

M. Shoev\* , N. Anarbayev , G. Kupeshova 

Egyptian University of Islamic Culture Nur-Mubarak, Kazakhstan, Almaty

\*e-mail: mshoev@gmail.com

## KAZAKHSTAN: THE COMPLIANCE OF BANKING LAW, PART OF ISLAMIC BANKING WITH THE SHARIAH PRINCIPLES AND RULES

The Kazakhstan government was from first country in the central Asia and post-soviet countries took initiation for amending the legislation to introduce Islamic Banking in the country. For this reason, the government of Kazakhstan decided to promote Islamic Banking in the country therefore, it introduced amendments into the existing legislation. The aims of this study were to analyze and find out the compliance of Kazakhstan Banking law, part of Islamic banking to the Shariah Standard of AAOIFI. Islamic banking sector is in the beginning of its development and growth, hence the government of Kazakhstan and banking system regulatory authority have to focus to build a competitive financing sector that to be attractive more for Islamic finance companies, not only two by financial institutions, and to promote attraction of investment and financing into real economy sector development of Kazakhstan through Islamic banking and financing. The reason for introducing Islamic banking is to reduce any future financial crises and to create stable economic system.

**Key words:** Banking, Law, Compliance, Legislation, Regulation.

М. Шоев\*, Н. Анарбаев, Г. Купешова

Нұр-Мұбарак Египет ислам мәдениеті университеті, Қазақстан, Алматы қ.

\*e-mail: mshoev@gmail.com

### Қазақстан: банк заңнамасын сақтау, шариғат қағидаттары мен ережелері бар ислам банкингінің бөлігі

Қазақстан Үкіметі Орталық Азия мен посткеңестік аумақта ең алғашқы болып елге ислам банкингіні ендіру үшін заңнамаға өзгерістер енгізу туралы шешім қабылдады. Қазақстан Үкіметі елде ислам банкингіні енгізуді бастайды, сондықтан ол қолданыстағы заңнамаға түзетулер енгізеді. Осы зерттеудің мақсаты Қазақстанның банк ісіне қатысты заңдарын, нақты ислам банк ісіне қатысты заңнамаларын, ААОIFI Шариғат стандарттарына сәйкестігін тексеріп, анықтау болды. Қазіргі таңда Исламдық банк секторы өсу-даму барысында, демек, Қазақстан Үкіметі мен банк жүйесін реттейтін органдар қаржы институттарына ғана емес, исламдық қаржыландыру компаниялары үшін тартымды болып табылатын әрі бәсекеге қабілетті қаржы секторын құруға бағытталуы керек. Исламдық банкинг және Исламдық қаржыландыру арқылы Қазақстанның қазіргі экономикасын дамытуға инвестициялар тартуға және экономиканы қаржыландыруға жәрдемдесу керек. Исламдық банкингті енгізудің басты себебі – болашақта қаржылық дағдарыстардың санын азайту және тұрақты экономикалық жүйені құру. Исламдық банк жүйесі елде ең бастысы адамдық құндылықтар мен олардың жеке мүдделерін қорғай отырып, адал табысқа жетуді мақсат етеді. Соңғы он жылдықта Қазақстанда мұсылмандар санының артуымен, елде ислам банктері мен ислам қаржы орталықтарына қажеттілік артып отыр.

**Түйін сөздер:** банк қызметі, құқық, сәйкестік, заңнама, реттеу.

М. Шоев\*, Н. Анарбаев, Г. Купешова

Египетский университет исламской культуры Нур-Мубарак, Казахстан, г. Алматы

\*e-mail: mshoev@gmail.com

### Казахстан: соблюдение банковского законодательства, часть исламской банковской деятельности с принципами и правилами шариата

Правительство Казахстана было первым в Центральной Азии и на постсоветском пространстве, кто принял решение за внесение поправок в законодательство о внедрении исламского банкинга в стране. По этой причине Казахстан начал продвигать исламское банковское дело в стране и были введены поправки в существующее законодательство. Целью данного исследования – проанализировать и проверить закон о банковском деле в Казахстане, в части исламского банкинга, на соответствие шариатским стандартам ААОIFI. Исламский банковский сектор нахо-

