

# FIQH OR FICTION

## **The primacy of a fatwa when accrediting an Islamic finance training program, and why Islamic finance scholars, not academic and professional bodies, should certify training programs for authenticity**

A fatwa, or expert legal opinion of one or more Islamic scholars, is the highest level of accreditation granted a transaction, product, or institution in Islamic finance. Islamic banks esteem fatwas. And Islamic banking customers esteem fatwas. Yet Islamic finance training programs continue to turn to academic and professional bodies for Shariah accreditation. Why?

Whence this came one can only guess. Perhaps the word “accreditation” itself naturally harks one back to the leafy environs of one’s campus and conjures up images of stone pillars and gilded arches. After all, accreditation and academia have always gone hand in hand. Or perhaps it is the Islamic finance industry’s natural tendency to replicate the conventional finance industry, and thereby errantly impose upon the Islamic educational paradigm a western educator’s sensibility.

Whatever the origins of this mistake, Islamic finance is ultimately about Islam. And in Islam, accreditation is not about the sanctity of a particular hall of academia or the credentials of a professor; it is about the Islamic qualification of the accreditor — qualification proper to a particular Islamic science, in this case the application of Islamic commercial law, and qualification proper to the individual or institution issuing the opinion, in this case a fatwa.

After all, it was the Prophet Muhammad (Allah bless him and give him peace) who said, "Whoever is given a fatwa without knowledge, his sin is but upon the person who gave him the opinion" (*Abu Dawud*).<sup>(1)</sup>



## What Does Standardized and Accredited Training Mean in Islamic Finance?

Of the many challenges now facing the Islamic financial industry, perhaps the greatest two are:

1. Accreditation by scholars, not academic and professional bodies: The importance of an Islamic finance scholar certifying a training program is paramount, and
2. Standardization in training: The importance of this scholar-certified training conforming to a widely accepted Islamic finance standard.

There is not a single industry in the world except that it enforces standards: banking, construction, transportation, food, and drug, to name but a few. And yet Islamic finance training, the very building block of the industry, is conspicuous in its absence of standards. This is a root problem for all practitioners for which almost every other problem is but a symptom.

Lack of standardization is felt most acutely in the industry's face-to-face training sector, where just about anyone with passable product knowledge stands before an audience of eager bankers and waxes lyrical about the virtues of Islamic finance. Of course, it would be acceptable if this trainer merely repeated the positions of those qualified to speak on the matter.

But more often than not, this unqualified trainer, professor, or writer assigns the role of scholar unto himself, guessing through an answer here, issuing a pronouncement there, with little regard for established industry standards. Seemingly innocent at first. But these same audience members then go out into the marketplace and begin putting what they learn to practice. If they remember nothing else from the trainer, they rarely forget his casual attitude towards the high standards of the Shariah, or Islamic Sacred Law, and his ready willingness to issue his own "fatwas" — a willingness they soon adopt. Non-scholar trainers may convey legal positions, but they may not create them.

Accrediting academic bodies like universities, degree programs, professional bodies, and accrediting institutes have a place, no doubt, in ensuring high pedagogical standards. Delivery standards in Islamic finance training span the spectrum from excellent to illegal. But pedagogy is not the same thing as Islamic finance.

In Islamic finance, accredited training means training approved by a scholar who confirms that the content fully adheres to a particular standard. And not just any scholar. In order to be qualified to approve something in Islamic finance, one must first be a trained and experienced Islamic scholar who possesses, foremost, deep knowledge of the Shariah with, at minimum, demonstrated, peer-reviewed competence in at least one of the traditional schools of jurisprudence.

And second, he must bring practical working knowledge of banking and finance, complemented by actual practical experience in the contemporary marketplace. It is not enough for him to have read books — even AAOIFI's Standards — and passed tests. He has to know finance at the level he is answering questions about.

The least of what can be expected of a scholar with little or no practical experience in the area of finance he is speaking about is to first ask an experienced Islamic finance scholar. Every transaction is different. And, therefore, every transaction must be understood in its context. Like a pilot who only reads a flight manual but never flies with another more experienced pilot, he is limited by what he has read. Never having executed an Islamic finance transaction under the guidance of a more experienced scholar, he is limited to the narrow confines of his inexperience.

The result? Often hasty fatwas and costly mistakes.

### **Standardized AAOIFI Based Training Promotes Shariah Harmonization**

In 1991, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI, pronounced “a-yo-fee”) formed as an independent, non-profit, standard-setting body with a remit to promulgate Islamic finance standards for the entire industry. Thirty years on, AAOIFI is still widely regarded by banks and governments as the de facto industry standard for Islamic finance practitioners. <sup>(2)</sup> In fact, numerous central banks and financial services authorities now recommend the standards as a source of guidance for local banks.

