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KYRGYZSTAN: COMPLIANCE WITH BANKING LEGISLATION, ISLAMIC BANKING DEPARTMENT IN ACCORDANCE WITH AAOIFI ISLAMIC SHARIA STANDARDS

The government of Kyrgyzstan has introduced Islamic banking without a legislative base. Later, as in Kazakhstan, it legalized Islamic banking, making the existing bank code illegal in Islamic banking. The National Strategic Plan of the Government of Kyrgyzstan for a sustainable economy contains important provisions for Islamic finance to achieve the goals of a sustainable economy. The whole of the above the research should be analyzed and found out whether the banking legislation of Kyrgyzstan, which is part of Islamic finance, complies with the AAOIFI Sharia standards. Since the Islamic banking sector is at an early stage of development, the creation of a competitive financial sector is attractive to investors and it is possible to attract funds for the development of the real sector of the Kyrgyz economy with the help of the Islamic banking.The reasons for the emergence of Islamic banking are the prevention of future financial crises and the construction of a stable economic system.Some Central Asian countries have developed laws on Islamic banking and have made changes to existing banking legislation. Kyrgyzstan is one of the two Central Asian countries that have implemented Islamic banking, out of the way of the current banking legislation.

Key words: banking, law, legislation, shariah, standard.

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Қырғызстан: банк заңнамасын сақтау, ААОИФИ шариғат стандарттарына сай исламдық банкинг бөлімі

Қырғызстан үкіметі елде ешқандай құқықтық базасы жоқ исламдық банкингті енгізді. Кейінірек үкімет ислам банкингі туралы заңнаманы қабылдай отырып, қолданыстағы (әдеттегі) банкство туралы заңнамаға түзетулер енгізу арқылы Қазақстандағы сияқты заңнамаға ислам банкингін енгізді. Қырғызстан үкіметінің тұрақты экономика жөніндегі ұлттық стратегиясының жоспары тұрақты экономиканы құру жөніндегі кейбір мақсаттарына қол жеткізуде исламдық қаржыландыру үшін өмірлік маңызды ережелерді белгілейді. Бұл зерттеудің мақсаты ислам банкингінің бөлігі болып табылатын Қырғызстанның банк заңнамасының ААОИФИ шариғат стандарттарына сәйкестігін талдау және нақтылау болып табылады. Исламдық банк секторы өзінің дамуы мен өсуінің басында тұр, сондықтан бәсекеге қабілетті қаржы секторын құру исламдық қаржы компаниялары үшін неғұрлым тартымды болады, сондай-ақ исламдық банкинг және қаржыландыру арқылы Қырғызстан экономикасының нақты секторын дамытуға инвестициялар мен қаржыландыруды тартуға ықпал етеді. Ислам банкингін енгізудің себебі кез келген болашақ қаржылық дағдарыстардың алдын алу және тұрақты экономикалық жүйені құру болып Орталық Азияда кейбір елдер исламдық банкингке қатысты жаңа заң енгізеді немесе қолданыстағы банктер туралы заңға түзетулер енгізу арқылы енгізеді. Қырғызстан Орталық Азия елдеріндегі дәстүрлі банктік заңдарға өзгерістер енгізу арқылы исламдық банкингті енгізген екі елдің қатарында.

Түйін сөздер: банк құқығы, құқық, заңнама, шариғат, стандарт.

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Кыргызстан: соблюдение банковского законодательства, отдел исламского банкинга в соответствии со стандартами исламского шариата ААОИФИ

Правительство Кыргызстана внедрило исламский банкинг в стране, не имея какой-либо правовой базы. Позже правительство внедрило исламский банкинг в законодательство, как и в Казахстане, путем внесения поправок в существующее законодательство о (обычном) банковском деле, приняв законодательство об исламском банкинге. План национальной стратегии правительства Кыргызстана по устойчивой экономике устанавливает жизненно важные правила для исламского финансирования в достижении некоторых его целей по созданию устойчивой экономики. Целью данного исследования является анализ и выяснение соответствия банковского законодательства Кыргызстана, являющегося частью исламского банкинга, стандартам шариата ААОИФИ. Исламский банковский сектор находится в начале своего развития и роста, следовательно, создание конкурентоспособного финансового сектора будет более привлекательным для исламских финансовых компаний, а также способствовать привлечению инвестиций и финансирования в развитие реального сектора экономики Кыргызстана посредством исламского банкинга и финансирования. Причиной внедрения исламского банкинга является предотвращение любых будущих финансовых кризисов и создание стабильной экономической системы. В Центральной Азии некоторые страны либо принимают новый закон об исламском банкинге, либо вносят поправки в существующий закон о банковской деятельности. Кыргызстан входит в число двух стран Центральной Азии, которые внедрили исламский банкинг путем внесения изменений в существующие традиционные банковские законы.

