

CHAPTER 20

Building Capacity

Introduction

In developing human resources in Islamic banking and finance (IBF), it is imperative to take both a micro and macro approach. The micro approach focuses on individual professional sectors. For instance, there has been much talk of developing Islamic scholars due to the shortage of trained scholars with knowledge of both finance and Islamic law. However, there are many more areas in which the professional skills of individuals need to be improved. It is not enough for workers in the IBF industry to have knowledge of Islamic financial law and the products involved. This is academic. The next stage is application, and to do that there needs to be programmes which are tailored specifically to that particular profession. For instance, lawyers in any part of the world need to graduate with law degrees, but until they train in a law firm, they would never be considered as lawyers. The practical skills are just as important as the academic knowledge. This chapter begins by looking at building the next generation of Islamic finance lawyers and the challenges that need to be overcome in order to create a professional class sufficiently imbued with the necessary values and skill specific for IBF.

The macro approach focuses on government and regulatory measures required to encourage the development of Islamic financial professionals. Countries such as Malaysia and Pakistan have been at the forefront of creating institutions dedicated to the development of individuals with the knowledge and skills necessary for IBF. This chapter then looks into the work of the State Bank of Pakistan (SBP), the central bank, and strong supporter of the development of Islamic finance in the country and beyond. SBP has stepped up its efforts since 2002 in enhancing the industry, and building human resource capacity and skills is a fundamental part of its strategy.

By looking at both the micro and macro approach, this

chapter highlights an important point. Institutions, such as law firms, have to invest in developing talent specific to IBF, and they are more likely to do so with the support of regulatory authorities and the government.

The Micro Approach: Building the Next Generation of Islamic Finance Lawyers

A few decades ago when IBF was first introduced, its pioneers and practitioners mainly comprised of finance and legal professionals who were trained in conventional banking and finance in predominantly secular legal systems, with the Islamic scholars group not yet being considered “professional” advisers. There was barely any purpose-built or tailor-made legislative or regulatory framework that catered for IBF; hence Islamic contracts and transactions generally had to take place under the same banking laws and regulations that govern conventional banking and finance. Albeit there were attempts to start creating such infrastructure, for example the Islamic Banking Act 1983 and Takaful Act 1984 of Malaysia, this was more of an exception rather than the prevalent case.

Against this background, the pioneer generation of IBF professionals were arguably almost like a group of craftsmen and masonries who had to construct a “modern” building with relatively primitive tools and raw materials. Despite all the obstacles, they must be credited for laying down the foundation for IBF to reach the level it is today.

It goes without saying that the landscape for IBF has changed tremendously. The next generation of Islamic

finance professionals benefits immensely from the foundations laid down and paths opened up by the pioneer generation for them, including a strong asset and customer base to build from, a much clearer and enabling legal and regulatory infrastructure in many countries, an increased awareness level that facilitates expansion of the Islamic markets beyond its traditional borders, and most importantly, a more solid compilation of skills, knowledge and experience to prepare them for furthering the IBF frontier.

Surely this does not mean that the way forward has been perfectly harnessed and is without new challenges. With size and time, new complications have arisen for IBF. This may require new thinking, fresh approaches and innovative solutions – it must be duly recognized that what used to work in the past may not necessarily continue to work again tomorrow. The pioneer generation of IBF practitioners must have the wisdom of allowing the next generation of IBF practitioners to find their own solutions without tying them down with traditions and dogmas that may no longer suit the time, while the next generation of IBF practitioners must realise that there could be situations which require them to have their own moral courage to abandon tested practice with new solutions – in line with the true dynamism that we wish to see in IBF.

Table 1 summarises the key challenges during the pioneer generation Islamic finance lawyers' era and what may likely be faced by the next generation of lawyers.

