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**Shari'ah Corporate Governance: The Need for a Special Governance Code**

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## Abstract

With advent of Islamic banking in the world, new specie was added to the banking system which was then, only dominated by the conventional banking. Islamic banking expanded in the world within the last decade and as a result, Islamic finance emerged as an alternative to the conventional finance. This created Islamic companies and Islamic Financial Institutions which operate based on the principles of Shari'ah or Islamic Law. These Islamic corporate bodies, like the conventional corporate bodies do need good governance rules. In other words, they also need a good, sophisticated "Shari'ah Governance Code" which would be based on the principle of Islamic Law. This is mainly because the objective of the conventional and the Islamic Corporate governance is different as conventional corporate governance structure is more focused on the protection of the rights of the stakeholders; while Islamic corporate governance focus on retaining the Islamicity of whole corporation. The objective of this research is; as the title suggests; proposing the reasons why a special governance Code for Shari'ah corporate bodies are needed. This paper would suggest a proper governance structure to the Islamic companies and will also discuss why the conventional corporate governance Codes are unsuitable for the Islamic Companies. Indeed, the growing demand for Islamic banking and finance in the world and emergence of Islamic companies in the world creates the need for a special governance code for Shari'ah corporate governance.

**Keywords:** Shari'ah governance, governance code, Islamic banking and finance

## Introduction

Corporate governance is a globally debated interdisciplinary notion with numerous attributes (Nobel cited in Krishnan, 2010, p.i). There is no precise definition of corporate governance. The Organization for Economic Cooperation and Development (OECD, 2004) defines corporate governance as "set of relationships between a company's management, its board, its shareholders and other stakeholders". Cadbury (1992, p.15) says "Corporate governance is the system by which Companies are directed and controlled."

Shari'ah corporate governance is the Islamic version of corporate governance. This is the simplest way to explain what Shari'ah corporate governance is. Corporate governance is essential for smooth running of any corporation. A corporation consists of multitude of limbs and organs that are responsible for specific functions of the organization. All these functions are streamlined and expressed as one entity via the veins and arteries of corporate governance. The blood flowing through these veins and arteries simply need to be pure for the corporation to be in its optimum state. Similarly, a corporation needs to have a shari'ah compliant corporate governance structure in order for it to be an Islamic corporation.

Good corporate governance comprises of three major constituents; which are transparency, disclosure and accountability. These components need to be successfully implemented with clockwork relativity. When one fails, the rest exponentially fails to

achieve its targets. With broken strands, it's hard to fathom the extent of damage until an unpredicted catastrophe like the financial crisis hit the organization. And, then it's too late to prevent the disintegration of numerous functions of a corporation.

Unlike the conventional corporate governance, Shari'ah corporate governance has a much refined objective. The three major constituents of the conventional corporate governance is owe to the shareholders and to the stakeholders of a corporation; where as in shari'ah corporate governance the three main tenets of the corporate governance are owed to God and then to the shareholders and the stakeholders. The fundamental objective of shari'ah corporate governance is to run the corporation according to the principles of Islamic law. This is because the reason for creating Islamic corporation is to distinguish itself from the conventional rules of corporate governance.

The main objective of this research is to recommend the reasons why a special governance Code for Shari'ah corporate bodies are imperative. In doing so, a proper governance structure to the Islamic companies would be suggested. Not only this; there would also be a discussion on why the conventional corporate governance Codes are short of being appropriate for the Islamic Companies. Islamic corporations definitely should be unique from that of its counterpart; the conventional corporations. Then only the true meaning of the prefix "Islamic" attached to the corporation would be reflected.