Ключевые слова: банковское дело, право, законодательство, шариат, стандарт.

Introduction

The global financial crisis of the last two decades has demonstrated the problems associated with the existing global financial system. The financial crisis has set up regulatory bodies for a variety of policy changes and a legal framework to create a strong financial sector and a sustainable economy. There are several reasons why investigating the principles of the rule of sharia in the banking sphere can help achieve these goals.

Kyrgyzstan was the first country to take the first steps towards the introduction of Islamic banking in May 2006, the President of Kyrgyzstan and the management of the Islamic Development Bank and the Ecobank signed a Memorandum of Understanding on the introduction of Islamic banking in the country within the framework of the Gilot project, the President of Kyrgyzstan and the President of the Republic participated in the launch of the Gilot project,and the Ecobank obtained a license to operate within the framework of the Gilot project in accordance with Information from the National Bank of the Kyrgyz Republic in accordance with Islamic principles and rules.It was Approved by the Resolution of the Board of Directors of the National Bank of the Kyrgyz Republic dated October 30, 2006. According to the statement, Ecobank was authorized to offer its customers various products such as Mudaraba, Sharika, Murabaha, Ijara and Ijara Muntahia Bittamlik, Haldhasan (interest-free loans), Istisna and Parallel Istisna.In April 2008, the Ecobank held the first meeting of the Sharia Council of Directors and started banking operations in May of the same year (EkoIslamicBank, 2009).

Some Central Asian countries have introduced new legislation on Islamic banking and have made changes to existing banking legislation. Kyrgyzstan is one of the two Central Asian countries, which led to Islamic banking by making amendments to the existing banking legislation.However, the existing legislation is an obstacle to the development of the sector, and we need a new justification for the existing legislation in Islamic banking.So far, a number of studies have been conducted on Islamic finance in the domestic market in accordance with the laws of the Islamic state.Therefore, the purpose of the study was to understand the importance of bringing Islamic banking legislation in line with Islamic norms and rules.The research helps the legislative regulatory authorities to get an idea The law of Islamic banking in Kyrgyzstan, the nature of work with Islamic financial products and the law of Islamic finance in connection with other laws, such as the Civil Code.

Scientific research methodology

My methodology in this research is based on reviewing all existing three countries' legislation on Islamic Banking and also regulations of National Banks, if any, studying their compliance with principles and rules of Shariah according to main sources of Islamic Banking principles and rules. I will compare these countries' legislation with the existing practice of other countries such as Kazakhstan, Tajikistan and other countries. Also, to the extent possible, I will try to compare Islamic Banking laws among each other to find out which one is best and more compliance with the Shariah principles and rules.

Justification of the choice of topic, goals and objectives

Unfortunately, the article does not contain a standard Number-Compliance with the Islamic Association (AAOIFI). There is no legislation of Kyrgyzstan on the Swiss Accounting and Auditing Standards.However, materials on other Islamic finance issues are available, but in small quantities. Local scholars have written a number of articles on this topic, including the publication of evidence on Islamic law, its application and practical aspects of Islamic law.In our opinion, even such literature, unrelated to the above, could at least explain the current situation and problems, the challenges faced by the development of Islamic finance in Kyrgyzstan. Therefore, the researcher tried to find answers to the following questions:

- Why the rise of Islamic finance in post-colonial market-building in central Asia and Russia?
- Challenges for Islamic Banking Industry in the Kyrgyz Republic Experience

The article "The Rise of Islamic Finance in the construction of post-colonial markets in Central Asia and Russia" by David Hoggart analyzes the development of Islamic finance in the region and the vision of politics. In memory of the scientist, the introduction of Islamic finance in Central Asia in the postcolonial era revolutionized the state, the economy, and the Islamic religious discourse, destroying the materialistic and symbolic status quo. She also explains the rise of Islamic finance by the fact that countries prefer to create their own financial strategies and identities, and to end the colonial legacy by creating multidimensional financial systems.

Another reason for the growth of Islamic finance in Central Asia is the 84 million Muslim population of the region, which is part of a project to develop faith rather than "pacify religious groups," and the separation of faith, financial and non-financial transactions by Muslims. This is unacceptable, and we point out where we think she is wrong. This conclusion stems from a lack of proper understanding of the principles of Islam. Next, she analyzes the rationale for the growth of Islamic finance by creating a multidimensional economy free from Russian influence and linked to the global Islamic economy, but the growth of Islamic finance in Russia itself is not the result of attracting investments from Islamic countries to the Russian economy, but the result of the return of investments from Islamic countries to the Russian economy. The West as an alternative source of investment after returning as an alternative source of investment after the imposition of sanctions. According to her, there is a negative attitude towards the growth of Islamic banking and "civil disobedience" on the part of religious organizations, although some scientific articles oppose the use of religion to grow the market, as this causes social unrest. In the rest of the article, the authors explain that another reason for the introduction of Islamic banking in Central Asian countries may be political goals and the creation of a cultural brand for countries with pre-colonial history. The article pursues political goals, rather than analyzing the legal and financial development of Islamic banking and Islamic finance in the region (Noggarth, 2016: 115-136).