Key Challenges

If we specifically focus on the next generation of Islamic finance lawyers, it is interesting to note that amongst the new challenges they will face include:

(1) Availability of more dedicated law and regulations, Shari'a resolutions and court decisions on IBF disputes requiring lawyers to be much more vigilant

Compared to four decades ago, the next generation of lawyers in IBF have an increased workload in terms of remaining updated about latest developments. Clients would expect them to duly ensure that the drafting of every Islamic finance contract has taken into consideration each of these developments carefully without missing anything material. In this respect, the next generation of lawyers in IBF must develop familiarity with the

right source of references to keep themselves updated, strengthen their connection with their relevant fellow professionals (in particular the regulatory and supervisory authorities and the Shari'a scholars) and, importantly, be able to optimise the usage of the information technology infrastructure around them.

From the various cases of Islamic finance disputes reported in law journals in Malaysia and the UK in the past five years, there is sufficient evidence to show that each legal aspect of an Islamic finance contract will continue to be challenged and tested, in line with the higher level of awareness amongst stakeholders of IBF (especially the consumer). The next generation of lawyers in IBF, therefore, must be able to defend the integrity of the Islamic finance contract in more coherent and convincing ways, as Islamic finance contracts and transactions are now being scrutinised closer than ever before.

It goes without saying that IBF continues to suffer from accusations of being a backdoor to usury, costly with multi-layered transactions that lack transparency and fairness, a conduit to money-laundering and terrorism financing, etc. This requires the next generation of lawyers in IBF to be more committed in spreading the right message and to be able to articulate against these misconceptions well, considering in particular that IBF's market has expanded beyond the Muslim community and has the potential to go even further in offering viable alternatives to conventional banking and finance.

There cannot be any short-cuts in this other than ensuring that the next generation of lawyers in IBF are well versed with latest developments whether in terms of law and regulations, Shari'a resolutions, or court decisions on Islamic finance disputes.

(2) Stakeholders having higher expectations in terms of better efficiency with lower fees

Considering the relative strength of IBF today (at least compared to three decades ago), stakeholders of IBF – from client banks to the consumer public to the Shari'a scholars and the supervisory authorities – would now expect that as IBF matures, the transaction cost (in particular legal fees) must come down and efficiency must increase (in particular since many consumer finance/retail products have become more standardised and the legal documents should largely have been standardised too).

Pioneer Generation

1. Lack of clear legal, regulatory and Shari'a framework and infrastructure – have to depend almost entirely on conventional wisdom

2. Lack of precedents in terms of legal documentation and dispute resolution – have to chart carefully across the legal landmines

3. Lack of awareness due to IBF being a very niche segment of financial services attracts low stakeholder engagement

Next Generation

Better enabling legal, regulatory and Shari'a framework and infrastructure – however compliance cost would likely increase

Better availability of precedents in terms of legal documentation and dispute resolution – lesser legal landmines but higher stakeholder expectations

Increased awareness due to IBF being internationalised and being part of mainstream financial services industry attracts broader and closer stakeholder engagement

Table 1: Summary of Key Challenges For Islamic Finance Lawyers

For example, the pioneer generation of lawyers in IBF did not have the luxury of having standards and best practices issued by standard-setting bodies such as AAOIFI, the Islamic Financial Services Board (IFSB) and the International Islamic Financial Market (IIFM). They did not have to ensure that the legal documentation of any given transaction complied with specific national Shari'a advisory council resolutions or the central bank's Shari'a parameters. They had a free hand in deciding how the legal documentation for an Islamic finance transaction should look like without much intervention from other industry stakeholders (such as regulatory and supervisory authorities, Shari'a bodies or international standard setting bodies).

Now standard setting bodies have a say, whether directly or indirectly, on how lawyers should do their job. The challenge to lawyers is to manage their interventions and expectations without compromising on professionalism and the quality of legal services. In this regard the challenge is not too different from the way lawyers are expected to manage expectations of demanding clients and stakeholders in the conventional banking and finance industry.