AAOIFI’s regularly updated texts have become the definitive reference work for those seeking a comprehensive rule book about Islamic financial products and practices. Its 100 standards cover everything from accounting and auditing to governance and product-specific Shariah standards. The 16 to 20 scholars — the number depending on the year — who sit on AAOIFI’s Shariah Board are leading Islamic finance scholars who come from the Gulf, South Asia, South East Asia, Africa, and North America; each of them legally qualified to issue a fatwa and adjudicate on matters Islamic finance.<sup>(3)</sup> And for a religion that deeply values scholarly consensus, or *ijma*, as one of the main sources for legal derivation in Islamic jurisprudence, it is a relief to hear one scholar put it this way: “AAOIFI is the closest thing we have to *ijma* in Islamic finance.”<sup>(4)</sup>

### **Training Accreditation by Scholars, Not Academic and Professional Bodies**

According to AAOIFI’s “*Stipulation and Ethics of Fatwa in the Institutional Framework*”<sup>(5)</sup> the standards for issuing a fatwa are, at minimum, knowledge of:

1. Islamic jurisprudence in financial transactions
2. How to derive rulings from primary sources
3. Islamic jurisprudential contributions of other scholars
4. Contemporary issues in the financial industry

Moreover, the individual should demonstrate discernment, scrupulousness, and peer-reviewed competence within the financial industry.<sup>(6)</sup>

In order to fully comprehend the complexity of the scholar’s task, one should reflect upon the competing demands placed upon him when deriving a ruling from the Quran and hadith (prophetic traditions) corpus; hadith which number in the tens of thousands for those that are rigorously authenticated (sahih) and exceed one million when counted as separate chains of transmission.

As one scholar notes, knowledge of the primary texts consists in knowing, among many other things, “the *‘amm*, a text of general applicability to many legal rulings, and its opposite; the *khass*, that which is applicable to only one ruling or type of ruling; the *mujmal*, that which requires other texts to be fully understood, and its opposite; the *mubayyan*, that which is plain without other texts; the *mutlaq*, that which is applicable without restriction, and its opposite; the *muqayyad*, that which has restrictions given in other texts; the *nasikh*, that which supersedes previous revealed rulings, and its opposite; the *mansukh*: that which is superseded; the *nass*: that which unequivocally decides a particular legal question, and its opposite; the *dhahir*: that which can bear more than one interpretation.”<sup>(7)</sup>

This lengthy description of the minutiae facing the scholar in only one area of *ijtihad*, or personal legal reasoning, is particularly relevant in an age when pretenders to the task open the doors of scholarship unto themselves. Lest one decry that such high standards only complicate matters, and that God’s word is divinely protected, we should have the humility to remind ourselves that divine protection relates to the *word* of God, not to our ability to derive rulings from it.

It is not lost on anyone the rareness of such individuals in present times. In a perfect world, such a scholar would be the trainer himself. But until there are enough scholars to go around, the best that we can do, and the least we must, is obtain their consent when accrediting a training program.

### **“Fatwa Shopping” and the Harms of Less Than 100% Standardization**

When training content is anything less than 100% standardized to AAOIFI, discrepancies between the learner’s knowledge and the market’s practice abound. This rift widens into a chasm of confusion and leads to what can only be euphemistically described as the banker’s penchant for “fatwa shopping”: finding the right fatwa to fit your needs, rather than tempering your needs to comply with the fatwa. At best, this occasionally costs some banks and customers their money. At worst, this laxity costs the whole industry its credibility.

A number of Islamic finance trainers now work with guidebooks and other material that is merely “authored” by a scholar or “supervised” by a scholar. But what we often end up with is material that is 80% or 90% AAOIFI-based; “Shariah compliant” according to somebody, perhaps. But not uniformly Shariah-compliant according to any particular mainstream collectivity.

When trainers fail to conform their content 100% against a widely accepted standard, newcomers get confused: “Why is this guidebook telling me a product is unacceptable to most of the industry, but teaching it to me anyway?”<sup>(8)</sup> It is not always quite clear where the Shariah-compliant part of the guidebook ends and where the non-compliant part begins. What is a newcomer in Islamic finance supposed to do?

