contracts and the banking operations further, SSB in collaboration with the Shariah supervisory department prepared publications on Islamic commercial law, namely *al-mufeed*, and the standards of the banking products (*al-dawabit al-shar'iyah*), and collection of the SSB *fatwas*. These materials are all available online for free. However, some non-Arab speakers had trouble understanding the bank's social media offerings that were published in Arabic.

Some Arabic speakers face the same issue when using online banking services and digital branches because they converse in English. Moreover, one customer failed to obtain information about the features of the bank's credit card and other account, known as Al-Thuraya, and, therefore, he complained about this. The bank considered this and then released the information on the bank's official website at a later time.⁶ Similarly, some advertisements lacked some necessary information which, therefore, misled some customers. For example, one advertisement presenting a food discount did not state that the discount applies to credit cards having particular numbers. Another one displayed a new type of prepaid credit card with a free credit balance of 5 BD but it failed to disclose that the free credit balance is only available to users who have never previously subscribed to a previous credit card.

Another one pointed out a special credit card without stating that the applicants must have a minimum salary of 1500 BD. Another one advised the customers to purchase cars via their credit card without naming the car agencies that accept credit card payments. A further one promised the customers a shopping discount but did not indicate a deadline by which the customer must take advantage of the deal. Thirdly, SSB encourages the parties to call people to witness the contract ceremony especially if the contract is unwritten (BISB, 2016: 382). This helps to prove the property rights of the parties if a dispute arises.

⁶ "VISA | Bahrain Islamic Bank," accessed April 19, 2023, <https://www.bisb.com/en/visa>)

From a legal perspective, these formalities are not required for establishing the contract between the bank and customer except *muḍārabah* and *ijārah muntahiyah bi al-tamlīk* (lease to own contract), but the bank at least should explain the contract and its essential conditions in their offer and should disclose Shariah compliance matters to the public to educate them.⁷

For the subject matter of the contract, SSB sees that in cases where the subject matter requested by the customer in *murābahah* and *ijārah muntahiyah bi al-tamlīk* is initially in the possession of a third party, the bank, and not the customer, should physically or constructively obtain it first from the third party by a purchase contract and, then, register it in its name if possible especially if the subject matter is land before reselling it to the customer (BISB, 2015: 14, 31, and 45). If the customer and the third party had already made a contract to sell the subject matter to the former before the conclusion of the *murābahah* or *ijārah muntahiyah bi al-tamlīk*, the customer and the third party should revoke their contract by a contract of *faskh* (recission) before the customer applies for the *murābahah* or *ijārah muntahiyah bi al-tamlīk* (BISB, 2015: 10 and 31).

The law, however, validates contracts even if the transferor does not possess the subject matter as long as it is capable of existing in the future, and the transferee thoroughly knows it.⁸ SSB also requires the customer to give a written *wa'd* (promise) to buy the requested property, in case of *murābahah*, and *mushārahah mutnāqīshah*, or to lease it in case of *ijārah muntahiyah bi al-tamlīk* together with a price quotation which includes all its essential characteristics of the goods in case of *murābahah* (BISB, 2015: 8 and 9; BISB, 2016: 17, 35, and 44). These measures are aimed at protecting the bank's right to ownership. However, one customer felt discontented with the binding effect of the *wa'd* by reason that trade in Islam is based on trust in Allah and risk and, therefore, ought to be free of assured profit.⁹ From a legal point of view, the customer must fulfill his *wa'ad* as long as the requested property and the price are defined.¹⁰

Where the subject matter is real estate, SSB opined that it must be estimated by an accredited valuer (BISB, 2015: 9, 30, and 44). This is to make certain that the value of the property to be sold or leased equals or is close to the funds to be provided to the customer, and, consequently, avoid *ghubun fāhish* (gross

⁷ Civil Code 2001, articles 69, 459 and 37; Land Lease Act 2014, article 3; Shariah Governance Module, section 6.1.1.

⁸ Civil Code 2001, articles 103, 382 (a), 505.

⁹ “#المراجعة للأمر بالشراء - المفيد - YouTube,” accessed April 13, 2023, <https://www.youtube.com/watch?v=VA7DeEe7eAc&t=124s>

¹⁰ Ibid, article 50.

injustice) against the bank which may render the contract amendable by the bank from a legal perspective.¹¹ On top of that, a bank officer or member of SB should see the property to be resold or leased to the customer in *murābahah* and *ijārah muntahiyah bi al-tamlīk* respectively (BISB, 2015: 30, and 44; BISB, 2016 :335). These measures let the bank know about the property, assure the bank that it exists and that the dealing between the customer and the third party, if any, is genuine, thereby preventing the bank from spending its funds on fake contracts.