## Literature Review

The term corporate governance is reasonably new as it became the limelight of corporate world within the last two decades and this conception is fundamentally not eccentric to Islam (Fotuih, 2010). Corporate governance has been defined in various manners. The literatures on the shari'ah corporate governance are less compared to that of conventional corporate governance (Siddiqi, and Haneef cited in Hassan, 2009). The modern day scholars (like Lewis, 2005; Saroni, 2008; Hassan 2009; Malekian & Daryaei, 2010; Salahudin, 2008; Choudhury and Hoque, 2006) have started writing on this subject matter. Malekian & Daryaei (2010) defines corporate governance as "the way in which the boards oversee the running of a company by its managers, and how board members are, in turn, accountable to shareholders, stakeholders and the company." This definition does not cover the accountability of the Board of Directors to God and the society, which are crucial factors in shari'ah corporate governance. Hence, this is a good definition of conventional corporate governance.

According to Fotuih (2010), concept of corporate governance was recommended as a consequence of swelling consciousness on the significance of the need to guard the rights of all stakeholders, including minority shareholders. And it has been said that good corporate governance is more than an excellent thought as it promotes flow of investments, lowers the cost of capital, and supports strong capital markets (Fotuih, 2010).

The general consensus is that governance allows an entity to target, and clearly state objectives and work towards achieving them with enhanced efficiency. Similarly corporations if governed appropriately could effectively achieve its corporate and fiscal aims and visions. Lazonick and O'Sullivan (2000), describes three major aspects that construct the corporate governance structure, namely, a system of corporate governance shapes that makes investment decisions in corporations, what types of investments they make, and how returns from investments are distributed.

These dimensions of corporate governance that corporate leaders and managers are familiar with are also the principles that shari'ah compliant organizations are most concerned with. As the source of the capital, how it is utilized and how the return is shared is key to the shari'ah compliance of a business, personnel managing Islamic corporations need to be extra vigilant on such matters.

As corporate governance can make or break the company's future it is imperative to apply good governance at all levels of the company or corporation in order to transparently and effectively complete the different tasks and objectives of the organization. Shari'ah corporate governance structure also achieve these objectives apart from the Islamization of the concept.

There are several shari'ah governance codes or guidelines issued specifically for Islamic Financial Institutions by several countries such as Malaysia and organizations or

institutions (like AAOIFI and IFSB). But the problem with these regulations or rules is that firstly; it is not applicable to Islamic corporations in general; and secondly; it is not binding to the whole world and it cannot be uniformly adopted and applied to all the Islamic corporations. Hence, the authors believe that this is the high time that the patrons and contributors to the Islamic finance realize that enough has been done to achieve shari'ah corporate governance at a domestic and regional levels; and now it is time to apply the flavor of globalization to shari'ah corporate governance by applying a Code uniform to all Islamic corporations; irrespective of their locality.

### **Methodology**

This research with its novelty is among the first few to theoretically shed light on the subjects discussed. Hence, the researcher's co-objective was to explore and establish the relations and findings within the conceptual, theoretical and foundational dynamics of the subject. An exploratory research was conducted to identify and accumulate existing literature and based on this information, further analysis and conceptual proliferation was performed. Subsequently, the authors present the findings of this comprehensive and meticulous research on a platter intelligible and graspable to all stakeholders of Islamic corporate affairs.

### **Epistemology of Shari'ah Corporate Governance**

Shari'ah corporate governance is a concept that emerged in the 19th Century after the birth of Islamic banking and Islamic finance. The increase in the number of Shari'ah

compliant companies led to the formulation of corporate governance rules which are in line with the Islamic law. It is hard to specify the person who coined the phrase Shari'ah corporate governance and there is also no specific unified Arabic phrase formulated for this (Lewis, 2005, p.5). However, Egyptian official translation has come up with the word for governance by pronouncing it as hawkama and this has been approved by the Egyptian Linguistic Department (Sourial, cited in Lewis, 2005, p.5). There is also no uniform set of shari'ah corporate governance rules in the world. Different Islamic companies operating in different parts of the world adopt different sets of rules. Some of the jurisdictions of the world like Malaysia have adopted their own shari'ah corporate governance structures.