(3) Closer Stakeholder Engagement

When IBF is accused as camouflaged interest-based transactions, or for failing to accurately reflect Shari'a values and principles in the contracts, very often the lawyers are the first target for blame. It is not uncommon to hear, from time to time, Shari'a scholars levelling criticism against lawyers for failing to follow strictly the directive as set out in their Shari'a resolutions when preparing the legal documents for Islamic finance contracts. Islamic banks also, from time to time, use the excuse that it was the lawyers who were negligent in ensuring that the legal documents for Islamic finance contracts adhere to every legal and Shari'a requirement that it should be complying with – despite the fact that the preparation of the draft legal documents often went through the collective contribution of various parties including the Shari'a board and the bank's management.

To be fair to the others, it is the lawyers who sign off on the appropriateness and adequacy of the legal documents. Therefore the buck arguably stops with the lawyers. In order to ensure that the negative portrayal of the lawyer does not continue to embarrass the IBF industry, the next generation of lawyers in IBF must strive to shed this image of not preparing documentation according to the expectation of the stakeholders. They must consider engaging the other stakeholders in a more constructive and comprehensive manner. There must be sufficient rigorousness and meticulousness in the drafting process so that every stakeholder is satisfied with the quality of legal documents prepared by the lawyers. In some jurisdictions, such as Malaysia, the legal documents for Islamic consumer financing products not only have to be perfectly legal, valid and enforceable, but must also use plain language which is understandable by the consumer public – thus raising the expectations on lawyers even higher. It goes without saying that one reasonable step towards removing the lawyers' negative image is by reducing the unnecessary use of legal jargon so that legal documents are more user-friendly and

transparent. Again this may require new thinking and a fresh approach by the next generation of lawyers in IBF as they cannot follow the footsteps of the "old school" pioneer generation of lawyers who could afford to use this jargon in their trade.

Let us not forget that with Islamic finance moving from being a niche segment of the global financial services industry towards being integrated as part of the mainstream, participants, professionals and other stakeholders involved in IBF, including the lawyers, will increasingly include non-Muslims and any development of IBF must duly take into consideration this group as relevant stakeholders as well.

Infrastructure Required

It is humbly submitted that although the number of IBF lawyers has continuously increased, the progress is still too slow compared to the growth rate of the industry itself. In this respect the shortage of adequately trained IBF lawyers is as much a problem as the shortage of other professionals such as Shari'a scholars, bankers, accountants, auditors and actuaries.

This is evident when in most renowned legal directories such as Chambers, International Financial Law Review (IFLR), Legal500, etc., there are only around a dozen law firms cited as having a prominent Islamic finance practice, with the same names of lawyers being cited for several years. Even then, they are very often not truly dedicated Islamic finance lawyers, but happen to be involved in Islamic finance transactions by virtue of their broader involvement in the capital markets and banking practices.

It is henceforth submitted that a more coherent and dedicated infrastructure to properly train Islamic finance lawyers should be developed for the benefit of the next generation of lawyers in IBF. Law firms claiming to be at the forefront of the Islamic finance practice must commit additional resources in terms of time, investment and headcount in ways similar to how they used to train lawyers for niche areas of practice such as intellectual property or private equity. It is through adequate and dedicated training that the next generation of lawyers in IBF can truly develop a rarefied level of skills, experience and technical knowledge compared to what the pioneer generation used to have. Without support from the law firms in terms of resources interest is likely to decline. We should not allow the next generation of IBF lawyers to struggle to develop their own skills, experience and knowledge as their time and energy could have been used more efficiently if the right training framework has been made available to them.

Internationalisation and the Way Forward

In summary, the next generation of IBF lawyers will be participating and contributing to the global IBF industry. While internationalisation of IBF is happening naturally and purely out of increasing demand and supply, the truth is that there will be little improvement to the qual-

ity and quantity of legal services in IBF without the right infrastructure and ingredients, both in terms of framework and talent supply, as it requires intensive investment of time and money. Stakeholders of the industry must find ways to work together and cooperate closely so that the industry can continue to generate high quality human capital to serve its agenda.

The recent global financial crisis has seen courts and authorities generally pushing for more accountability amongst financial services professionals. Obviously the next generation of IBF lawyers would need to step up to the plate and be accounted as true professionals that the industry can be proud of.