The next article is on "Challenges for Islamic Banking Industry: The Kyrgyz Republic Experience written by Abdurashed Zhoraev and Ali Yuksuk. The article is written for the business analysis rather core issue of the operating of Islamic Banking which legislation of the country. The authors provide additional historical information about the legal foundations of Islamic banking in Kyrgyzstan, without analyzing these legal acts from the point of view of the history of the development of Islamic banking in the country, as mentioned earlier. Further the authors give overview of current banking sector, Islamic and non-Islamic by providing no of bank operating and data on their deposits and assets. On challenges which are facing by Islamic financing institutions, the authors are referring to National Bank regulatory document where it summarize five strategic domains: 1) coordination among state bodies on issues and implementation of Islamic Banking, 2) harmonization local laws with International standards such as Islamic Financial Service Board (IFSB) and AAOIFI, 3) resolving liquidity management issue for Islamic bank sector, 4) assistance of

with market players for their increasing their market share, 5) creating regulatory act on Islamic economy such as Zakat and endowment. As per the authors as significant time passed there is no sign of impact in industry has been seen.

The authors propose to use example of Malaysia however they have not noted that legislation system of Malaysia good for development of Islamic where it is based on common law system however Kyrgyzstan legal system is civil law system where it requires to codify all matters related to Islamic banking. The best example can be followed is UAE and Indonesian where their legal system is similar to Kyrgyzstan. The authors further discuss the challenges in relation to harmonization of local laws with international standards and encourage local scientist to write and make research on Islamic Banking which goods encourage in creating local professional in field of Islamic banking. In regard of creation Central Shariah Board, the authors propose to use Supreme Board of Shariah scholar in the country where it has public trust and cost efficient and they cannot see the development of Islamic Banking without those scholars. I guess it is good example where the same is followed in Indonesia. According to the authors, due to small share of Islamic financing sector in the banking sector is "not relevant" to develop this sector at this stage where in my opinion the management this issue can be handle by National Bank of Kyrgyzstan where it can play role median and in solving the liquidity issue for Islamic bank rather leave as it is. The authors conclude reason for not developing this sectors lack of legislative acts and regulatory support from the government and central(national) bank of the country which out main aim from this article to define the issue on legislation and regulatory acts in order to amendment them and further help in the development this sector (Zhoraev, Yuksek, 2021: 713-730).

Result and discussion

In 2016, the president of Kyrgyzstan signed amendments to the existing Banking laws for the purpose of introducing Islamic Banking as part of the current law of the country, not as a separate law (National Bank of Kyrgyzstan, 2023). Since the inception, Islamic Banking sector, the National Bank of Kyrgyzstan has issued many regulations for Islamic Banking and finance. In principal Islamic banking sector was operating on the basis of National Bank regulations without any legal base. For our research, the author reviewed the existing part of the Islamic bank having current banking law and also the National Bank's regulations. The adopted banking law has few dedicated articles for Islamic banking. The amended banking law officially and legally permits Islamic Banking to operate in Kyrgyzstan as well as the conventional banks to open Islamic window. Also, banking industry and financing are the principles and rules for the implementation of banking operations and transactions by following of AAOIFI's Shariah standard. This law will be applicable for banking and non-banking financial and credit organization. Article 4 of the Banking Law states:

Islamic Principles of Banking Industry and Financing

1) The Islamic principles of banking industry and financing shall be applied in the Kyrgyz Republic along with traditional banking industry and lending.

2) The Islamic principles of banking industry and financing are the principles and rules for implementation of banking operations and transactions in accordance with the standards of Shariah that have been developed and approved by the international organizations that establish standards for the conduct of Islamic banking industry (Organization of accounting and audit for Islamic financial institutions, the Council of Islamic Financial Services).

3) The provisions of the present Law and the banking legislation of the Kyrgyz Republic shall be applied to the banks and non-banking financial and credit organizations that carry out their activities in accordance with the Islamic principles of banking industry and financing" (Law of Kyrgyzstan, 2016).