Shari'ah corporate governance is applicable to Islamic corporate bodies. In legal sense, Islamic corporate bodies are companies which is a separate legal entity that has the right to sue and being sued detached from the shareholders who has invested for it (Salmon v Salmon & Co. (1897) AC at 22) and which also complies with the rules of Shari'ah or Islamic law in conducting all the affairs of the company. Hence, partnership would be different from corporations. In order to run and manage a corporate body whether Islamic or conventional, it is imperative to have a delicate human touch. This is the reason why the law compels the corporate bodies to have a sophisticated Board of Directors appointed by the shareholders to organize and manage it. The Board then delegates the power to manage the company on behalf of them to a group of professional

managers who would be controlled by Chief Executive Officer or CEO, who is in many cases, the chairman of the Board (Lewis, 2005, p.7).

Shari'ah corporate governance derives its rules from the sources of Islamic law. The purpose of Shari'ah corporate governance is not only to work for the benefit of the shareholders and the stakeholders; but it also acknowledges the duty of mankind to God and to the rest of the people living in the community. In order to fully understand the Shari'ah Corporate governance it is imperative to comprehend how things work in Islamic worldview. If not, one will never digest the real rationale behind Shari'ah corporate governance.

Islamic worldview is not only limited to the affairs of this world. It also encourages mankind to gain well in the hereafter. It works in a circular motion where everything begins from God and ends to God. The job of the mankind in the world is to fulfill its duty as a vicegerent (khalifah) to God by doing good deeds and refraining from committing sins. Everything which Islam prohibits is harmful to the individuals at a micro level and to the society at a macro level. For example, riba or usury is explicitly prohibited by the primary source of Islamic law; Qur'an. Usury is not only harmful for the individual who has to pay it, but eventually the whole society would collapse as the poor people or the debtors would never be able to pay their debts and they will have neither the hope to become self sufficient or will have self respect in the society to survive. 'Loan sharking' is a case that proves the shortfall of

interest. Making money out of money is against Islamic commercial principles as fairness and justice compels people in need to be treated kindly, without over exploiting them.

The basic belief of Islamic law is based on monotheistic concept of God (tawheed). Every Muslim shall believe in unity of God. It is God who created man and universe. The good qualities through which man should live in universe are intrinsically known to him the moment he enters to the world. Those qualities include trustworthiness, honesty, trustfulness, sincerity, justice, kindness and determination. God has commanded mankind that they shall be accountable to him and the rest of the humans living with him. Hence, accountability is also a basic part of Islamic worldview.

It can be said here that the concepts in Islamic worldview is also applicable to Shari'ah corporate governance. All the affairs of the corporation should be consistent to the commands of God. For example, the corporation should not engage in any activities dealing with interest or any prohibited activities like gambling. This is the first tier of Shari'ah corporate governance. The second tier is created in the hope to achieve the objective of the first tier. Hence, the second tier is a supervisory stage where several bodies are created to make the affairs of the corporation accountable to God and then to the humans who has invested in the corporation in terms of money and work, and to the customers who seek benefit from the company. Last, but not least the corporation is also accountable to the society in which it

exists. The paying of alms or zakat from the property is for the benefit of the society.

The ultimate triumph enjoyed from successful implementation of Shari'ah corporate governance would be substantially much more beneficial than that of conventional corporate governance. This is mainly because of the multi-perspective benefits it provides not only to the corporation; but to the whole mankind. But the crucial factor to note is that it would be incongruous to make 'apple to apple' comparison between Shari'ah corporate governance and conventional corporate governance.