дится в начале своего развития и роста, следовательно, правительство Казахстана и органы регулирования банковской системы должны сосредоточиться на создании конкурентного сектора финансирования, который будет более привлекателен не только для финансовых институтов, но и для исламских финансовых компаний, и содействовать привлечению инвестиций и финансирования в нынешнюю экономику Казахстана через исламский банкинг и исламское финансирование. Причиной введения исламского банкинга является сокращение любых будущих финансовых кризисов и создание стабильной экономической системы. Исламская банковская система нацелена на достижение честного успеха в стране, защищая человеческие ценности и их личные интересы. С увеличением числа мусульман в Казахстане за последние десять лет возрастает потребность в исламских банках и исламских финансовых центрах в стране.

**Ключевые слова:** банковское дело, право, соблюдение, законодательство, регулирование.

## Introduction

The last two financial crises in the world showed the problems surrounding the existing financial system in the world. The financial crises forced the decision-makers in many countries of the world to think and search for an alternative economic system that is more stable and will protect the economy of their countries from future crises and assure more stable development in the long and short term. In this respect, Central Asian countries are not far from existing trends in other parts of the world. They have also been, indirectly, affected deeply by such financial crises. However, there is a strong reason that implementation and introducing of Islamic Banking in the Islamic countries can help in achieving the sustainable development economic goals (Peter Knaack, 2022).

As Kazakhstan, like other Central Asia countries, was part of the Soviet Union for 70 years and even before that they were part of the Russian empire or were under its influences for a more extended period, the legal system of Kazakhstan like other Central Asian countries has been influenced by Russian and Soviet Union where all of them follow civil legal system. As a result of contradiction of Islam with core ideology of USSR further prohibition of teaching Islamic knowledge was introduced for long term, the country banking sectors has a shortage of expertise about the laws and regulations of Islamic transactions in general, with financing and depositing money with the conventional banking system in particular. After obtaining independence and increasing Islamic knowledge on Haram and Halal, Muslims conceived Riba (interest – usury), as mentioned in Quran, as a great sin as it is offered by conventional financing institution in the Kazakhstan.

In the Central Asia, countries either introduce new law for Islamic Banking or through introducing amendment into the existing Banking law. Kazakhstan is among two countries in the Central Asian

countries which have introduced Islamic banking through modifications to the existing conventional banking laws. However, the existing law has obstacles for developing this sector, requiring new amendments into existing Islamic Banking law. So far, there have not been too many studies about domestic Islamic Financing with Islamic Sharia; understanding this needs more evidence-based research. So, the attempt is to understand the significance of building Islamic Banking legislation in compliance with Islamic rules and regulations. This study can grow insights off the legislators and regulatory bodies of Kazakhstan's existing Islamic banking laws, the nature of dealing with Islamic financing products, and understanding Islamic financing laws concerning other legislation such as Civil Code Law.

Islamic finance is one of the world's fastest growing industries. The increasing success rate of Islamic finance industry in the global arena, as well as its acceptance as an effective instrument for financing, is predicated on the presumption that Islamic financial institutions operate more ethically, thus upholding a higher moral standard and resulting in risk moderation and lower moral hazards (ZICO Shariah, 2020).

## Justification of the Choice of Articles and Goals and Objectives

As experienced Islamic Banker and working for more than 10 years in Kazakhstan Islamic Banking market and facing difficulties in implementing the Shariah requirements in Islamic Banking transaction as well as difficulties to develop new product for our business, it made the authors to choose this topic in order to find solution and help in development Islamic Banking in Kazakhstan. The main objective is to define the problems in legislation related to Islamic Banking and suggestion practical solution to rectify those problems.

### Scientific Research Methodology

The method of present study is legal research which is used comparative review of Kazakhstan Islamic banking law to find out its relevancy to the Shariah requirements in accordance to the primary source of Islamic law principles. As mentioned, I have compared Kazastan Islamic banking law with the Shariah standards of AAOIFI as well as the existing practice of other countries such as Malaysia and Oman. In addition, I have also compared Kazakhstan Islamic Banking law to the countries of Tajikistan purposefully to determine which one of them is has strong points of compliance with the Shariah principles and rules in general and with the Shariah standards of AAOIFI in particular.