Kyrgyzstan's banking law, Islamic financing section:

The part of the existing Banking Law related to Islamic banking was adopted in 2016. According to the author, the Law on Banks was adopted without making changes to other interrelated legislative acts. In this regard, the Civil Code contains cases that contradict the Law on Banking Activities. The Civil Code (1997) recognizes that an Islamic financial company violates the principles and rules of Sharia when it knowingly or unknowingly forces transactions that do not comply with Sharia requirements (Section, 2023). It should be noted that this issue may also be raised in Kazakhstan and Tajikistan. Section 1, relevant to the General Comment, states that article 2.3 of the Banking Act provides as follows (National Bank of Kyrgyzstan, 2023):

"*In case of a conflict between the provision of the present Law and the provision of the Civil Code of the Kyrgyz Republic shall apply***.** In case of a conflict between the provisions of the present Law and the provisions of other laws of the Kyrgyz Republic, the rules of the present Law shall regulate the banking legal relationships."

The italic part of law mentioned that in case of contradiction between Banking law, including Islamic banking section, with the Civil Code of Kyrgyzstan, the Civil Code shall prevail. In this respect, in case of the contradiction of civil code which has clause violating the principles and rules of Shariah, the civil code law prevails, or in another word, the provision which violates the principles of Shariah shall be applicable regardless of the company has the license to operate according to Shariah principles and rules. In Civil code, Chapter 5 on legal entities, under article 99 on Satisfaction of Obliges Claims: while determining the order of payment of claims in case of liquidation in fifth order of the law mentioned (Paragraf, 2023):

"*In the fifth priority, claims for forfeit (fine and penalty) of oblige of the third and the fourth priority including interests on the principal amounts of payments due to budget and non-budgetary funds*."

The above point indirectly forcing Islamic Banks in case liquidation to pay interest to the claims which may arise from its the customer or any other third party where according to Quran and Hadith of Prophet interest payments are prohibited. Quran says:

(Quran.com, 2023) {ٱضۡعَٰفٗا مُّضَٰعَفَةٗۖ وَٱتَّقُواْ ٱللَّهَ لَعَلَّكُمۡ تُفۡلِحُونَ} {يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا تَأۡكُلُواْ ٱلرِّبَوٰٓاْ

O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful. [03:130 Aal Imran (The family of Imran)] **(**Saheeh International, 2004:60**)**.

Prophet Muhammad said:

"*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*", (Imam Hafiz Abu Eisa Mohamed ibni Eisa At-Tirmidhi, 2007: vol. 3, 22).

Similarly, non-Shariah compliance also clauses also found in article 103 under the same chapter. In Chapter 19, on Securing Performance of Obligation, wherein article 319 define ways of securing obligations:

"1. *Performance of an obligation may be secured by penalty, pledge, retention of obligor's property, surety, guaranty, advance or any other way established by the legislation or the contract*."

In the next article 320, the civil code defines penalties (Paragraf, 2023):

"Article 320. The concept of Penalty 1. Penalty (fine) shall be a sum of money or any other piece of property determined by the legislation or the contract, which the obligor must pay or transfer to the obligee, in the event of the failure to perform or improper performance of an obligation. Upon a claim for a penalty, the obligee must not prove damages suffered.

2. The obligee shall have no right to claim for a penalty if the obligor is not liable for the failure to perform or improper performance of the obligation."

The above-mentioned civil code article forces Islamic Bank to pay penalties even penalty for financial dues and obligation. However, under the Shariah, any direct and indirect revenue, income and benefits over the principal amount due will be equivalent to the interest. The banking law or civil does not exclude Islamic Banking from payment of penalties. As mentioned earlier receiving and payment of interest is prohibited under Shariah rules. According to AAOIFI standard, it is not permitted for Islamic Banks to charge a penalty for financing obligation the Standard No 3 on Procrastinating Debtor states:

"2/1/2 It is not permitted to stipulate any financial compensation, either in cash or in other consideration, as a penalty clause in respect of a delay by a debtor in settling his debt, whether or not the amount of such compensation is pre-determined; this applies both to compensation in respect of loss of income (opportunity loss) and in respect of a loss due to a change in the value of the currency of the debt.

2/1/3 It is not permitted to make a judicial demand on a debtor in default to pay financial compensation, in the form either cash or of other consideration, for a delay in settling his debt." (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

However, the Shariah standard has permitted Islamic financing company to charge a penalty for the customer who can pay its installment but not pay it on time as per agreement. However, the standard puts restrictions that (first) such penalty purpose is to force obligor to pay its installment on time and other (second) restriction on Islamic financing company that it shall forfeit it to charitable causes after deducting its actual cost and loss, with exclusion opportunity profit and cost of funding. The Shariah standard also permits to charge penalty without

forfeiting to charity causes if the penalty for non-financial obligation such not the fulfillment of construction of the building by the contractor on the time where the contractor has to pay the penalty for the Islamic Bank and Islamic Bank may get such penalty for itself. (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