Macro Approach: Human Resource Development in Pakistan

Recognizing the need for specialized training, a number of stakeholders of IBF are actively involved in developing training modules for providing a stream of skilled human resources. Many multilateral bodies for the development of IBF, including Islamic Development bank (IDB) and its affiliates, Islamic Corporation for the Development of the Private Sector (ICD) and Islamic Research and Training Institute (IRTI), and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) are offering talent development programs and technical support to member countries for capacity building of the industry. Countries having IBF in place also have their own talent programs.

Just as IBF has an established international footprint and is evolving continuously, progress can be seen in Pakistan as well with IBF developing at a considerable pace, particularly over the last decade. High growth of IBF over these years has led to a demand supply gap of well trained human capital. This issue is central to the sustainable development of the industry since it was one of the key factors that contributed to the failure of efforts to Islamize the economy of Pakistan. Learning from past experience, human resource development was placed among key areas for establishing sound foundations of the industry not only at the time of its re-launch in 2002 but also in both first and second five year strategic plans for the IBF industry. Currently Pakistan occupies fourth place on the international market in terms of offering Islamic finance specific courses, training programs and degrees. Overall 22 institutions and nine universities are operational in the country that are offering Islamic finance courses and degrees.

The State Bank of Pakistan (SBP) has accepted the dual role of facilitator and regulator when IBF was re-launched in Pakistan at the inception of this millennium. Being cognizant of the significance of capacity building for meeting high standards for nourishing the enhancement of IBF in the country, SBP is playing a leading role in this regard. SBP has not only launched numerous initiatives but has also been very supportive for the industry to develop collaborated training and targeted courses and seminars to meet the growing demands of talent development in the industry. The resolve of Pakistan's

IBF industry in attracting, developing and retaining human resources with required skills is reflected by the inclusion of capacity building in the list of strategic areas in both the first and second strategic plans for the promotion of the industry.

Major Initiatives

SBP has adopted a multipronged strategy for building human capital in IBF. This strategy is divided in two main components: capacity building of Islamic banking and finance, and support to local universities and research institutes.

(I) Capacity Building of IBF

• Programs Conducted by SBP

SBP, through its Islamic Banking Department (IBD), conducts various programs aimed at improving capacity building within the organization as well as of the overall IBF industry. These initiatives mainly include technical training programs, targeted seminars, conferences and workshops.

i. Training for SBP Staff: With the autonomy of SBP in 1999, the whole recruitment process and career development was redefined, and regular trainings of officers were introduced as a mandatory requirement. Following this strategy, SBP not only conducts dedicated training programs for its officers in-house but also provides them with national and international exposure for equipping them with technical skills while also acquainting them with international best practices. Individuals working in IBF can benefit from these prevailing programs. Moreover, the IBD arranges Islamic banking specific programs on a regular basis where employees are invited from other departments, particularly those who are stakeholders or, can be potential stakeholders of the IBF industry. Furthermore, SBP has scholarship programs for encouraging its staff to improve their degrees and their knowledge base to enhance their efficiency and productivity.

ii. Training for the Industry: SBP offers Islamic banking specific technical training programs covering product structuring, regulatory infrastructure (international as well as national) and Shari'a related issues. For capacity building of the industry, IBD also leverages on visits of prominent practitioners and experts in the IBF industry, domestically and internationally, by arranging special sessions for the industry.

• Programs Conducted by National Institute of Banking and Finance (NIBAF)

The training arm of SBP, the National Institute of Banking and Finance (NIBAF), has been instrumental in capacity building for the IBF industry. With the re-launch of IBF in the country, NIBAF included an exclusive module on IBF in its training courses for fresh inductees of SBP.

i. Islamic Banking Certification Course: An exclusive 3-week Intermediate to Advance level Certification

Course, known as the Islamic Banking Certification Course (IBCC), was developed in 2005. The course was designed in consultation with IBF experts and Shari'a scholars throughout the world. The course comprises of 16 modules including group work on product development, deposit management, process of murabaha and ijara pricing along with case studies regarding securitization, sukuk, diminishing musharaka (specifically housing finance), murabaha, ijara, etc. The course especially targets staff from Islamic banks and Islamic divisions of commercial banks. The frequency of this course is estimated by analyzing market appetite; however, generally it is conducted two to three times a year. Until now 26 courses have been successfully conducted at NIBAF (Karachi & Islamabad) in which total 920 individuals participated while 894 were awarded certificates for successful completion.