#### **Shari'ah Corporate Governance vs. Conventional Corporate Governance: Why is Conventional Corporate Governance unsuitable for Islamic Corporations?**

Shari'ah corporate governance and conventional corporate governance is different because the objective of both is unique. There are many models of conventional corporate governance. It is wrong to generalize all the conventional corporate governance models and consider it as one. Each structure has its own attributes, signifies special corporate models and different objectives of corporation (Hassan, 2009). The conventional corporate governance models differ from country to country and region to region. This is evident from the work of Malekian & Daryaei (2010), where they have categorized conventional corporate governance to Anglo-Saxon countries, Germanic Countries, Latin Countries and Japan. Lewis (2005) has classified conventional corporate governance

on decision-making basis. He has classified conventional corporate governance to “managed corporation model” and “socially responsive model” (Lewis, 2005).

In Anglo-Saxon countries (like UK and USA), the shareholders are at the apex of the corporate governance structure and they dictate to the Board of Directors on what to do and what not to do. The Board of Directors is controlled by the shareholders. Hence, it can be said that in these countries, the substantial pressure on management decision-making is made by the shareholders and the power of shareholders is robustly institutionalized in these countries (Malekian & Daryaei, 2010). Hence, in this system market forces play a vital role.

In Germanic countries (like Germany and Netherlands), the shareholders do not have substantial power in managing company as in Anglo-Saxon countries and follow a two tier board system in which one is a management board and the other is a supervisory board. This helps to guarantee absolute division of powers with the corporation. The duty of the supervisory board is to monitor the management board and in practice, it provides advice on key policy decisions (Weimer & Pape cited in Malekian & Daryaei, 2010). The corporate governance structure in these countries is treated as a sovereign economic creature constituting an alliance of a range of partakers, like shareholders, corporate management, employees, suppliers of goods and services, suppliers of debt and customers, endeavoring for the stability of the corporation as a whole

(Moerland cited in Malekian & Daryaei, 2010).

In Latin countries (like France and Italy), the corporate governance structure is a combination of both Anglo-Saxon and Germanic structure as they have choice to choose either a one tier system or two tier system. It is typified by the existence and power of a reference shareholder within a communally or socially corrected market model (Malekian & Daryaei, 2010).

In Japan, as Malekian & Daryaei (2010) puts it; “family values pervade all characteristics of the Japanese governance system”. The governance concept of Japanese is based on keiretsu which can be defines as large-scale presence of interoperate networks. The concept of familyism and consensus unlock the unlimited access to long-term engagements (Malekian & Daryaei, 2010).

In the classification of managed corporation model coined in the research by Lewis (2005, p.19), the decision-making power vests in the hand of Chief Executive Officer and the management of the corporation. The economic object of the corporation is to maximize profit for the sake of shareholders. In this type the financial governance is done by the shareholders and the suppliers of the finances (Lewis, 2005, p.19).

In the socially responsive corporation model of Lewis (2005, p.19), the decisions for the corporation would be made by the executive and supervisory processes. The decisions of the corporate would be made for considering the interest of the stakeholders in general;

not only the shareholders. Economic, environmental and social accountability would exist in this case (Lewis, 2005, p.19).

In Shari'ah corporate governance, the decisions of the corporation would be based on Shura or consultation. The structure may be based on two tier system in which an independent shari'ah board would be setup to safeguard the Islamicity element of the corporation and the Board of Directors would be created to manage and direct the corporation. The job scope of the independent Shari'ah Board would be to advise the Chief Executive Officer or the Board of Directors on the shari'ah matters. Shari'ah audit shall be carried out to make the corporation accountable to God, shareholders, stakeholders and to the society.

Hassan (2009, p.284-285) has put forth two structure of shari'ah corporate governance model; that is Tawheed and Shura based approach, and stakeholders based approach. In Tawheed and Shura approach, the most important constituents are Shari'ah board and the of Shura groups; whose participants are of the stakeholders. The two groups would interact and consult each other before taking any decision with regard to the corporation. The Shari'ah Board would act as the watchdog to retain the shari'ah element in all the decisions made. This way the Islamicity of the corporate would never be compromised. In stakeholders approach, governance mode and mechanisms shield not only the rights and interests of shareholders; but of all stakeholders too (Iqbal and Mirakhor cited in Hassan, 2009).