The justification for non-permissibility of charging a penalty for financing obligations and dues prior to the arrival of Islam, lenders who charged interest used to say to their debtors: "Do you want to settle now or to pay an additional amount for a further period of credit?" (Imam Malik ibn Anas, 2014: 495). The prohibition charging an extra amount over the principal debt or financial dues/loan has also reported on the authority of many companions from the Prophet. On this basis, a decision reached by the International Islamic Fiqh Academy which reads as follows: "*It is impermissible from the Shariah perspective to stipulate a condition of compensation in the case of delay in settlement of a debt*" (International Islamic Fiqh Academy, 2021). However, it is permissible to put the condition that the debtor shall donate to charitable causes in case of default in payment. The interpretation of two Mailiky Scholars on Saying of Prophet Muhammad (peace be upon him) says: "*Default in payment on the part of a solvent debtor is unjust"* (Al Khatib At-Tabrizi, 1979: 878) and He also says: "*Delay in payment by a solvent debtor would be a legal ground for his publicly dishonored and punished*." (Hafiz Ibni Hajar al-Asqalani, 2014: 331)). In case if the customer has real financial difficulties such individual who got sick or children inherited financial obligation form the parents than it is not permissible to the charge any penalty or increase liability for Murabaha sell price. In this respect, the Quran says:

{وَإِن كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَن تَصَدَّقُوا خَيْرٌ لَّكُمْ إِن كُنتُمْ تَعْلَمُونَ} (Quran.com, 2023)

Translation is: And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew *[2:280 Al Baqara (The Cow)]* (Saheeh International, 2004: 42).

In light of the above facts regarding the prohibition in the hadith of the Prophet and the Quran to charge interest in terms such as interest or penalty, there is a conflict between the existing banking business and the Islamic banking business with the Civil Code, which requires Islamic banks to pay a penalty on debts. It is worth noting that similar issues may arise with respect to debts arising between Islamic banks and other counterparties for non-banking transactions, in which case the Islamic bank must pay the counterparty a penalty in case of late payment. There may be more points of inconsistency between Islamic banking law and civil law, and additional research is required to list all inconsistencies with the general principles and rules of Sharia, and in particular with the AAOIFI Sharia standards. The next contradiction to the principles and rules of Sharia in the Banking Law is the article obliging Islamic banks to participate in deposit protection and insurance schemes together with other ordinary banks. The law says:

"Article 120. Deposit Mandatory Protection System"

1. Banks shall participate in the deposit mandatory protection system.

2. The procedure for functioning of the deposit mandatory protection system, formation and use of the Deposit Protection Fund. The payment of compensation on deposits in the event of warranty claims as well as the relationship between the authorized deposit protection authority, banks, the National Bank, government agencies and other relations arising in this field, shall be regulated by the law on the bank deposit protection.

3. The Bank may choose additional forms of deposit protection used in international banking practice."

Kyrgyzstan deposit protection is working on the conventional way of insurance of the deposits not Islamic way. This clause contradicts with banking law itself wherein article 4.2 (above) of banking laws say that the Islamic Bank shall operate according to AAOIFI's standards. According to the Shariah standard of AAOIFI No 29 on Islamic Insurance, Islamic Insurance is a "process of agreement among a group of persons to handle the injuries resulting from specific risks to which all of them are vulnerable". It based on donation contribution, and where insurance fund itself is a separate legal independent financial entity. The insurance fund shall pay for any injuries and loss which happen to participate in the insurance fund (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

In contrast to Islamic insurance (takaful), traditional insurance based on a mutual compensation contract. It seeks to generate income and revenue from insurance operation itself. The modern Muslim scholar prohibited conventional insurance as it consists of Garar or uncertainty. The based reference for the prohibition of traditional insurance is saying of Prophet Muhammad: "*The Prophet peace be upon*

him prohibited sales which involve Gharar" (Abū Abdullah Muḥammad ibn Yazid ibn Majah al-Rab i al-Qazwīnī, 2007: vol. 3, 254-255). In this context International Islamic Fiqh Academy also gave its resolution in respect to prohibition traditional insurance. Another contradiction in Islamic banking section existing banking law is in article 112.7 where the law mentioned Islamic banks give or place money with customer similar to conventional banking however Islamic bank never lend or put direct cash for financing purpose with its customers. The law states:

"7. Placement of funds in accordance with the Islamic principles of banking industry and financing shall be carried out in accordance with the banking legislation of the Kyrgyz Republic with account of the specifics and peculiarities of the Islamic principles of banking industry and financing."

The mentioned law contradicts with the nature of Islamic banks which is based on trading such as selling and leasing, participating and sharing risks with its customers under Mudarabah, Wakala and Musharakah. Therefore, the above article of the law needs amendments to the nature of Islamic Banks activities.