### Main Part

The principles and rules of Islamic finance and banking regulated under Islamic commercial law, which derived from two sources – primary and secondary. The primary sources are based on revelation. As mentioned earlier, these are the Quran and Sunnah/Hadith. These sources are not subjected to any change or alteration. In the hierarchy, the Quran is prevailing over Hadith of Prophet Muhammad. Any decision by secondary source shall not violate the ruling and principles mentioned in the primary sources. The secondary sources are based on human interpretation and reasoning (Study lecture notes, 2022). It shall be derived from primary sources and shall not contradict to them. When a particular decision or authority related to a specific case does not found in the Quran or the traditions of the Prophet Muhammad, then the accepted methodology is to undertake legal reasoning and interpretation to find out the answer.

The articles in the relation to main question of our topic which is the Islamic financing legislation and its implementation issues in Kazakhstan as well as degree of compliance with Shariah Standards of Accounting and Auditing Organization of Islamic Institution (AAOIFI) is not available. However, the material on other matters of Islamic financing are available but in few. The local scholar either due to lack of knowledge either in Islamic laws or implementation and practical aspect did not write much article on the topic even due these articles are not relating to our topic (Baidaulet, 2019: 21). In my opinion even these kinds of literature which not relate to our topic could explain the existing situation to some extend and challenges which are facing devel-

opment of Islamic Banking in Kazakhstan. Hence the researchers made efforts to find responses to the following questions:

1. Why the rise of Islamic finance in post-colonial market building in central Asia and Russia?
2. Islamic Banking in Kazakhstan Law

The article is on “*The Rise of Islamic Finance in Post – Colonial Market – Building in Central Asia and Russia*” which has been written by scholar Davinia Hoggarth (2016) that analysis from political aspect the development of the Islamic Banking in this region. According to this scholar, in central Asia, the introduction of Islamic finance in the post-colonial era revolutionized the discourse among the state, economy, and the Islamic religion by collapsing materialistic and symbolizing status quo. Further she says on the reason of rise of Islamic Banking is that nations prefer to establish its own financial strategy and identities by ending its colonial inheritances through establishing multi dimension financial system (Noggarth, 2016).

In justifying other reason for rising of Islamic financing in Central Asia is 84 million Muslim population in region but it is not for “the appeasement of religious groups” it is part of project for development of faith identify where in my opinion she is wrong as for Muslim it is not acceptable to make segregation between the faith identity and financial and non-financial transaction. I assume such conclusion due to lack knowledge of correctly understanding principles of the Islam. She further analyze the justification of increasing of Islamic financing due to creation of multi dimension economy away from the influencing of the Russian and connecting to global Islamic economics however for rising Islamic financing in Russian itself it returning for alternative source of investment after the imposing of sanction from western countries through attracting of investment from Islamic countries into Russian economy where in my opinion attracting of the investment is one reason but increasing of knowledge of Muslim about dealing with conventional is Haram and also increasing of role Muslim in economic and political life of the Russian where it will bring the Islamic Banking to the spot. According to her, there some academic writing against using religious in market growth where it may lead to unrests in the society, however, there is negative relation in regarding to growth of Islamic banking and “civil disobedience” by the religion groups. In the following part of the article the author explains another reason for introducing of Islamic banking in Central Asia countries could be for the political purpose and for branding

of culture with history of countries before colonization. The article generally intended for political aim rather than analyzing legally and financially development of Islamic banking and finance in the region.

The next article is on Islamic Banking in Kazakhstan Law written by (Maggs 2011) and the author started his article from history and current situation of Islamic banking in Kazakhstan. The aim from article is to discuss the implication of regulation Islamic Banking in Kazakhstan. Further discussing some principles of Islamic banking and finance such prohibition of interest and ban of profit without risk but the author further questioning why some transaction still permissible as it was in the past, such selling in different, without providing justification why it shall be banned if it was permissible. There is no text from Quran and Saying of Prophet Muhammad on such requirements, while in the Holly of Quran from Allah is clearly stated that;