The conventional corporate governance models are unsuitable for shari'ah corporate governance because the apex of shari'ah corporate governance is to obey God. Hence, it would be impossible to apply Islamic law by using conventional models of corporate governance structures which is based on worldviews which are inconsistent with Islamic law.

### **Need for a Special Shari'ah Governance Code**

Corporate images tag with the prefix Islamic needs to be gauged with similar scale of measurements. This would enable all stakeholders to easily measure the level of shari'ah compliance with regards to the conformity to the Shari'ah Governance Code. This would also help cross-border Islamic investments to seek and utilize guaranteed shari'ah compliant corporations. Ultimately, successful implementation of a uniform based Shari'ah Governance Code would allow corporations all over the world to compete within the same shari'ah compliance dynamics. As the ladle for measurement of shari'ah corporate governance would be free of local perceptions and in accordance with the Islamic Worldview. There definitely is a need for a special Shari'ah Governance Code to impose a minimum standard of Shari'ah corporate governance to the Islamic corporations to abide irrespective of their location.

### **Recommendation: Envisioned Model Shari'ah Governance Code**

In a model Shari'ah governance code which is applicable to all Islamic corporations, the following components shall be common,

irrespective of their geographical location or localities:

1. Every Islamic company shall have an independent Shari'ah committee Independent Shari'ah Committee to supervise the activities and management of Islamic corporation is necessary as these scholars would be in a better position to advice on the doubtful activities happening in the company according to the vagaries of the economy. The job scope of this body would be to impartially advise and supervise all the activities happening in the company and to advice the Chief Executive Officer (CEO) of the company on the Islamicity of the affairs of the company.

This Shari'ah Committee can be defined similar to what AAOIFI standards has defined Shari'ah Supervisory Board used for the purpose of Islamic Banks:

*an independent body of specialized jurists in fiqh muamalat (Islamic commercial jurisprudence), and may include a member who is an expert in the field of Islamic financial institutions and with knowledge of fiqh muamalat, which is entrusted with the duty of directing, reviewing and supervising the activities of the Islamic financial institution in order to ensure that they are in compliance with Islamic shari'ah rules and principles through the fatwas, and rulings which are binding on the Islamic financial institution (AAOIFI, Governance Standard, 2002).*

The shari'ah Scholars sitting in the Committee should have interdisciplinary expertise; meaning that they should have knowledge of either Islamic law or Islamic commercial law and he or she must also

have practical experience in the relevant field. Then only prudent decisions based on reasonable care and due diligence can be taken without prejudice.

The rationale behind creating an independent Shari'ah Committee is three-fold. Firstly, from the shari'ah perspective, the committee performs a farsighted duty, that is to express shari'ah principles in the contracts, dealings and transactions of the corporation which is to be benefited by the Muslims. Secondly, from an economic perspective, the Committee encourages the economic conversion from riba or usury based economics, which is unjust and exploitative towards Islamic economics. Through fatwas and advices, the Committee is proficient of introducing financial transactions consistent to Islamic values. Lastly, from the sociological perspective, the Committee is capable of maintaining social responsibilities of the corporation such as paying zakat or alms and doing shari'ah compliant investments.

Furthermore, the Committee member shall be independent (istighlal). They should be free from any fear and favor of the Board of Directors or the stakeholders. There should not arise any circumstance in which conflict of interest may arise. The Committee's loyalty shall be to God, and not to the people who remunerates them or gives other worldly opportunities to them. To ensure this, the proper status of the Shari'ah Committee shall be expressly stated in the Memorandum and Article of Association of the Corporation; so that legally, in the eyes of the respective

domestic law, the Committee would have a standing. The Committee should not be subordinate to the Board of Directors; or should be a sub-committee formed to facilitate the Board of Directors. The Committee should be independent and above than the company directors and the staffs of the company. Furthermore, the scholars presiding the Committee of one corporation should not preside in multiple Boards; as this might create conflict of interest. Likewise, a director of the corporation should not preside in the Committee as this would also create conflict of interest.