Regulation for Implementing the Principles of Islamic Banking and Finance in the Kyrgyz Republic within the Pilot Project,

Approved by Resolution No. 32/2 of the National Bank of the Kyrgyz Republic Board dated October 30, 2006 *(As amended by the Resolutions of the NBKR Board No. 38/1 dated November 30, 2006, No. 33/1 dated June 29, 2007, No. 18/2 dated April 25, 2008, No. 47/3 dated December 17, 2008, No. 32/8 dated August 28, 2013, No. 25/9 dated June 11, 2014, No. 32/6 dated July 16, 2014, No. 7/2 dated February 10, 2016, No. 40/4 dated September 28, 2016, No. 49/8 dated December 21, 2016, No. 21/10 dated May 31, 2017)*.

This regulation is mandatory regulation for Islamic Banks. It was adopted initially for the pilot project for Eco Islamic Banks. After the amendments in banking law, this regulation amended also. However, this regulation still contains contradiction to Shariah principles and rules in general, according to Shariah standard adopted by AAOIFI, in particular, which now a reference to Islamic banking transaction.

i) In Chapter 2.3, point 1 of the regulation mentioned in above part related to the definition of Murabaha. It states that when selling the goods to the client under the Murabaha Contract, the bank shall act as the owner of the products however in next paragraph under the same definition it says that the ownership of the assets shall be transferred after full payment of the price, otherwise stipulated by the terms of the contract. However as per principles and rules of Shariah and also AAOIFI's Shariah standard, which are the parts of Banking legislation. It is required that the goods which are subject of Murabaha must be transferred immediately on the signing of the Murabaha agreement/contract. It means, sale considered void from the Shariah aspect unless if the legislation recognizes the purchaser under such agreement will be the owner of the good without registration. This issue also exists in Tajikistan's National Bank regulation where we discussed it as Shariah basis for such prohibition (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

ii) In the same point, 6 of chapter 2.3 of the regulation mentioned on appoint of the customer to be an agent (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).). in purchasing of the goods from the seller or the bank may purchase by itself. However, the Shariah standard eight articles 3.1.3 mentioned as a reference in the banking law such appoint shall be an only dire need, not as a general practice of the Islamic bank and standard approach where the regulation has mentioned such restriction and has provided a general procedure for the banking practice. From author experience in Islamic Banking, the Shariah Board has a significant role in controlling and implementing this standard where it permits to use as standard practice in banking operation. The Shariah Board approve the appointment of the customer to be the agent of the bank in a case by case basis and upon obtaining advance approval of Shariah Board, provided the price of the good must be paid directly to the supplier or seller, not to the customer. The justification for such a requirement to segregate the risk of ownership while the bank is buying or selling the goods. The appointing of the bank's customer as the agent of the bank also contradicts with Shariah maxim of "Al Ghunm bil Ghurm" as "earning profit is legitimized only by engaging in an economic venture, risk sharing and thereby contributing to the economy." (State Bank of Pakistan, 2023) and "Al-Kharaju bid-daman" is means the entitlement to revenue on corresponding liability for bearing losses (The Financial Encyclopedia, 2023), where by appointing the customer to be an agent of the bank, it does not take risks and responsibility; therefore, how Islamic Bank will deserve for the profit earned under subsequent Murabaha contract.

iii) In point 8 of chapter 2.3, the regulation states in the third paragraph: "where the client has not made the full payment of the price, the bank will not register the ownership of the goods in the name of the client until the installments paid in full." This requirement contradicts with the nature of sale and purchase in Shariah view. It is worth to note that Shariah standard of AAOIFI on Murabaha where it is required, it must be transferred immediately after signing of the Murabaha (SPA) contract. The justification of Shariah standard is that such term in the agreement is contradicting with nature or "effect" of sale purchase agreement (Murabaha agreement) where its consequence must result in the ownership transfer of the subject of the sale to the purchase, therefore, it is prohibited to stipulate such condition in the agreement to delay ownership transfer (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

iv) In chapter 2,4 which relates to leasing, in point 3 in the definition of the lessor, it mentions that bank "borrows fund"; however, Islamic Bank is not entitled to "borrows funds". The regulations states:

"Lessor is a bank that at the expense of its own and/or borrowed funds, acquires property during implementation of the Ijarah Contract and grants it as an Ijarah subject to the Lessee for a specified fee, for a specified period and under specified conditions for temporary possession and use, with or without transfer of ownership to the Lessee in relation to the subject matter of the contract."