### **Addressing Common Questions**

Shifting training certification away from conventional academic and professional bodies to Islamic finance scholars requires a paradigm shift in our collective thinking. Common questions and comments, and how to address them, include the following:

*Why follow a single standard when scholars cannot agree among themselves, and each bank has its own Shariah board? Does AAOIFI have an answer for everything?*

Standards should be specific enough to be of technical benefit to the practitioner, and general enough to be of practical benefit to the broader audience in a variety of situations. Most Islamic finance scholars already acknowledge that AAOIFI is the leading standard-setting body in the industry.

Differences in opinion *between* qualified scholars is a part of Islamic finance, indeed a part of Islam. But the operative word here is “qualified,” and difference of opinion between laypersons is part of the problem.

Shariah harmonization in training has the immediate effect of getting all the stakeholders in the industry moving in one direction. The laborious work of *ijtihad* then returns to those qualified to adjudicate on the matter, far from the din of confusion now plaguing the lay audience. It is impossible for AAOIFI to anticipate every possible question on every possible matter. Operationalizing rulings is the work of the banks’ Shariah advisors. However, for purposes of training, which is more general in nature, AAOIFI provides sufficient depth.

*Aren’t academic and professional bodies necessary to ensure high standards?*

Pedagogical standards and Islamic finance standards are related but separate issues. Ideally, the industry’s aim should be to deliver high pedagogical standards along with scholar-approved certification. Academic bodies serve an important role here. But this role must be treated as secondary to the more important matter of standardizing Shariah compliance. Mediocre learning that leads to a 100% scholar-standardized examination is far better for the industry than the best guidebook, trainer, or online course that is anything less than 100% Shariah standardized. Of course, it would be best if training institutes delivered both 100% standardization with the best pedagogical standards possible.

*Banks use scholars because bankers execute the products themselves in the marketplace. But students do not need scholar-approved certification because they are just trying to get a job and require only general knowledge of Islamic finance, not detailed knowledge of standards. Correct?*

Islamic banking students are future Islamic banking professionals. The same care that is taken by scholars working inside banks to ensure that products are Shariah-compliant must also be taken to ensure that training is Shariah-compliant. Newcomers to Islamic finance, even those who are still students, need standardized knowledge more than ever precisely because of their limited exposure to practical application.

*Who determines which individuals are considered Islamic scholars? Why do we need scholars when anyone who memorizes AAOIFI rulings can give certifications?*

It is not merely a matter of memorizing AAOIFI’s rulings and parroting them to a captive audience. An individual must possess the ability to join between contemporary rulings and the classical texts in order to help bankers better navigate the uncharted waters not yet faced; new and detailed matters which necessarily give rise to new *ijtihad*.



The standards for scholarship vary by institution, but generally a student of Islamic Sacred Law reaches the rank of scholar through a system of prolonged study in the classical Islamic sciences, throughout receiving *ijazas*, or formal authorization to transmit a particular subject, from qualified individuals and institutions.

This is followed by a period of apprenticeship under scholars who are already qualified to issue fatwas, where at the culmination of as few as six years and as many as sixteen years of Shariah and general study one hopes to attain sufficient competence to reach the level of a scholar.

To give an idea of the specialness of such individuals and the loftiness of their rank, at the beginning of Islam and at the end of the Prophet's life (Allah bless him and give him peace), when there were estimated to be as many as one hundred thousand companions, only as few as seven individuals were at the level of scholarship to be able to perform *ijtihad* and issue fatwa independently. Today, the jurisprudence of these several individuals personally taught by the Prophet (Allah bless him and give him peace) have been distilled into the four traditional *madhhabs*, or schools of jurisprudence, by verifiable contiguous chains of transmission resulting in the schools well known to students of Sacred Law: the Hanafi, Shafi'i, Maliki, and Hanbali schools.<sup>(9)</sup>

There is not a classical scholar after the early Muslims except that he followed one of these schools: Bukhari, Muslim, Nawawi, Suyuti, and Subki, to name but a few, each of whom had memorized over 100,000 hadiths, sometimes as many as several hundred thousand, with their individual chains of transmission and each chains relative authenticity committed to memory. In order to put this feat into perspective, consider that a nine volume Sahih Bukhari contains just over 7,000 hadith.

