

**3<sup>RD</sup> ANNUAL ISLAMIC BANKING  
SUMMIT AFRICA - DIJBOUTI**

**Pragmatic Steps to Improve Legal &  
Regulatory Environment in Africa**

**Building Local Depth and  
Improving International  
Harmonization**

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# **Overcoming the legal & regulatory challenges facing Islamic Banking in key African markets**

- **Particulars of Islamic Banking:**
- **Islamic Banking is based on Islamic Shariaa rules (Quran & Hadith.....).**
- **Islamic Shariaa rules are to be strictly followed, otherwise not allowed....**
- **Specialized competence & knowledge is required? How to overcome and face this challenge.**

# **Legal & Regulatory** **Requirements**

**Special license is required to start Islamic Banking. There are certain conditions to be satisfied \ met before granting \ obtaining this special license.**

**Satisfying & meeting the license conditions is a challenge to be faced by bankers & regulators.**

**In some countries, there is a clear-cut special law promulgated to legalize & regulate Islamic Banking. Whereas, this is not the same in other countries. As, Islamic Banking is legalized & regulated under the banking Law i.e. the “general” law for banking activities.**

**The difference between the above two scenarios could be taken as a challenge. Why?**

**Having special law, for Islamic banking, gives cognizance for this special type of banking. This is not the same, in the general law.**

# **Full fledged Islamic Banks or special window**

**In global practice, there are two ways:**

**A fully fledged pure Islamic Bank, however, there are licensed conventional banks having Islamic Banking Window \ Unit.**

**This is a challenge from either Islamic or conventional banking perspectives. Why ?**

**Lets look at Qatar experience in this respect.**

**The Central Bank of Qatar issued a rule asking conventional banks not to undertake Islamic Banking through windows \ units.**

**We need to consider, for guidance, the consequences of Qatar decision? Pros & Cons ?**

# **Role of regulators**

**The role (or initiative) of the Regulators in Africa, with reference to Islamic Banking, could be a real challenge.**

**Is there a law or legislation for Islamic Banking. Is there any contradiction between “this” law and \ or The Constitution of the Country or other current laws.**

**Do they have enough know-how? Enough experience and personnel to regulate & supervise Islamic Banking.**

**How to apply “Checks & Balances” between the role of the different regulators in each country, in case of overlapping.**

**Do they have, a Central Shariaa Supervisory Body, in place? Its composition, jurisdiction & role?**

**Level of degree of relation, cooperation & accessibility between regulatory bodies in Africa and other related International or Regional Islamic Banking Agencies.**

# **Role of Islamic Banking Agencies – A challenge**

**To enhance Islamic Banking in Africa, the Islamic Banking Institutions must take the lead and “go the extra mile”. This is a challenge. Africa needs more active steps from:**

**IDB**

**AAOIFI**

**CIBAFI**

**IFSB**

**IRA**

# **What more needs to be done** **at the national domestic** **level?**

**A need for a clear national strategy in each country regarding Islamic Banking.**

**A need for special law to legalize & regulate Islamic Banking. Here, special attention must be taken regarding the constitutionality of Islamic Banking. Also, harmonization with other legislations in the country.**

**A need for special regulations from the regulator to regulate & supervise Islamic Banking activities. A need for special plans \ feasibility studies to undertake Islamic Banking activities. A need for special culture promoting Islamic banking & its concepts.**

# **Role of each Islamic Bank**

**Islamic banks & bankers must believe in their message. Their work for “dunyah” & “akhirah”, having this in mind will lay down strong foundation for Islamic banking. Believing in “Al-Ikhlass fi al-amal” for special reward, is a cornerstone.**

**Moreover, enacting regulations & procedures and putting them in place and setting in motion.....**

**Need for special trained cadre & personnel that knows, understands & believes in Islamic Banking. Not a mere employment opportunity or taking it as a temporary assignment.....**

**Special culture, continuous training strategy & proper implementation in consultation with current Islamic Banking Agencies & other licensed Islamic banks.**



# **Case Study - Africa**

**We believe that, the African experience with reference to Islamic Banking is still at an early infancy stage. Even though, many Africans are eager to go for Islamic banking.**

**This puts certain additional responsibility on each Gov. \ country looking for Islamic Banking activities. Here, a wider national role is needed to support the regulatory authority in the country. There is a need for real support from Executive & Legislative Bodies  
The Press, also, must take positive initiative to highlight the social and ethical sides of Islamic banking in comparison to conventional banking.**

# **Terms of Reference**

**Each licensed Islamic Bank in each country must have clear-cut terms of reference to exercise and implement Islamic banking.**

**Issue necessary policies to explain Islamic banking products. Laying down priorities in applying different Islamic banking products, depending on the needs in each place.**

**How can Africa best apply the  
essential international  
standards necessary for  
Islamic Finance to succeed?**

**Special will & determination**

**Special loyalty**

**Special training**

**Special cadre**

**Special customers**

**Special culture**

**Special strategy**

# **How can Africa best apply the essential international standards necessary for Islamic Finance to succeed?**

**We believe, there is a joint-mission here from both sides, Africa & the agencies laying down the international standards.**

**A joint-intention is needed from both ends. However, since the agencies were primarily established to promote\develop Islamic banking, they must move forward and give hand to Africa. The promising future for Islamic banking & finance.**

**How can Africa best apply the  
essential international  
standards necessary for  
Islamic Finance to succeed?**

**At the same time, Africa must open doors to show interest \ determination to support Islamic banking.**

**Clear positive steps must be taken to pave the way for licensing Islamic banking.**

**Moreover, particular pragmatic steps must be taken to enable smooth understanding & proper implementation of all necessary needed international standards.**

# Addressing risk issues in Africa

## Operational risk:

Since the industry is new, there is operational risk. This needs necessary policies \ regulations to meet all potential operational risk from initial stages.

# **Addressing risk issues in Africa**

## **Financial risk:**

**Required capital, available capital,  
capital adequacy ratio issues,  
Basel rules...**

**This needs rules from both the  
regulator & Islamic banks to meet  
financial risk.**

# Addressing risk issues in Africa

## Legal risk:

Availability of laws \ regulations & policies. Availability of proper legal documentation between Islamic banks and customers.

Do we follow others or we look for tailor-made documentation. Tough issues, like applicable law & jurisdiction.....

Experienced Judges & lawyers for proper legal decisions.....



# Other examples

**Applicable law**

**Jurisdiction**

# **Litigation or Arbitration**

**There is legal risk here:**

**Meaning of each**

**Differences between each**

**Best approach**

# **Proposed steps**

**Legislations**

**Internal regulations & policies**

**Shariaa Advisory**

**Training & training**

**Connection with Islamic banking**

**Agencies**

# THANKS

## Questions & Answers

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