As a result, SSB was able to establish a number of requirements for a legitimate, clear, known, visible, and equitable agreement and a guaranteed right to property. However, it failed to guarantee that the contracts are clear, accurate, and thorough and that it prohibits the bank from doing business with non-Shariah-compliant companies in specific situations.

2. The Role of the Shariah Supervisory Board in Protecting and Promoting the Rights of the Bank and Customer After the Conclusion of the Contract

SSB supported various means for protecting and promoting the rights of the bank and customers after the conclusion of the contract. These means depend on the type of the product as follows.

a) The Role of the Shariah Supervisory Board in Protecting and Promoting the Rights of the Bank and Customer in Deposit Products

SSB sought to protect and promote the rights of the bank and customer in deposit products to achieve the Shariah *maqāṣid* of wealth circulation, protection, promotion, and specification. In favor of wealth circulation, SSB allowed the bank and customer to make *qarḍ ḥassan* (free interest loan) for the current account and unrestricted *muḍārabah* (passive partnership contract) for the investment saving account. Both give the bank a free choice to deal with the funds deposited. The former lets the bank make what profit it can and pay back only the principal upon demand while the latter stipulates a right to the return for both parties as agreed (BISB Terms and Conditions of Current Accounts, section 4; BISB Terms and Conditions of Investment Saving Account, section 3). Both contracts are recognized by the law.¹²

¹¹ Ibid, article 99 (a).

¹² Ibid, articles 487, and 453.

Nonetheless, a few criticisms are aimed at the deposit product. One customer complained about not receiving profits after he had broken the deposit fixed term, arguing that this is contrary to Shariah. SSB granted the customers who prematurely withdraw their fixed deposit a right to profit in proportion to the deposit period elapsed (BISB, 2016, p. 270). Yet, it made it clear that any amount of the profit above the anticipated profit shall belong to it and it is entitled to administrative fees for the closure of fixed-term deposit before the maturity date. The same customer went on to fault the bank for renewing the deposit term without his request. Here, SSB clarified that the fixed deposit term is automatically renewed for a similar period unless the accountholder requests not to renew it at least three working days before the maturity date (BISB Investment Deposits Terms and Conditions, section 1).

For the protection and promotion of wealth, SSB accepted some measures to reward the parties for their business and prevent them from losing. In support of the promotion of the bank's rights to wealth specifically, SSB, firstly, gave the bank a right to impose administrative fees in exchange for actual services and facilities such as checkbooks and financial statements, financial costs incurred by the bank, effort exerted by the bank, privileges, and benefits of the deposit product and opening a debit card account and issuing it (BISB, 2016: 403). Secondly, SSB approved the bank's right to impose monthly fees that are specified from time to time on customers whose balance is less than the minimum limit to cover the loss incurred by the bank for serving these accounts (BISB, 2016: 247). However, these fees became a subject of harsh criticism from some customers for not being compatible with Shariah in their opinion, especially in the scenario where the customer has no balance in their account at all. In this regard, SSB outlined that these fees intend to cover the costs of the accounts having less than the minimum cash deposit (BISB, 2016: 247).

In addition, one customer chastised the bank for not giving the customers notice of these fees as the principle of honesty (*amānah*) requires. On this matter, SSB required the bank to inform the customers of these fees and the bank stipulated the bank's right to these fees in the terms and conditions of the current and saving accounts (BISB, 2016: 247; Current Account Terms and Conditions, sections 5; Saving Account Terms and Conditions, section 2.). Despite the bank's stance on these fees, SSB discouraged payment of these fees in the first place and underlined the necessity of embodying an express term stating the payment of these fees or informing the customer about it if the bank desires to impose it (BISB, 2016: 247).

From a legal point of view, these rulings render the bank a paid debtor in *qard hassan* and a paid manager in *muḍārabah*.¹³ SSB also allowed the bank to exercise its legal right to inactivate any account not being deposited and/or withdrawn for one year. This action is necessary to reduce the expected loss. Otherwise, the bank would have to share the loss with the customer.¹⁴

Thirdly, SSB allowed the bank to deduct administrative monthly fees from dormant accounts to recover the loss, but it urges the bank to utilize the remaining balance for an investment project under the *muḍārabah* concept (BISB, 2016: 258). In this way, the customer would also be safe from the cost of the monthly administrative fees and perhaps make a profit out of *muḍārabah* in the interest of the customer. SSB went further to assent to the bank's right to close a bank account and card facility attached for any reason that the bank sees appropriate according to its sole discretion (BISB General Terms and Conditions of Accounts, section D (2)).