*“Those who take ribā (usury or interest) will not stand but as stands the one whom the demon has driven crazy by his touch. That is because they have said: “Sale is but like ribā”, while Allah has permitted sale, and prohibited ribā. So, whoever receives an advice from his Lord and desists (from indulging in ribā), then what has passed is allowed for him, and his matter is up to Allah. As for the ones who revert back, those are the people of Fire. There they will remain forever”, (Quran, 2: 275,) (Translation of Quran By Mufti Taqi Usmani, 2022)*

In addition, similar to this issue in terms of permissibility transaction in Islamic perspective a Hadith which is narrated by Ibn Mas’ud from Prophet Muhammad following as;

*"The Messenger of Allah (SWT) cursed the one who consumed Riba, and the one who charged it, those who witnessed it, and the one who recorded it" (Ibn Hajar al- Asqalani, 1429. Imam Tirmidhi, No. 1206).*

As detailed above, this author further discusses the different opinion of scholars on acceptability or no acceptability of some multiple transaction (Maggs, 2011). For instance, the author give product auto financing and requirement of the Shariah for the bank “take title to the goods and selling them to the client on credit” and for avoiding fluctuation of the price between buying from the supplier and selling to the customer, the author suggest the customer appoint the bank to be its agent to conclude Murabaha agreement “within a minutes” where such action is permit by Banking law, part of Islamic Banking, for the Islamic Banks under Article 52-11. However, general understanding of law is about the deposit where the bank

will be agent of the customer for investing it is money however it does not apply for being the agent of the customer in executing of the Murabaha agreement/ transaction and also it is worth to note that the suggested structure contradicts with Shariah Standard of AAOIFI where it is restrict appointing of customer to be the Bank agent in very exception case and appointing of the bank to conclude Murabaha is not acceptable by the Shariah standard as well as majority of the scholars and the provided example product “Walk in – Drive Out” Al Hilal Bank is not based on agency where the bank in majority case used be the owner of the car for a while before selling it to its customer on the Murabaha bases. It worth to mentioned that such product is not offered by Al Hilal Islamic Bank in Kazakhstan.

The author further put question on the investment or financing where the indirectly relate to non-Shariah compliance business such alcohol, port and etc. where the decision for entering to such business is depend on the Islamic Finance Principle Board (Shariah Board) (Mufti Ismail Ebrahim Desai, 2019). From my experience Islamic Bank try to avoid direct and indirect relation to finance business which dealing clearly in prohibited transaction from aspect where the income from such businesses may be forfeited and it may carry reputation risk for the banks where may lead to lose confidence of customer in compliance of the transactions of the bank, in general, to the Shariah principles. The author further provide justification for not introducing “Islamic Window” in Kazakhstan is influence of some bank from UAE for not having competition in local market from potential local Islamic window of conventional banks, whereas per my information at time the law was passed and approved by Kazakhstan parliament there was no any intention in AL Hilal Bank to make investment in Kazakhstan financial market. In my opinion there are could be other the reasons where one of them could be Shariah strict requirements and condition for having an Islamic window in conventional and difficulty to apply and implement those requirements. In justifying for not introducing insurance for the depositors of Islamic Bank, is nature of high-risk investments where “insurance would be highly inappropriate. From my experience the reason for not participating is nature insurance scheme for Banks in Kazakhstan where it is based on conventional insurance which contradicts with other Islamic Banking law of Kazakhstan and Shariah principles and rules.

These days, most Muslim countries follow either common or civil law structures in doing financial

transactions. However, their legal systems do not have specific laws/statutes that support the unique features of Islamic financial products. In this situation, they require particular rules and regulations that can support and promote the Islamic financing industry. Above that, Kazakhstan had modification to the current Banking law. From my experience working with Islamic Banks in Kazakhstan, even after two-time amendments, the current banking law for Islamic banking needs detailed codification of the law, including Islamic principles for financial transactions and the administrative procedures for carrying out these activities. In the case of the common law, the system has more room to maneuver in terms of evidence/witness. The principal source of law is jurisprudence for drawing law, or source of the law is a case in which Islamic contracts and transactions for Islamic Banking. This law will give the provisions in a legal document more weight, irrespective of other considerations such as materiality or fairness.