The Committee shall also conduct meetings once a month at least and it should be compulsory for all the members of the Committee to attend. These periodical meetings are a forum in which the Board of Directors and board of management of the corporation may request consultations pertaining to shari'ah issues.

Shari'ah Committee should have the capacity to act as a Muhtasib inside and outside the corporation. Muhtasib is the Islamic version of Ombudsman. This would give the locus standi to the Shari'ah Committee to hear complains within and outside the corporation on any matter related to compromise of Islamic law. For, example, through this mechanism, the staffs of the corporation might anonymously report a shari'ah non-compliant or a doubtful (shubhah) activity conducted by the company, and the Committee would have the locus standi to

investigate the matter and take adequate action. Likewise, a member of public may also lodge a complaint with the Committee and the Committee would be in a position to take action on the complaint made. Not only this, the Committee can also, on its own initiative prohibit staffs of the company from doing things which are prohibited in shari'ah without waiting for Board's approval. However, the Shari'ah Committee should not have any saying in other matters except Islamic matters.

It is very important to note here that in order to create and enforce the duties of Shari'ah Committee legally in the jurisdictions of the world, things like attributes or qualification, appointment, rights and duties, remuneration, hierarchy and the termination and resignation of members of Shari'ah Committee shall be expressly mentioned in the Article and Memorandum of Association of the corporation. Otherwise, the whole notion of setting up of an independent Shari'ah Committee Board within the corporation is unrealistic and useless, as the law of the nation would not recognize it.

2. The Shari'ah committee's decisions shall be binding on the BOD

If the Shari'ah Committee's decisions are not binding to the Board of Directors, than the Committee would be like a tootles tiger. They are wasting the time and giving a false impression to the public by saying that they are screening the company's activities and advising the CEO accordingly; whereas the CEO or the BOD

may or may not honor the decisions made by the Committee. The end result is there is no use to have such a Committee and the protection of Islamicity element would become secondary. If this is the case, it would be hard to differentiate between conventional and shari'ah corporate governance. In most of the countries who has enacted shari'ah governance Codes, this element is missing (for example see Malaysia's Guidelines for Shari'ah Governance for Islamic Financial Institutions issued by Bank Negara).

3. Shura or consultation and consensus-seeking shall be the root to reach all decisions

Shura or consultation and consensus seeking should be the mode of reaching decisions within the Islamic corporation. The following two verses quoted from the primary source of Islamic law; the Holy Quran would be sufficient to prove this:  
And consult them on affairs (of moment). Then, when you have taken a decision, put your trust in Allah (3:159)

Those who respond to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation; who spend out of what we bestow on them for sustenance (42:38)

Islam promotes Shura due to the benefits it gives to the mankind. For example, Shura would give the chance for the people who are most affected by the decision to participate and make a choice for them by discussing their own problems. Also Shura would prevent the problem of one group of people overriding

the rights of another like in the modern democratic rules where the majority of the people have all the saying; and the minority is left unattended as their voice is unreachable to the authorities. Not only this, decision making is not the only job of the person in authority; but all the people who suffer because of the issue, shall have a say in it and it is the duty imposed by God on the person in authority to seek advice from others when making group decisions (Mawdadi,1974). This way the decision would be binding on all as the decision is not one person's and all would be satisfied. This is the key to creating a 'win-win' situation.

4. Sub-committees of the Shari'ah committee shall be in all departments of the company

Forming sub-committees of Shari'ah committees within the different arms of a corporation would facilitate the main Shari'ah committee to keep track of everything which is happening in the corporation without depending and waiting for the oral or written reports of the department heads. Not only this, this would definitely solve the tumult of shari'ah scholars in the Shari'ah committee working like non-executive directors and meeting only when the directors or the BOD calls for a meeting. The quality of the decision is low when the shari'ah scholars are invited for a specific purpose and when they are not present in the corporation and participate in day to day activities of the organization.