Aiming for the protection of the customer's financial rights on the deposit specifically, SSB, firstly, allowed the bank to disclose to the customer their account balance upon their request (BISB, 2016, p. 428. This is to observe the transparency required by the law.¹⁵ Secondly, SSB puts a burden on the bank to reject payment of checks not matching the special specimen of checks that are produced by the bank (BISB Terms and Conditions of Current Accounts, section 11). Thirdly, it considers the money deposited as a preferred debt that must be fulfilled before payment of other obligations in case of liquidation of the bank according to the law (BISB, 2015: 87).¹⁶ Nevertheless, customers' complaints reports show that the bank was involved in a contract breach. It failed to bring back the amount of money transferred to another account upon cancellation of the transfer transaction to the transferor. It also failed to transfer the amount of money to the beneficiary in time upon the customer's instruction (Customer Complaint Report, July- Septemeber 2022).

For the specification of the rights of the customer, SSB permitted the bank to record in the current account all checks, withdrawals, other payment orders, bills, and any draft it receives (BISB Terms and Conditions of Current Accounts, section 12). Accounts kept in writing may work as evidence for the transactions performed against the bank since it is the recorder of these transactions.¹⁷ Yet, a complaint was lodged at the Consumer Protection

¹³ Civil Code 2001, articles 495, and 470.

¹⁴ Ibid, article 217.

¹⁵ Civil Code 2001, article 468.

¹⁶ Commercial Companies 2001, article 341.

¹⁷ Civil Code 2001, article 13.

Association against the bank for not delivering transaction details to the complainer (Customer Complaint Report, January- March 2021).

Consequently, SSB exerted great effort to ensure that the deposit contracts were legal, compatible with Shariah wealth *maqṣad*, valid, observable, equitable, and secured against loss but there are several issues with the practice of these contracts.

b) The Role of the Shariah Supervisory Board in Protecting and Promoting the Rights of the Bank and Customer in Financing Products

Like the deposit products, SSB sought to protect and promote the rights of the bank and customer in financing products to achieve the *Shariah maqāṣid* of circulation, protection, and promotion of wealth.

For the circulation of wealth, SSB liberalized trade between the bank and customers in various forms. These forms include *murābahah* (cost plus profit sale), *mushārahah mutanāqishah* (diminishing partnership), *ijārah muntahiyah bi al-tamlīk* (lease contract that ends up with the transfer of ownership of the leased asset to the lessee), *tawarruq* (monetization), and *al-qarḍ al-ḥassan*. All of them are acknowledged by the law.¹⁸

For *murābahah*, SSB approved some measures protecting the rights of the bank and customer. In defense of the bank's financial rights, SSB, firstly, allowed the bank to obtain a deposit or other kind of guarantee such as surety or mortgage to enable the bank to cover the amount of loss in case the customer defaults (BISB, 2015: 10; BISB, 2016: 15). In the eyes of the law, these guarantees fall under the concepts of *kafāllah*'(surety) and *rahn* (mortgage) respectively.¹⁹ Secondly, SSB entitles the bank to a lien on the bill of lading until the customer signs the agreed second contract of sale and brings it back to the bank (BISB, 2016: 130). This defense is also afforded to the seller by the law.²⁰ Thirdly, SSB obliged the bank to send a representative to witness the delivery of the goods from the original seller to the customer in case it doubts that the customer and the original seller are acting in collusion with each other (BISB, 2016: 94). This is to promote the legal principle of good faith in dealing for the benefit of the bank.²¹

¹⁸ Ibid, articles 381, 453, 487 and 505.

¹⁹ Ibid, articles 742, and 942.

²⁰ Ibid, article 240 (a).

²¹ Ibid, article 129.

For the protection of the customer's ownership right, SSB, first, recognized *khiyār al-sharṭ* (option clause) through which the bank can reject the goods purchased from the original seller within a specific period if the customer wills to change it. This would protect the customer from loss if he were not satisfied with the goods bought by the bank (BISB, 2016, p.105). From a legal standpoint, *khiyār al-sharṭ* is deemed as a *sharṭ fāsikh* (an agreed cause abrogating the contract) suspending the binding force of the contract on the bank.²²

Secondly, SSB requires the bank to issue a Letter of Purchase Order (LPO) containing the detailed characteristics of the goods desired and send it to the original seller to make the first seller aware of the bank's intention as required by the law (BISB, 2015: 12).