### **Result and Discussion**

The first Shariah required amendments to conventional banking laws was done in 2009. After that, the government incorporates two more changes: First amendments related to introducing Wakala deposit and commodity Murabaha into the legislation to avoid taxation on these products and also to provide one level playfield for Islamic and conventional banking. The Second amendments were for Sukuk issuance by the government of Kazakhstan on the basis of government property. After the above two changes, there are still noncompliance issues with Shariah principles and laws, taxes. In regard of regulations of National Bank on Islamic banking transactions, there are no regulations on products however there is a regulation on prudential norms. Therefore, in our research, we only concentrate on Banking law, Islamic Banking part.

1. The law determined in clause 52.1, concerning the activities of Islamic banks, only operations which were prohibited and left for the Shariah Board to determined actions of Islamic Banks:

The Law states: “Article 52-1. Requirements to the Islamic Banks Activities. Islamic Bank shall have no right to charge remuneration in the form of interest, to warrant return of the investments deposit or income on it, to finance (credit) the activity connected with production and (or) trade of tobacco products, alcoholic beverages, arms and ammunition, gambling industry, as well as other types of

business activity, financing (crediting) of which is interdicted by the Council on Islamic Financing Principles. Council on Islamic Financing Principles shall have a right to additionally determine other requirements to the activity of Islamic Bank binding upon Islamic Bank” (Law of the Republic of Kazakhstan on Bank and Banking Activities).

The last paragraph of the law gives the Shariah Board authorities to determine other activities (products) which possible for an Islamic Bank to conduct. According to Shariah principles and rules, the Islamic Bank, as a trading company, may lead all types of buy and sell, and all kinds of sales (spot and deferment sales). It may also perform all sorts of leasing such as financial, operational and services lease and lease of an existing asset or specified assets. It may also participate in the partnership, Mudarabah and Wakala activities. It may also conduct other banking activities such as LGs and LCs, and Shariah compliance treasuries products. In general, Islamic Bank is a trading company which is also capable of providing banking products and services which are offered by any conventional financing institution as per parameter of Shariah principles and rules. In this respect, it is worth to mention that the Shariah Board has the right to determine and develop a new product. However, any approved product requires tax treatment where it needs again to incorporate any newly approved product into the law in order, the tax authority has to accept it otherwise there will be tax implication which may increase the cost of the financing for Islamic. It will not create one level of field play between conventional and Islamic banks. Therefore, the law does not have a mechanism for approving a new product by an Islamic Bank in Kazakhstan. It was better to provide a general treatment for tax matters based on nature of Islamic products hence Islamic bank will have right to develop a new product within those generally approved limits without introducing a new amendment to legislation for each new products of an Islamic Bank. The tax will be paid on income of the Islamic banking regardless of the types of products’ profit earned as we saw it in the example of Singapore amendments to its law.

2. The other issue is in article 52.5 (3) of the banking law in the mentioned banking activities which are also permitted of Islamic Banks with the exclusion of factoring and forfeiting which noncompliance to Shariah board. The law states:

“3. Islamic Bank shall have the right, if it is provided by the Charter, to perform some banking and

other operations specified in Article 30 hereof, following the requirements specified in Article 52-1 of this Law, except the following:

1) Factoring operations: acquisition of rights to demand payment from the buyer of the goods (works, services) with acceptance of risk of non-payment;

2) Forfeit operations (forfeiting): payment of the bonds of the buyer of the goods (works, services) by purchase of the bill without a turn to the seller.

Council on Principles of Islamic Financing has the right to recognize the separate bank and other operations provided by Article 30 of this Law as non-complying to the principles specified in Article 52-1 of this Law".

The above-referenced law refers to article 30 of banking law which has other activities, are also non-compliance with Shariah principles and rules such as discounting of bills and borrowed money operation. However, the Islamic section only excluded factoring and forfeiting activities. Here is the contradiction to Shariah principles clause which are not banned for Islamic banking as per Article 30.

"f) Accounting operations: account (discount) of the bills of exchange and other promissory notes of legal entities and individuals;"

"g) Borrowed operations: granting of credits in money terms under conditions of payment, urgency and re-currency;"

"i) Bank trust: management of money chose in action on real-estate loans and affined precious metals in the interests and upon instruction of trustier;"

"l) Pawn operations: granting of short-term credits on the security of deposited convertible securities and other movables;"

The above sub-articles of article 30 contradicts to the principles of Islamic banking prohibits the interest which is an essential element of borrowing and lending in the banking sector. The amended law of Islamic banking did not exclude them for Islamic Banking, as we have already discussed the prohibition of interest either for loan giver (deposit) or borrower above and narrated a verse from Holy Quran and saying of Prophet Muhammad.