The above definition has two issues: the first one, it is mentioning the bank (lessor) is "borrowed funds" where the Islamic banks never borrow funds from its customer. The Islamic Bank either obtains funds through Mudarabah or Wakala where both of them based on sharing of risk between the bank and fund provider. The other issues are mentioned the property subject of the lease to be "acquired during the implementation of the Ijarah Contracts" where the Shariah requirements are the bank must possess either identical goods/asset or usufruct of the asset prior concluding the of Ijarah contract not during Ijarah. Prophet Muhammad said: "*Do not sell what you do not possess*" (Al Imam Al Hafiz Abi Dawud Sulaiman Ibni AlAshath AlAzdi As-sajistani 2009: vol.5, 362) and in another Hadith of Prophet Muhammad said,: "Ibn Abbas (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) as saying: He who buys food grain should not sell it until he has taken possession of it" (Muslim Ibn al-Hajjaj, 2023). Also**,** it was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that: The Messenger of Allah prohibited lending on the condition of a sale, or to have two terms in one transaction, or to profit from what you do not possess (Abu Abd ar-Raḥman Aḥmad son Shuayb ibn Ali son of Sinan al-Nasai 2007: vol. 5, 329,). Hence, we cannot have selling or ownership transfer under lease agreement itself.

The mentioned Hadith of Prophet applies for selling of either goods or services. In this context, it is worth to say that Shariah standard No. 9 of AAOIFI, article 3.1 on Lease and leasing ending with ownership transfer also has mentioned such requirement for the validity of lease contract. All reason was discussed in detail earlier, and justifications of Shariah for ownership requirement before signing Buy and Sell agreement (Murabaha contract) in Tajikistan part of this thesis and there is reason to repeat all facts here again as the same required for selling of service too. In the same point 3 of the regulation also there is a contradiction with the nature of Lease ending with ownership transfer. The definition of rental payment in regulation mentioned:

"Lease payments are the fees for owning and using the subject matter of the Ijarah Contract". The definition is contradicting with Shariah nature of lease as rental payment is for using of the item or for buying of usufruct not for purchasing as Prophet Muhammad prohibited to combine two contracts in 1 contract. It narrated that Abu Hurairah said: "The Messenger of Allah forbade two transactions in one" (Abu Abd ar-Raḥman Ahmad son Shuayb ibn Ali son of Sinan al-Nasai 2007: vol. 5, 332). If rental under Lease contract is considered as a part of purchasing from initial than transaction will fall under prohibition above Saying of Prophet Muhammad. In practice rental payment even, it is higher than standard market rentals, it will not consider for ownership of the price but it is used as service or usufruct of the asset. The party enter into gift agreement or another SPA agreement at the end of the lease term. Therefore, the above definition is non-compliance with Shariah principles and rules.

ϖ) Also concerning maintenance, the regulation stated that in point 11 of chapter 2.4 of the document, it says that "the lessor shall provide basic maintenance. The lessee shall perform routine or periodic maintenance". However, the AAOIFI's Shariah standard No. 9 on leasing segregates maintenance by major and minor maintenances and also divide by "partial" and "Total destruction" which each has its ruling according to the Shariah standard. In case of "Total destruction", the identified lease

asset in the lease agreement is terminated however if it is leasing for the specified asset, the lessor may substitute with another similar property provided that such total loss under existing or specified leased asset does not happen due to misconduct and negligence of the lessee. In case if it is due to lessee fault, it will be liable for damage as per lease agreement. If total loss is not attributable to the customer, the lessor is not liable to charge from lessee any cost or future rental payment, and it has either substitute with another similar asset under a specified lease category. And for the identified/existing asset, the bank re-calculates all received rental payment on market operating rentals base for the same asset and will return any extra amount to the customer. In case of partial loss due to the customer, the customer has to repair leased asset and continue rental payment. However, if partial loss is not due to lessee's fault, the rental amount will be reduced for part of the partially damaged part. Regarding the maintenance expenses and costs, if the maintenance is major maintenance it must be done by lessor; however, the lessor may appoint customer or third person to do a major repair. If it is minor or ordinary maintenance, the lessee shall do it by itself on its own expense (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

vi) In the point 40 of chapter 2.4 of the regulation mention termination scenario. The regulation states that Ijarah Contract may be "terminated when the leased property is damaged" without specifying types of the damage and who did damage. However, the AAOIFI's Shariah standards are required to define who has committed damage as we have discussed above and not by simple "damage" as it mentioned in the regulation.

vii) In point 24 of chapter 2.4 of the regulation it states: "Ijarah Contract may be entered into several lessees entitled to the same benefit in respect of any property and lease period, *without establishing a certain period for a certain person*. In this case, each lessee can get a benefit from the property during the period established for it, according to the stipulated rules between the lessees."