Similarly, SSB provided certain measures for the protection of the rights of the bank (the lessee) and the customer (the lessor) in *ijārah muntahiyah bi al-tamlīk*. To secure the bank's right to lease the property to the customer, SSB, first, allowed the bank to obtain a predetermined deposit at the time of the contract and deduct from it a sum of money equal to the loss borne by the bank in case the customer rejects to fulfill his promise to lease the property purchased by the bank (BISB, 2016: 128).

Secondly, SSB consented to a few clauses that safeguarded the bank's rental rights. These clauses include, firstly, the right of the bank to have the property leased and pledged to it and/or ask for any other guarantee as agreed by the parties according to the concept of *rahn*. Secondly, the right of the bank to penalize the customer by paying a certain amount of money or a fixed percentage of the rent in case he defaults provided that the parties have agreed so. However, SSB requires the bank to use the penalty for charity in line with the law which deems any agreement to give a financial benefit to the creditor for delaying the payment of the debt void (Civil Code 2001, article 228 (a)). Nonetheless, one customer still does not agree with this; arguing that the bank should donate from his fund if he wishes, and not from the defaulter's money especially if the latter is insolvent. In defense of the penalty clause, SSB confirmed that the penalty clause is not applied to insolvent customers (BISB, 2016: 356).

Thirdly, the right of the bank to stipulate that if the customer fails to pay the rent on time, the contract will be terminated by itself (BISB, 2016: 149). This stipulation legally comes into force.²³ Fourthly, SSB permitted the bank to

²² Ibid, article 249 (a).

²³ Civil Code 2001, article 141 (a).

force the customer to buy the property for a sum amount that equals the amount of the remaining installments in case he defaults or to grant the bank a right to dispose of the property leased as it deems appropriate with the stipulation that the parties have agreed so on condition that the Land Registration Directorate (LRD) and the courts of Bahrain approve them. However, the law does not provide these measures. It states only the bank's right to claim tenant rent arrears or vacate the property leased.²⁴ On the other hand, nothing guarantees the customer's right to own the property upon the end of *ijārah*. In fact, in some cases, the bank failed to transfer the ownership to the customer in time (Customer Complaint Report, July-September 2022).

On the subject of *mushārah mutanāqīshah*, SSB recognized the rights of both the bank and the customer on the property purchased (BISB, 2016: 235). Thus, it suggested that the property shared should be registered in the name of both the bank and the customer. If this is not legally possible, then the property may be registered in the name of the customer with the bank's right to a mortgage preserved (BISB, 2016: 188). It also SSB reserves the bank's right to change the price of the portions not being purchased because they belong to the bank (BISB, 2015: 42).

To promote the customer's right to ownership, SSB stated that the customer is at liberty to buy all portions of the bank at one time by a sale contract and own the whole property at the sale contract is concluded (BISB, 2016: 43).

On the matter of *tawarruq*, SSB recognized rights and measures to protect or promote the financial rights of the bank and customers. For the promotion of the bank's financial rights, the SSB gave the bank the green light to require the customer to pay administrative fees for opening a *tawarruq* file against the actual costs burdened by the bank and to increase these fees along with the rise in the costs and the effort exerted by the bank to avoid *ghubun fāhish* (BISB, 2016: 335). From a legal viewpoint, the bank is entitled to these fees because the parties are involved in a service contract.²⁵ Yet, one customer objected to the bank's decision to increase the profits for the deferred *tawarruq* installments during the time of the COVID-19 crisis because it is *riba* according to his opinion. For the BISB's decision on postponement of the payment of *tawarruq* installments.²⁶ Other customers complained to the Consumer Protection Association about the bank's deduction of the installment payment owed to the bank before the due date (Customer Complaint Report, July-Septemebr 2022).

²⁴ Land Lease Act 2014, article 38 (1); Civil Code 2001, article 206)

²⁵ Civil Code 2001, article 621.

²⁶ See "تأجيل الأقساط الشهرية لتمويلات الزبائن | Bahrain Islamic Bank," accessed April 13, 2023, <https://www.bisb.com/ar/postponing-finance-installments-2022>)

For the promotion of the customer's ownership right, SSB, firstly, commands that the goods purchased should be possessed by the customer upon the second sale and sold to the second trader by him and not by the bank since he is the legal owner of such goods (Al-Shaikh, 2019: 23). Secondly, it gave consent to the customer's choice to use the fund granted to him to pay debts or administrative fees owed to the bank by a previous transaction but not to compel him to do so by the agreement (BISB, 2016: 329, 324, and 389). It also went along with the right of the bank and customer to see the goods bought by the bank's agent within 7 days from the date of the purchase and decide whether to accept or reject the contract by '*khiyār al-sharṭ*' mentioned above (BISB, 2016: 336).