5. Shari'ah audit shall be conducted at least once a year and details of the report shall be mentioned in the annual report of the corporation

Whether it is conventional or shari'ah corporate governance, the auditors play a vital role. The financial integrity of the whole company is vested in the hands of the auditors. Krishnan (2010) has described auditors as "guardian of the company's financial integrity." Auditors are vested with broad range of discretionary powers to facilitate them to detect wrongdoings by the management. They shall be independent of the company and they are expected to report on the company without prejudice. Shari'ah audit standards shall be followed without compromise. This is an element which is omitted generally as people are so familiar with the conventional or prudential audit and are either forgotten or unaware of the existence of Shari'ah audit.

In shari'ah corporate governance, there are two aspects of audit that must be included in the annual report, which are namely prudential audit and shari'ah audit. The auditing exercise for prudential aspect of the corporation would be conducted by authorized accountants and legal consultants. The shari'ah audit would be conducted by the Shari'ah Committee established within the corporation.

6. The stakeholders of Islamic corporations shall not only be shareholders

The stakeholder to whom the Islamic corporation owes duty of care and

accountability is not only the shareholders of the company. But the Islamic corporation shall include Shareholders, who would be concerned in guarding the value of their equity in the corporation, and acquire a high-quality rate of return; Demand Depositors, who would be interested in assuring the value of their deposits and have complete entrée to their funds on demand; Regulators, who has the legal power to supervise the activities of Islamic corporations and would be keen in inhibiting common problems and crises, safeguard of eminence of financial products and effectiveness of the financial system; Financial Market Authorities, who sets the minimum standards for intelligibility and exposé and would be interested in having resourceful financial market; Islamic Economic Community, who would profit from standardizing economical and financial Islamic products, contracts and practices; and last but not least the public: would desires to obtain quality economic and financial services from the Islamic corporations. All these parties and their interests should be carefully scrutinized and catered for within the parameters of shari'ah by the Islamic corporations.

7. Right to sue the Shari'ah Committee in case of pure negligence

One way to make the Shari'ah Committee accountable is to give the parties to which it owes a duty of care the right to sue if pure negligence on the part of the Shari'ah Committee is proved. This would change the current trend which makes Shari'ah Committees immune from any

kind of legal action by a client or a stakeholder for negligence. Most of the Shari'ah Advisors or scholars would be against this as for them this might be ridiculous thing to do. But the reality is that the stakeholders and the society counts on the Shari'ah Committee very much and if due to pure negligence if a right of any party is deprived, there is no reason the Committee cannot be sued in a Court of law. Justice and equity compels to lift the veil of immunity given to the Shari'ah Committee and its members in

exceptional circumstances such as in cases of sheer negligence.

In the model Shari'ah Governance Code, all of the above elements shall be included. Then only the true avatar of shari'ah corporate governance can be evident and the whole world could benefit from the Islamic corporations. This would indeed contribute to the Islamization of the whole world economy.

### **Conclusion**

In view of the above, it is imperative to have a special Shari'ah Corporate Governance Code to specifically govern the Islamic corporations. Islamic law is immutable, hence making a specific Code for shari'ah corporate governance would definitely make the task easier for the Muslims and non-Muslims who would want to invest or get any kind of benefit from the Islamic corporations. The special Code shall definitely push and precisely mention the role of the Shari'ah Boards, Board of Directors, management as

well as the auditors of the Islamic corporation. All of these organs of the Islamic corporations shall execute their professional duties with the target of gratifying rules imposed by God and the expectations of all stakeholders. Definitely enacting a special Code would promote accountability, transparency, disclosure and clarity without prejudice. This is much closer to the spirit of Islam and is the way to create and manage governance and social responsibility. The viable critical success roots of this are yet to be examined with further research.

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