3. The next obstacle for the development of the Islamic banking as per article 52.6, Islamic banking, part of current Banking Law, does not permit Islamic Bank to provide saving deposits with paying of the profit to its customer. According to the law, traditional saving deposit in a conventional bank must be guaranteed by the bank with its interest according to civil law hence Islamic banking's saving deposit according to Shariah standard

must not be guaranteed either under Mudarabah or Wakala deposit products. As per banking law, Islamic Bank can offer savings account; however, it may offer but has similar nature of current account where the bank guarantee payment of the principal amount on demand but without any profit payment to the customer. Restriction on saving creates obstacles for an Islamic Bank to attract cheap funding for Islamic banking and also it does not create one level field play between Islamic banks and conventional Islamic Banks. For example, below point is extracted from Malaysia Islamic Banking law, as it defines the Islamic Banking activities as "Islamic banking business" where the businesses are

(a) accepting Islamic deposits on current account, deposit account, savings account or other similar accounts, with or without the business of paying or collecting cheques drawn by or paid in by customers; or

(b) accepting money under an investment account; and

(c) provision of finance; and

(d) such other business as prescribed under section 3." (Islamic Financial Services Act, 2013).

The above Islamic banking law of Malaysia allows the country's banks to keep saving deposit money from its customers. The same is provision is available in Tajikistan Islamic banking law under the section defining "Islamic Deposit or Islamic Saving" (Law of the Republic of Tajikistan on Islamic Banking Activities, 2014). Also, in Oman's legislation for Islamic banking, attracting saving deposits is mentioned under Banking activities definition. The law states:

"Banking business is the undertaking as the principal and regular course of business conduct, as such business conduct may be defined and interpreted by the Board of Governors of the Central Bank, any one or more of the following activities or such additional activities as may be specifically authorized in amendments to this Law or by the Board of Governors of the Central Bank in a license issued pursuant to this Law: the operation of receiving monies as demand or time or savings deposits; the opening of current accounts and credits; the unsecured loan of money or extension of credit; the loan of money on personal, collateral or real property security; operation of credit card business; the issuance and negotiation of letters of guarantee and letters of credit; the payment and collection of checks, orders, payment vouchers and other negotiable instruments; the acceptance, discounting and negotiation of notes and promissory notes and other negotiable instruments;

the sale and placement of bonds, certificates, notes or other securities; the acceptance of items for safe-keeping; the exercise of fiduciary powers; the undertaking of Investment and Merchant Banking and other Financial activities which may include but not be restricted to corporate finance, project finance, investment brokerage and investment advisory services, investment management, the underwriting of securities, custodian and fiduciary services, leasing, factoring, hire purchase financing and any other similar activities approved by the Board of Governors as banking business or the purchase, sale and exchange of foreign and domestic currency or other monetary assets in the form of cash, coins and bullion, provided, however, that natural persons who deal exclusively in the business of exchanging foreign and domestic currencies on a retail basis and persons engaged in the operation of retail business establishments and places of public accommodation who exchange foreign currencies only as a convenience to their customers shall not be deemed to be engaged in the banking business (Royal Decree's Banking Law, 2000).

It is worth to mention that in general practice, most countries where Islamic banking is operating, permit all types of deposits for Islamic banking like conventional banking under the principles and rules of Islamic Shariah;

4. The next issue in the Banking law of Kazakhstan is under article 52-8 which relates to the sale of goods to the customers of the Bank. It does not clearly cover all types of purchase which are permissible according to Shariah principles and rules. It mentioned sell which is through Murabaha where the Bank has to disclose its profit, expense and cost incurred for acquiring of goods. However, according to Shariah principles and rules, especially Shariah standard permits specific sales of the specified products to be produced by the bank in future through Salam and Istisna. Also, in Shariah, we have Musawamah sales where Islamic banks sell goods without mentioning in the agreement the price, cost, expenses which Islamic Bank has incurred in acquiring of the products as well as the profit which earned by the bank. The Musawamah, Istisna and Salam according to Shariah standard requirement for an Islamic Bank, does not mention the detail of the selling price to the customer. In this regard, the Oman Islamic Banking does not require break down of the selling price and their law is comprehensive that covers all types of sales under Shariah. Like Oman law of Islamic Bank, the Malaysia law of Islamic Banking also covers under articles 180, 182,

and 186 that law only mentions "sell" or "dispose of" for selling transaction by the Islamic bank for any goods or property.