For *al-qard al-ḥassan*, SSB admitted financial rights for promoting and protecting the bank's rights on wealth. In the direction of the promotion of the bank's rights on the property, it defends the bank's right to charge the customer administrative fees not exceeding the actual costs sustained by the bank (BISB, 2016: 428). Again, these fees are due to the bank on the grounds of the service contract. To protect the bank's financial rights, SSB, like the case with *ijārah muntahiyah bi al-tamlīk*, gave consent to a fine payable by the customer to the bank in case the former breaches its obligation to pay the debt if and only if the agreement stipulates so. Again, the penalty should be channeled to charity after the deduction of the litigation costs and any other costs attached, if any (BISB, 2016: 357).

SSB applied the concept of *al-qard al-ḥassan* to the credit card facility (BISB, 2016: 400). Again, SSB acknowledged financial rights for promoting the bank's right to wealth and approved several precautions to protect the rights of the bank and the customer under this facility. For the promotion of the rights of the bank on wealth, SSB, firstly, did not object to levying administrative fees in return for increasing the credit limit, using the bank's ATM, insurance, issuing secondary credit cards, issuing card statements, printing confirmation messages for withdrawal under a service contract, but not for cash withdrawal per se within or beyond the credit limit (BISB, 2016: 389, 390, 391, 395, and 407). These fees can be changed by the bank provided that the customer is actually or constructively notified of this change (BISB Credit Card Terms and Conditions, section 5 (2)). Although these fees are imposed in exchange for banking service, one customer alleged that the bank imposes interest on credit card facility which is unlawful while the bank confirmed that these fees, as opposed to the interest, are fixed.

Secondly, the SSB permitted the bank to deduct any arrears or penalties imposed for any card transaction made in breach of the terms and conditions

of the agreements from any account belonging to the cardholder (BISB Credit Card Terms and Conditions, section 9). This right is granted to the bank and is known as the right to set off from a legal perspective.²⁷

Thirdly, once more, the bank is given a right to receive a deposit from where any amount owed to the bank under the credit card facility can be deducted by the bank at its discretion by the concept of *rahn* (BISB Credit Card Terms and Conditions, section 4). Fourthly, the bank is entitled to suspend or terminate the credit card facility permanently or temporarily if the cardholder breaches any term or condition agreed upon or fails to pay any amount due to him by the *right to withhold performance* (BISB Credit Card Terms and Conditions, section 8).²⁸ Fifthly, one more time, SSB authorized the bank to impose fees on the cardholder for the delay in payment of any installment owed to the bank and allocate these fees for charity (BISB, 2016: 389, 393).

For the protection of the customer's financial right and his right to secrecy under the credit card facility, SSB, firstly, approved that the customer is obliged to sign the card as soon as he receives the card to prove the identity of the cardholder and the bank shall provide the customer with a PIN to secure access to the cardholder account. In case the customer loses his card, or doubts that the PIN becomes known to other person/s, the bank will take care of all transactions made but only if he receives information about this loss from the customer (BISB Credit Card Terms and Conditions, section 3). Secondly, SSB obliged the bank to send a card statement per month to the cardholder (BISB Credit Card Terms and Conditions, section 4) for the sake of transparency. This card statement shall include the account balance of the cardholder, and the amount of the service fees owed to or waived by the bank (BISB, 2016: 404).

Nevertheless, some customers ran into practical problems with the credit card facility. One customer feels that this service is not safe since the card can be stolen and freely used by others. The bank replied saying that withdrawal of money via credit card at an ATM requires inserting a password while payment via credit card is limited to 50 Brunei Dollars. On top of that holders of stolen credit cards can easily inactivate them via online application or telephone call and the bank shall be liable for all transactions made from the date in which he receives information about the loss onwards. In addition, others were hacked and lost their money though the bank had warned them of sharing their card information with others and visiting suspicious websites. Moreover, others realized that the cards they received from the bank were perishable and that

²⁷ Ibid, article 353.

²⁸ Ibid, article 150.

their serial number could be erased quickly. Furthermore, others have not received their card, and PIN, for more than one week from the date of the opening of the account despite they have been promised to have their cards ready within 6 working days, and the One-Time Password (OTP). Others also did not recover their payment made via their Mastercard upon cancellation of their transaction (Customer Complaint Report, July- September 2022). One more customer requested to cancel his credit card but the bank took a while to answer (Customer Complaint Report, October-December 2022).