NIBAF is also in the process of developing Shari'a scholars' specific IBCC as well as intermediate to advance level Islamic banking courses for middle and senior level management of Islamic banking institutions (IBIs). In order to leverage NIBAF's platform and to increase enrollment of IBCC, development of a distance-learning program has been planned and the same has also been included in the recently issued second strategic plan of IBF(2014-2018). Moving forward, the strategic plan envisages conducting multiple international and regional training programs highlighting the collaboration between IBD and NIBAF for internationalization of IBCC. Furthermore, admitting the need of trainers for sustainable capacity building initiatives and to equip

the trainers with necessary skills, NIBAF is developing a training programme for trainers of IBF practitioners and Shari'a Scholars not only for local industry but also for the international market.

ii. FIBO: Realizing the critical need for training of Islamic banking field staff for improving the perception of masses about the IBF industry, IBD in consultation with NIBAF and the industry, designed a one week training course known as Fundamentals of Islamic Banking Operations (FIBO) for branch managers, operational managers and relationship managers of Islamic banking institutions. The main objective of this program is to increase the understanding of field officers about Islamic banking, its distinguishing features over conventional banking, the benefits this industry can bring to the business community and the critical importance of complying with the procedures and process flows designed to ensure Shari'a compliance, etc.

These programs are conducted at various locations across the country particularly where there is a concentration of Islamic banking branches. SBP-BSC¹ (Banking Services Corporation) offices are generally used for conducting these programs except in Karachi and Islamabad where premises of NIBAF are used. This program is mandatory for field officers who have not undergone any prior training of Islamic banking from NIBAF or other national or international institutions. In the last three years, five courses have been successfully completed and 179 participants of various Islamic banks have benefited from these.

Capacity Building of Shari'a Scholars

Considering the critical role of Shari'a scholars, building capacity is crucial. In this regard the first strategic plan for the Islamic banking industry (2007-2012) emphasized on extending adequate training to Shari'a Scholars. It further planned to build relationships between NIBAF and the industry not only for training of current Shari'a scholars of the industry but also ensuring their steady supply. Despite many programs conducted by SBP, as well as the industry, the industry is still faced with a lack of sufficiently qualified Shari'a scholars. Consequently, the second strategic plan for the Islamic banking industry (2014-2018) has focused on training Shari'a scholars with particular reference to improving their understanding of finance, treasury operations, accounting and auditing in order to enable them to effectively assess the Shari'a compliance of financial products and their processes. In this regard, it has been planned that not only customized IBCC will be developed for potential Shari'a advisors along with arranging regular training sessions, but collaboration will also be made with Shari'a educational institutions (Madaris) for the development and execution of IBF courses in their respective institutions.

• Collaborations and Partnerships with International Universities and Research Institutes

SBP is fully committed to capacity building of the industry, and is ready to explore all possible avenues. To this end, SBP has signed a Memorandum of Understanding with International Centre for Education in Islamic Finance (INCEIF), Malaysia, creating a strategic alliance between the two institutions for the promotion of educational excellence in IBF in their respective countries. Under this Memorandum of Understanding 10 exclusive scholarships were awarded to employees from SBP, NIBAF and domestic IBF institutions to participate in a distance learning program of INCEIF, the Certified Islamic Finance Professional (CIFFP) course. Further, IBD has also collaborated with the Islamic Research and Training Institute (IRTI), the research associate of Islamic Development Bank (IDB), for organizing customized training programmes for national and international participants (IBD member countries) of Islamic finance industry. To date three programs have been successfully concluded where more than hundred professionals obtained certificates; more support is expected in future. It is important mentioning that IRTI has also extended support to the Securities and Exchange Commission of Pakistan (SECP) for arranging training program for Islamic capital market in the country.