All this is relevant to understanding the importance of upholding scholarship in the present age where opinions are bandied about with little regard for jurisprudential authority. The Prophet himself (Allah bless him and give him peace), the gentlest of mankind, responded to the ignorance of loose opinion in the strongest terms in a hadith that should give any thinking individual reason for pause:

*We went on a journey, and a stone struck one of us and opened a gash in his head. When he later had a wet-dream in his sleep, he then asked his companions, "Do you find any dispensation for me to perform dry ablution (tayammum)?" [Meaning instead of a full purificatory bath (ghusl).] They told him, "We don't find any dispensation for you if you can use water." So he performed the purificatory bath and his wound opened and he died. When we came to the Prophet (Allah bless him and give him peace), he was told of this and he said: "They have killed him, may Allah kill them. Why did they not ask?—for they didn't know. The only cure for someone who does not know what to say is to ask." (Abu Dawud)<sup>(10)</sup>*

*How can we rely on a single fatwa? That is just one scholar's opinion.*

Reliance on a single fatwa is not being suggested - quite the opposite. The industry should rely on the opinions of many scholars - through their acceptance of *already agreed upon standards*. The purpose of the single fatwa is to assure users of a *particular* training program that these agreed upon standards are actually being followed. Think of the commercial pilot: he makes the final decisions, but his decisions are based upon an already agreed upon standard recognized by the mainstream aviation industry. Islamic finance training standards, on the other hand, abide by no such standard and are still very much up in the air.

*What about Islamic scholars who disagree with AAOIFI scholars?*

The Prophet (Allah bless him and give him peace) said “The hand of Allah is over the *jama’ah*” (*Tirmidhi*)<sup>(11)</sup> where the word *jama’ah* refers to the overwhelming majority of the Muslim collectivity, and in the context of *ijtihad*, the overwhelming majority of those qualified to independently derive rulings.

But where, one wonders, does difference of opinion come in when the opinion of an overwhelming majority prevails? The answer is that within the overwhelming majority, there is legal deference given to those permitted to make *ijtihad*, so that while one’s own position is considered correct and the opposing position is considered incorrect, one accepts the possibility that one’s own position might be incorrect and the opposing position might be correct. Within this framework of tolerance scholars accept valid difference of opinion.

For instance, scholars accept that Islamic finance practiced correctly is, in and of itself, legally valid; however, there is difference of opinion as to which products are valid and which ones are not. It is the task of AAOIFI, the world’s largest collectivity of Islamic finance scholars, to organize these rulings and their application and determine validity here. If a divergent opinion is extreme to the extent that it does not accord with any mainstream collectivity (e.g. saying that commercial interest is permissible), whether this collectivity is in the majority or not, it is simply ignored.

The above is a necessary digression in order to understand the following: for scholars who disagree with an aspect of Islamic finance, the constructive response is to formally approach with one’s disagreement the largest collectivity of those scholars who possess industry-specific knowledge and practical, day-to-day execution experience in Islamic finance. For this reason, each Shariah standard in AAOIFI is followed by an explanatory appendix describing the evidentiary bases for arriving at the rulings.

*Scholar-approved certification is only necessary for those who actually engage in product development and need to study Islamic finance in-depth for that purpose.*

From the customer-facing relationship manager who answers client questions all the way up to the boardroom executive who rarely sees the inside of a single product structuring exercise, everyone who works inside an Islamic bank should understand Islamic finance principles. At the bank, training is not about *fiqh* and *fatwas*, it is about product knowledge, and every individual working inside an Islamic bank needs some level of product knowledge, if nothing else, to understand how Islamic finance is different from - and better than - conventional finance.

*AAOIFI is just a standard-setting body. How can they certify so many training programs?*

AAOIFI does not certify training programs besides their own face-to-face programs as of this writing. It is the work of the scholars familiar with AAOIFI who are hired by training institutes to check that material conforms to their standards.

*What about the Malaysian standard in Islamic finance? How is it different from AAOIFI?*

The Malaysian standard in Islamic finance is accepted in few countries - Thailand and Indonesia are two that come to mind - of the more than 90% of the industry that is heading towards common AAOIFI convergence. In an exclusive interview with Ethica a few years ago, we had the privilege to speak with Malaysia's former Prime Minister, Dr. Mahathir Mohammad, who expressed his country's willingness to use products based on the buyback and debt trading structures in order to galvanize their then fledgling industry. However, because Bay al Inah and Bay al Dain are not acceptable to AAOIFI, it may be one of the reasons that there has not been much liquidity flowing from AAOIFI-based markets to Malaysian-based markets.<sup>(12)</sup>

### **Next Steps: Promoting Shariah Harmonization in Training and the Role of Academic and Professional Bodies**

Face-to-face trainers, guidebook publishers, and online course providers now need to take a hard look at their content and decide whether they want to continue allocating resources to marketing and distribution, or finally step back and acknowledge that the market has changed, and so too have the needs of the customer. Bankers no longer want more theory and the confusion of multiple standards; they want to know the practical application of what is already widely accepted in the industry.