Thus, like deposit contracts, SSB worked hard to make sure the financing contracts were compatible with wealth *maqasid*, legal, visible, equitable, and secured against loss. However, there are several issues with the performance of these contracts.

THE ROLE OF THE SHARIAH SUPERVISORY BOARD IN PROTECTING AND PROMOTING THE STATE'S RIGHTS

SSB acknowledged the rights of the state to maintain order in the country and entitled the bank to take necessary actions to adhere to the state's rights to enhance the legitimacy of the property dealt with in banking products.

Firstly, it recognized the sovereignty of the laws of Bahrain over the contractual relationship between the bank and the customer, whatever kind it may be, which is enshrined by the Constitution of Bahrain. Nonetheless, it gives priority to the *Shariah* to the law in case of conflict between them as required by the CBB (General Terms and Conditions of Accounts, section H (1); Credit Cards Terms and Conditions, section 11; Constitution of the Kingdom of Bahrain 2002, article 33 (b); CBB resolution no. 18, article 3).

Secondly, SSB encouraged the bank to cooperate with relevant authorities to enforce the law. In this regard:

- i) It allowed the bank to freeze or terminate the bank account in case the customer violates the regulations of the CBB or the laws of Bahrain or uses a credit card for purchasing non-*Shariah*-compliant or immoral goods (General Terms and Conditions of Accounts, section D (1); BISB, 2016: 403).
- ii) It permitted the bank to undertake any action on a bank account in obedience to the decisions of the courts in Bahrain or relevant authorities or if the accountholder rejects to provide the competent official authority with the required information or document (General Terms and Conditions of Accounts, section D (1), and C (15)). However, the consumer protection

association reported complaints from customers against the BISB for not submitting documents to the court required for legal proceedings (Customer Complaint Report, January- March 2021).

- iii) It authorized the bank to report to the relevant authorities including the enforcement unit and the public prosecution any suspicious transaction that may take place in the account as required by the applicable laws (General Terms and Conditions of Accounts, section E (3)). By law, actions taken on a bank account are obligatory for the bank if they help to prevent a crime.²⁹ As for the credit card facility, the law mentioned the bank's right to cancel the credit card facility for reasons accepted in Shariah (AAOIFI *Shariah* Standard No. 61, section 5 (2) (5)).
- iv) It recognized the authority of the LRD and the courts of Bahrain to verify the terms and conditions of the contracts between the bank and the customer. Particularly, it guides the bank to seek the approval of the LRD and the courts of Bahrain first before incorporating a condition into the contract of *ijārah muntahiyah bi al-tamlīk and mushārahah mutnaqīshah* allowing the bank to sell the land leased to a third party or to compel the customer to buy it if the customer intentionally delays payment of the installments (BISB, 2016: 161). This is consistent with the legal power to distrain the debtor's real property and to indicate the distrain on the property's registration in the directorate's official records given to the court and the LRD respectively.³⁰

Consequently, SSB respected the supremacy of the law, as well as the jurisdiction and powers of the relevant authorities in order to uphold the states' rights.

CONCLUSION

To conclude, SSB significantly protected and promoted the legal tangible rights of the bank, customer, and the state but also placed restrictions on the freedom of the bank to deal with the conventional financial industry. It also considerably considers wealth *maqāsid*. For the circulation of wealth, SSB introduced various Shariah-compatible contracts for depositing and financing products. In connection with the specification of wealth, it commanded the bank to visualize the details of the banking contracts for the bank, customer, and the public. It also encourages the bank to establish evidence for the contents of the contracts such as ownership registration and witness. Concerning the protection

²⁹ Anti-Money Laundering Law 2001, article 5 (c) (h).

³⁰ Civil and Commercial Procedure Act 1971, article 289.

of wealth, SSB legalized the deposit, the right to withhold performance for default, the right to set off, the right to inactivate bank account for mitigation of loss, and the penalty clause for the benefit of the bank and *khiyār al-shart* and the security of the transactions for the benefit of the customer.

As far as the legitimacy of the wealth is concerned, SSB acknowledged the primacy of the AAI OFI *Sharī'ah* standards in the first place and the Bahraini law in the second place. It also admitted the official authorities and the Bahraini courts as being sovereign for banking dealings.