(2) Support to Local Universities & Research Institutes

¹ State Bank of Pakistan Banking Services Corporation was set up in January 2002 as a subsidiary of the State Bank of Pakistan and is entrusted with the task of currency management and operational and administrative oversight of foreign exchange departments, export and other finance, management of government accounts and operational work related to government certificates.

The focus of the central bank on improving the skill set of human resources working in IBF coupled with its high growth rate has had a positive impact on local universities and research institutes that are now offering Islamic banking specific courses. International Institute of Islamic Economics, International Islamic University Islamabad, RIPAH International University Islamabad, Institute of Business Administration (IBA), COMSATS Institute of Information Technology, Centre for Islamic Economics, and Al-Huda Centre of Islamic Business and Economics are among the prominent institutions that are offering academic and training courses in IBF. Here it is also worth mentioning that the Institute of Bankers Pakistan (IBP), which provides technical training services for the banking industry, has not only included the subject of Islamic Banking and Finance in its banking diploma course, but is also conducting IBF specific training courses, workshops and seminars.

Recognising the role of academic institutions for maintaining an adequate stream of human resources with IBF specific expertise, SBP is also extending support to local universities and research institutions. In this regard notable measures include development of a standardized curriculum by SBP for certification, post-graduate and master level programs in Islamic Banking. A tentative curriculum has been sent to the Higher Education Commission (HEC) for its possible adoption in educational institutes in the country after review.

The second strategic plan for the Islamic banking industry (2014-2018) has also indicated an urgent need for the development of specialized training, and strengthening cooperation and collaboration between national and international stakeholders to ensure the desired human capital to meet the growing needs of this emerging industry. The plan also encourages Islamic banking institutions to strengthen linkages with educational institutions especially business schools and professional bodies including ICAP (Institute of Chartered Accountants of Pakistan) and ICMAP (Institute of Chartered & Management Accountants of Pakistan). Greater collaboration will assist in improving the quality of their customized courses in IBF. Going forward the State Bank of Pakistan, with the support of the government, plans to establish an exclusive research institute for developing human resources in IBF.

Industry Status

These efforts of the SBP have been received positively by the industry. Not only do institutions send their staff for various training programs, but most of them have developed in-house training facilities as well. The training facility of Meezan bank, the largest Islamic bank, is worth mentioning as it is not only catering to their internal requirements but also offers customized training programs internationally.

By the end of 2013, the IBF industry in Pakistan had assets above Rs. 1 trillion with a network of more than 1000 branches across the country. The industry is expected to double its branch network by 2018 as indicated in the second strategic plan for the Islamic banking industry. Doubling the branch network means that the

industry will require almost an 11% annual increase in their human resources. At present more than 95% of the staff employed in full-fledged Islamic banks has undergone training after joining their relevant banks while their average training budget for one employee is almost Rs. 4500 (US \$42)². On the other hand Islamic windows do not have a separate budget allocation as the parent company manages human resources for the overall bank; however, these divisions are training their staff through their in-house training programs as well as external programs including IBCC and FIBO.

Furthermore as the industry is being persuaded to expand their network to rural and semi-urban areas, and to sectors like small and medium enterprises (SMEs), agriculture and microfinance, this indicates the demand for specialized training for human resources to cater to the needs of these sectors. This expected expansion of the industry accentuates the need for exploiting as many avenues as possible aimed at covering capacity building of prevailing human resources and sustaining a steady flow of new entrants.

IBF is still faced with the challenge of closing the demand-supply gap in high quality human resources in domestic as well as in international markets. Another significant challenge is the standardization of programs and courses being offered by multiple institutions. The industry is also in need of a central accrediting agency to monitor the quality of these programs. Besides continuing with prevailing programs, IBF needs to market itself as a competitive profession to encourage reputable universities and research institutes to offer IBF specific courses and degrees. Having a sound academic background in IBF coupled with hands-on training, competitive compensation packages and a structured career plan will enable the industry to build the capacity which is required for making its mark in the global finance industry.

² Dollar-rupee Exchange Rate is Rs. 106