Ethica recommends the following steps:

Step 1: Go to [www.aaofii.com](http://www.aaofii.com)<sup>(13)</sup> and order AAOIFI's latest "Shariah Standards."<sup>(14)</sup>

Step 2: Bring bankers and scholars together in order to create training content around these standards.

Step 3: Review and approve the certification examination by one or more third-party Islamic finance scholars who understand AAOIFI and confirm that the content, and certainly the examination, is consistent with these standards.

With common standards in training, the dividends to the industry are substantial. At the moment, Islamic finance faces a credibility problem. On the one hand, bankers are often not entirely convinced of their own products; not knowing the difference between what they used to execute as conventional bankers and what they now execute as Islamic bankers. And customers face a similar crisis of confidence as they grapple with how Islamic banking is any different from conventional banking. Some level of informational asymmetry is to be expected in a young, burgeoning sector. But trainers, who are the fountainheads of much of the information streaming out into the industry, have no excuse for falling prey to this asymmetry.

Even so, it is a time of optimism and opportunity. Never before has the industry had a critical mass of so many Islamic bankers. And never before have we had a set of so many heavily refined standards agreed upon by the majority of the industry's scholars. And, most important, not once before have we had the opportunity to consolidate this critical mass into a standardized whole. With an entire industry working in unison towards a common purpose, Islamic finance will then truly embody the lofty ideals on which it was originated rather than be mired in the confusion that may one day hasten its undoing.



Notes:

1. Abu Dawud 3.321 Well-authenticated (hasan).
2. [http://www.thefinancialexpress-bd.com/more.php?news\\_id=95274](http://www.thefinancialexpress-bd.com/more.php?news_id=95274);  
<http://www.philadelphia.edu.jo/courses/accountancy/Files/Accountancy/aa303.pdf>;  
<http://www.philadelphia.edu.jo/courses/accountancy/Files/Accountancy/0308910.txt>;  
<http://pakistanimes.net/pt/detail.php?newsId=7805>;  
<http://www.ibfim.com/v2/images/kmc/2011BookshopeList/iaccount/56%20islamic%20accounting.pdf>;  
<https://www.zawya.com/story.cfm/sidZAWYA20100125122913/Islamic%20Bank%20leads%20on%20Sharia%20compliance%20with%20AAOIFI%20industry%20certification>;  
<http://www.islamicfinance.de/?q=node/1140>;  
[http://www.tradearabia.com/news/bank\\_190503.html](http://www.tradearabia.com/news/bank_190503.html);  
<http://www.islamicfinance.de/?q=node/933>;
3. Accounting and Auditing Organization for Islamic Financial Institutions, Shariah Standards: Introduction, pp. XI-XXVIII (Manama, Bahrain: Accounting and Auditing Organization for Islamic Financial Institutions, 2008).
4. Private study session, Darul Uloom, Karachi, Pakistan, 2005.
5. Accounting and Auditing Organization for Islamic Financial Institutions, Shariah Standards: "Stipulation and Ethics of Fatwa in the Institutional Framework," pp. 515-530 (Manama, Bahrain: Accounting and Auditing Organization for Islamic Financial Institutions, 2008).
6. State Bank of Pakistan, Islamic Banking Department, Fit and Proper Criteria for Shariah Advisors of Islamic Banking Institutions (Annexure-IV to IBD Circular No. 2 of 2004, revised vide IBD Circular 2) (Karachi, Pakistan: State Bank of Pakistan, 2004).
7. "Why Muslims Follow Madhhabs," Nuh Ha Mim Keller, accessed February 2011, <http://www.masud.co.uk/ISLAM/nuh/madhhabstlk.htm>.
8. Securities and Investment Institute (now Chartered Institute for Securities and Investment), "Islamic Finance Qualification (IFQ): Bay al Inah," pp. 75-76 (London, UK: Securities and Investment Institute, 2007).
9. Ahmad ibn Naqib al Misri, Reliance of the Traveller: A Classic Manual of Islamic Sacred Law, trans. Keller (Maryland: Amana Publications, 1999).
10. Abu Dawud 1.93, well-authenticated (hasan).
11. Tirmidhi, well-authenticated (hasan)
12. Dr. Mahathir Mohammad, interview by Ethica Institute of Islamic Finance, available as a podcast at [www.EthicalInstitute.com](http://www.EthicalInstitute.com), 2008.
13. "Shariah Standards," Accounting and Auditing Organization for Islamic Financial Institutions, accessed February 2011, <http://www.aaofii.com>.
14. The present author neither works for nor is compensated by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) for endorsing their standards.