With regards to the *maqṣad* of promotion of wealth, it is manifested in SSB's eagerness to transfer the ownership of the property sold in *murābahah* and *tawarruq* only from and through the seller himself (the bank in the first sale and the customer in the second sale) because he is the owner. It is also reflected in the payment of banking fees and rent in exchange for banking services and the property leased with appropriate fees and rent respectively and the right to alter these banking fees in proportion to the cost and effort that might be spent on the respective service.

Nevertheless, SSB failed to accomplish some tasks necessary for the protection or promotion of the customer's intangible rights. Probably, this is because it ignores the ethical principles of business while considering the compatibility of Islamic banking products and services with *Sharī'ah*, though they are part and parcel of *Shariah*. These tasks are as follows: First, it did not ensure that transactions between the bank and the customer were clear to the customers which is against *maqṣad* of specification of wealth on the subsequent points:

- i) In certain instances, SSB did not consider whether advertisements published by the bank were accurate and sufficient in contravention to section 3.2.1 of the *Shariah* Governance Model.
- ii) It described the bank's duty to disclose the account balance to the customer as an optional duty. This might not achieve the transparency required in transactions because it gives the bank a choice not to provide the customer with account information if it so desires.
- iii) It did not state the customers' right to query the bank on whether their profits emanated from investment, Profit Equalization Reserve (PER), or the company's returns or mix of them in the savings account contracts. The customer would then be able to assess their investment performance.
- iv) It did not specify non-Shariah compliant and immoral goods and services that terminate or taint the credit card facility.
- v) It did not give *fiqh*-based justifications for the binding force of *wa'd*.

- vi) It did not advise the bank to clearly define the reason for the early withdrawal penalty and the rise of the profit rate for the deferred installments. This is to repeal arguments saying that they are illegitimate.
- vii) It did not recommend the bank announce their offers via social media and software in both Arabic and English language to ensure that all customers fully comprehend their meanings.
- viii) It did not urge the bank to promise that it would inform holders of fixed deposits when their deposits were being renewed so that they may express their opinions on whether to continue the contract or not.

Secondly, SSB tipped the scales in favor of the bank's rights over those of the customer to the point that the bank can terminate or suspend the contract unilaterally without giving a prior alert, and a reason for doing so to the customer. Besides, the bank can change any term or condition of the contract even if these terms or conditions are relevant to the customer's basic rights such as the right to withdraw money and the right to know account balance. This disparity between the two parties restricts the circulation of wealth. It also gives no room for the customers to voice their opinions and settle their disputes against the bank peacefully. On top of that, terminating or freezing customers' accounts without warning them goes against the principle of legality mentioned earlier.

Thirdly, SSB did not include some important cardholder's rights in the credit card terms and conditions like credit card warranty for a reasonable time, the right to obtain the card, PIN, and OTP, upon his request, within a reasonable time, the right to recover any payment made via credit card if the transaction is canceled, and the right to terminate the card within a reasonable time upon his request.

Thus, SSB should take the necessary actions to make the bank's advertisements accurate and sufficient and ensure that the bank's duty to disclose the bank account to the customer is compulsory and put right the terms and conditions of the banking contracts to ensure the customer's rights to be notified and warned about material facts and other necessary rights.

Fourthly, SSB did not take any action against the bank's breaches of money transfer service, delivery of property under *ijārah muntahiya bi al-tamlīk*, and submission of relevant documents to the court as duly required by the law. It would be better if it condemns any similar breaches in its annual report in the future and recommends fulfilling the contract and responding to courts' orders on time for the promotion and legitimacy of the wealth.