5. The next issues are also related to tax under the Article 52-10 on leasing; the law permits "financial lease" or "lease ending with ownership transfer" only and also for the corporate customer. The law does not permit service lease for an Islamic bank as mentioned in Shariah principles and rules and also practiced by other Islamic Banks in other countries according to Shariah standards of AAOIFI. Also, the Kazakhstan Banking Law, which became supervisory member of two international standard-setting organizations (Accounting and Auditing Organization for Islamic Financial Institutions and International Islamic Financial Market) mentioned that "financial lease" and operating lease for individual and legal entities (National Bank of Kazakhstan, 2017). However, tax code excluding the individual customer from tax exemption and operational lease product is also not exempted from tax for both legal and individual customers. For the instance Malaysia Islamic Banking law under definition "provision of finance" permits an individual to obtain financial leasing or lease ending with the owner under different provided structures. Also, in Islamic Banking Law of Oman under articles 66 (a & b) and articles 124 (d) permit "financial lease" for corporate and individuals and also permit for an Islamic bank to offer service lease. It is worth to mention that Shariah standards permit for an Islamic Bank to offer all types of leasing to its customers either corporate or individuals (Oman Law Blog, 2012).

6. The non-Shariah compliance in concept of Commission Agency as per Kazakhstan civil law, where the civil law making guaranteed the payment of principal. The Law states:

"Article 867. Rights and Obligations of the Commission on Transaction with A Third Party;

For transactions made by the commission agent with a third party, the commission agent shall acquire the rights and becomes obligated, even if the consignor was named in the transaction or entered as a third party in direct relationship to the transaction" (Civil Code of the Republic of Kazakhstan, 1999). However, Shariah standards mentioned that Agent under agency contract is not responsible unless for non-binding by the term of agreement misconduct and negligence. The second issue, any action or deed which will be conducted by the agent on behalf of the bank, it is for principal according to Shariah. The last issue under agency related to tax issues mentioned in article 52.11 of Kazakhstan

Banking law. The mentioned article relates to Agency activities of Islamic Bank. The first issue misconception of the definition of Shariah compliance agency. It is not under investment law hence it is not recognized as an Islamic deposit; hence it is not exempted from VAT (Civil Code of the Republic of Kazakhstan, 1999).

### Conclusion

The legislation of Kazakhstan which we mentioned above are taking good and positive steps towards establishing a stable financial sector in Kazakhstan. As discussed earlier, the Islamic banking and finance have its specifics which contradict with conventional financing. Therefore, the legislation is missing the main ingredient of Islamic banking and finance such as treatment of Islamic Banks as a trading company which should have a right to do all types of trading either goods or service and also participate in partnership relation, meanwhile receiving deposits from its customers for financing its project. The banking sector is at the beginning of its development hence the government and regulatory body has to focus on the following to build competitive financing sector which will be attractive for the

foreign and local investors. In this respect we can finalize the audiences:

1. As detailed earlier Islamic financing is at the early stage of its development. Hence the regulatory body shall build mechanism in laws and regulation which accept and adjust itself to new growth in the sector so it will not be required to go through lengthy steps of the amendment of laws and other related legislation to accept new changes and the financial sector shall be able to develop new products.

2. The governments are required to take action for creating one level field play in term of the tax treatment and other duty between conventional financing and Islamic financing for all types of Islamic banking product. Otherwise, the Islamic Banking will be more expensive and not attractive neither for investors nor for bank's customers. Malaysia is one of the best examples in this regard for creating a balanced system.

3. It is crucial for Islamic financing sector that the government should establish a working group to amend existing legislation, particular non-Sharia compliance clause, and the National Banks have to take similar actions to amend regulations contain non – Shariah compliance clauses and terms.

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