The underlined part of the above regulation is contradicting Shariah principles which are required to avoid Garar from a transaction where the lessor may enter into lease agreement with many lessees without determining the period for a specific person and property subject of the lease. It is narrated that Abu Hurairah said: "*The Messenger of Allah (PBHU) forbade Gharar transactions and Hasah transactions*" (Abū Abdullah Muḥammad ibn Yazid ibn Majah al-Rab i al – Qazwīnī, 2007: vol. 3, 254). The ambiguity and uncertainty which exist due to non-determination property and period fall under the term of Gharar, hence it is not acceptable. Also, AAOIFI Shariah standard No.9 on lease under article 4.2.1 has a similar requirement on "successive lease" (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

viii)In Istisna product (sale and purchase based on specification), under point 46 of 2.6 of the regulation states that "upon completing the manufacturing process for the subject matter of the contract, the bank shall, under the Purchase and Sale Agreement, transfers the subject matter to the client and terminate its recognition only after the client has fully repaid the value specified in the contract reflecting the amount of income received from the sale".

The regulation has two Shariah issues: one related to the transfer of ownership to a customer under a separate SPA other than Istisna contract and the second issue is recognition transfer of property to the customer upon full payment of the price by the bank. The later issue we have already discussed it above and the same will be applicable on Isitsna as it is applicable in Murabaha. For the first issue where it is required to sign a separate SPA, there is no Shariah requirement for such SPA as Istisna contract by itself is sell and purchase agreement. In the practice, bank is not using a separate SPA, and no any Muslim scholars has required such a requirement.

ix) In chapter 2.12 of the above regulation it permits the payment of profit for current account holders under the product name "Wadi'ah Yad Dhamanah" transaction (contract) which is defined as a contract of guaranteed custody, under which the Bank shall be authorized to dispose of the funds entrusted to it and receive profit from their placement. Under point 2.2, it clarifies the nature of the payment by the bank to its customers; it will treat as a saving deposit. Under 2.3, the payment of profit to the customer will be Hiba "gift" which is not an obligation of the bank to pay such Hiba to its customer. In other words, it is at the bank discretion to such gifts to the customers. Under point 2.3, the Hiba is defined as a donation in a kind of material incentive paid to the bank's clients who placed money under the Current account (Qard Hasan and Wadi'ah Yad Dhamanah Contracts) as well as under other deposit transactions on an interest-free basis. The above-introduced product is directly violating Shariah principles and rules of an interest-free loan.

Prophet Muhammad said, "any loan which brings benefits is equivalent to Riba (interest)". It was narrated from Amr bin Shu'aib, from his father that his grandfather said: The Messenger of Allah said: "It is not permissible to lend on the condition of a sale, or to have two conditions in one transaction, or to sell what you do not have and profiting on what you do not possess" (Abu Abd ar-Raḥman Aḥmad son Shuayb ibn Ali son of Sinan al-Nasai 2007: vol. 5, 331). The Shariah standard No. 19 of AAOIFI on Loan stated:

"**10/2 Perquisites for Qard**

It is not permitted to the institution to present to the owners of current accounts, in lieu of such accounts, material gifts, financial incentives, services or benefits that are not related to deposits and withdrawals. Among these are exemptions from charges in whole or in part, like exemption from credit card charges, deposit boxes, transfer charges and letters of guarantee and credit. The perquisites and incentives that are not specific to current accounts are not governed by this rule" (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017).

The above Shariah standard which references for Islamic Banking transaction as per banking legislation of Kyrgyzstan prohibits the payment of the gift. The reason for the prohibition of Hiba is that the Hiba payment is due to Qard (interest-free loan) by the customer to the Bank. A general comment on the regulation is that it treats all types of financing by the Islamic bank as the placement of loan by the Islamic banks which contradict with the nature of Islamic financing products where these Islamic products are not a loan (The Accounting and Auditing Organization for Islamic Financial Institutions, 2017)

Results and conclusion

The adoption of the Law on Islamic Banking and Finance is a positive and good step towards creating a stable financial sector. As mentioned earlier, Islamic banking and finance have their own characteristics and characteristics that contradict traditional finance. The adoption of sharia law is a good start in Kyrgyzstan, but if other relevant laws are not reviewed and corrected and inconsistencies are not pointed out, this will lead to conflicts between users of the law, whether financial institutions or individuals, as a result of which some people will also lose their property rights in the form of money. Since the Islamic banking sector is still in its infancy, the government and regulators need to address the following issues in order for Islamic banking to develop faster:

1. Regulatory authorities should include mechanisms in existing laws and regulations to adapt to new market changes

2. Governments should take steps to create a level playing field between conventional and Islamic finance in terms of taxation and other mandatory obligations

3. For the Islamic finance sector, it is important that governments establish working groups to amend existing laws, especially those relating to conflicts of laws in Islamic finance, civil and tax law, and national banks should take similar actions to change their rules to include conditions that do not comply with Sharia

4. Introduce courses/subjects in Islamic banking and finance at universities/institutes/colleges to educate a new generation working in various sectors of the economy.

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