REFERENCES

- About BisB | Bahrain Islamic Bank.* (n.d.). Retrieved June 6, 2022, from <https://www.bisb.com/en/about-bisb>.
- Ahmad, N., Asmad, A., & Mohiddin, M. N. (2020). *Introduction to Legal Research Methodology*. Bandar Seri Bagwan, Brunei Darussalam: UNISSA Press.
- Al-Nasser Mohammed, S. A. S., & Muhammed, J. (2017). The Relationship between Agency Theory, Stakeholder Theory and Shariah Supervisory Board in Islamic Banking: An Attempt Towards Discussion. *Humanomics*, 33(1), 75–83.
- Al-Shaikh, H. (2019). *General Inquiries*. Al-Manamah, Bahrain: BISB.
- Alnofli, A. (2021). Corporate Governance In Islamic Financial Institutions. *International Journal of Fiqh and Usul-Al-Fiqh Studies*, 6(2), 65–73.
- Anti-Money Laundering Law (Decree Law No. 4), 2001, Bahrain.
- Besar, M. (2019). Corporate Governance: Infusing Muamalah Contracts in Shareholders' Relationship. *Research in Corporate and Shari'ah Governance in the Muslim World: Theory and Practice*, 79–86.
- BISB. (2015). *Al-Dawabit Al-Shariah*. Al-Manamah, Bahrain: BISB.
- BISB Credit Card Terms and Conditions (n.d.). Retrieved December 31, 2023, from [Credit-Cards-Terms-And-Conditions_v4.pdf](#).
- BISB General Terms and Conditions of Accounts. (n.d.). Retrieved December 31, 2023, from [BISB General Accounts Terms and Conditions.pdf](#).
- BISB Terms and Conditions of Current Accounts. (n.d.). Retrieved December 31, 2023, from [BISB General Accounts Terms and Conditions.pdf](#).
- BISB Terms and Conditions of Investment Saving Account. (n.d.). Retrieved December 31, 2023, from [BISB General Accounts Terms and Conditions.pdf](#).
- BISB. (2016). *Fatwas of Shariah Board of the Bahrain Islamic Bank (1979-2014)* (2nd edition). Bahrain Islamic Bank.
- Civil Code (Decree Law No. 19) 2001, Bahrain.
- Civil and Commercial Procedure Act (Decree-Law No. 12), 1971, Bahrain.
- Constitution of the Kingdom of Bahrain, 2002, Bahrain.
- Corporate Governance Code 2010, Central Bank of Bahrain, Bahrain.
- Customer Complaint Report (October-December 2022), Central Bank of Bahrain, Bahrain.

- Customer Complaint Report (July-September 2022), Central Bank of Bahrain, Bahrain.
- Customer Complaint Report (January-March 2021), Central Bank of Bahrain, Bahrain.
- Fatima, S., Bilal, M., & Muhammad Ishtiaq. (2019). Shari'ah Compliant Corporate Governance. *Journal of Managerial Science*, 14(4), 170–197.
- Hamza, H. (2013). Sharia governance in Islamic banks: effectiveness and supervision model. *International Journal of Islamic and Middle Eastern Finance and Management*, 6(3), 226–237.
- Hassan, M. A. D., Besar, M. H. A. H., & Jaidin, J. H. (2022). An Analysis of the Legal and Governance Framework for Protection and Promotion of the Rights of the Islamic Bank, Customers, and Community: A Case Study of Brunei Darussalam. *Journal of Islamic Finance*, 11(2), 84–94.
- Hasan, Z. (2009). Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries, and the UK. *Kyoto Bulletin of Islamic Area Studies*, 3(3).
- Hidayat, Sutan Emir, and Ali Khaled Al-Khalifa. "Shariah Governance Practices at Islamic Banks in Bahrain From Islamic Bankers' Perspective." *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 10, no. 1 (2018): 53-74.
- Hutchinson, T., & Duncan, N. (2012). Defining and Describing What We Do: Doctrinal Legal Research. *Deakin Law Review*, 17(1), 83.
- Ibnu 'Āshūr, M. (2001). *Maqāshid al-Syarīah al-Islamiyyah*. Amman, Jordan: Dar Al-Nafais.
- Iqbal, Z., & Mirakhor, A. (2004). Stakeholders Model of Governance in Islamic Economic System. *Islamic Economic Studies*, 11(2), 43–63.
- Kamali, M. (1989). *Principles of Islamic Jurisprudence*. Subang Jaya, Malaysia: Pelanduk Publications (M) Sdn Bhd.
- Kothari, C. . (2004). *Research Methodology: Methods and Techniques* (second edition). New Delhi, India: New Age International (P) Ltd., Publishers.
- Land Lease Act (Decree Law No. 14), 2014, Bahrain.
- Magalhães, Rodrigo, and Shereen Al-Saad. "Corporate Governance in Islamic Financial Institutions: The Issues Surrounding Unrestricted Investment Account Holders." *Corporate Governance (Bingley)* 13, no. 1 (2013): 39–57.
- Mohd Safian, Y. H. (2018). Shariah Scholars and Fatwa Making Process in Islamic Finance. *Journal of Fatwa Management and Research*, 10(1), 120–135.

Resolution no. 18, Central Bank of Bahrain, Bahrain.

Samra, E. (2020). Corporate governance in islamic financial institutions.

Journal of Governance and Regulation, 9(2), 75-82.

Sharī'ah Governance Module, Central Bank of Bahrain, Bahrain.

Sharī'ah Standard No. 61, AAOIFI, Bahrain

VISA | *Bahrain Islamic Bank*. (n.d.). Retrieved April 19, 2023, from <https://www.bisb.com/en/visa>