

Taking the Road Less Travelled

By Islamic Finance news

The crude oil boom in 2007 made the Middle East the most attractive and lucrative region in the world. Many saw it as an opportunity waiting to be seized and hence began the exodus of some of the biggest international institutions and firms to this geographically arid region. International legal giants also did not want to miss out on this chance to be part of multi-million — and sometimes multi-billion — dollar ventures began opening up offices in the fastest booming city in the Gulf – Dubai.

The Dubai International Financial Centre's (DIFC) website reveals that over 90% of the 38 law firms operating there are international law firms, and almost all of them have legal experts in Islamic finance. The bigger the better, it seemed.

Oliver Agha, however, chose a path not taken by many. DLA Piper's former global head of Islamic finance instead decided to set up a Shariah compliant law firm, believed to be the first in the world, in January 2009.

Together with Emirati lawyer Dr Saeed Mohammed Al-Shamsi, Agha & Shamsi established a non-exclusive relationship with US firm Pillsbury, marking the latter's first Gulf affiliation. The firm currently has six lawyers focusing on Islamic finance, energy, restructuring and project finance.



Islamic Finance news spoke to Agha (pic) on his unique journey.

How did the idea come about to establish a Shariah compliant law firm?

Being Muslim and having studied Islamic jurisprudence, I have been interested in playing a role in the development of a firm that by express mandate adheres to the higher spiritual law, as well as the law of the land, while providing excellence in the practice of law. Establishing a firm that provides

seamless transactional counsel coupled with a genuine knowledge of Shariah, in my view, fills a noticeable void in the marketplace.

Furthermore, the crises in the conventional banking arena, proliferation of Islamic banking and robustness of the economies of the Middle East suggested that the time for implementing the vision was right.

If you scrutinize Islamic finance practices, it is an area that is not very well understood and is not staffed adequately vis-à-vis the tremendous opportunity and responsibility that Islamic finance represents, invariably exposing potential Islamic finance clients to an undisclosed universe of potential risks.

For quite a while, I have felt that the Islamic finance marketplace more than justifies a standalone and uncompromised Shariah compliant practice, which will allay potential pitfalls for clients interested in "genuine," not "form over substance" Islamic finance.

When questionable structures are presented for enforcement to a Shariah adjudicator, depending upon the fora, the result may be well

out of the realm of "conventional" expectations. A true Islamic deal manages risk sharing between the parties. Unfortunately, the pre-crisis market has been flooded with questionable structures, claiming to be Islamic but being conventional in substance. Agha & Shamsi's goal is to develop innovative but genuine structures.

What are the distinguishing characteristics that allow Agha & Shamsi to operate according to Shariah principles?

First and foremost, Agha & Shamsi, pursuant to being a Shariah compliant firm by mandate, does not represent parties that engage in non-compliant activities, such as interest-based transactions, speculative activities (hedge funds), as well as in deals related to alcohol, tobacco, gaming (casinos) or pornography.

The firm itself does not avail of any credit/debt facilities and does not invest in interest-based (usurious) instruments. Naturally, we have had to forgo a very large base of clients, including conventional banks, insurance companies and funds but that is a volitional policy decision for us.

Agha & Shamsi maintains a Shariah Supervisory and Advisory Board which comprises leading Shariah scholars and experts in Islamic finance. The board ensures that the operations and activities of the firm, and transactions presented to it, are in compliance with the Shariah.

The lawyers of the firm work very closely with the board to offer the market innovative and commercially friendly products that are Shariah compliant not only in form but, more importantly, in substance as well.

Agha & Shamsi's professionals have had extensive exposure to Islamic finance and have an independent knowledge of fiqh. We also have a chance to influence and support the development of the Islamic finance market through our active participation in the work of Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). Our lawyers are on two AAOIFI committees.

Additionally, Agha & Shamsi lawyers share their expertise by speaking at numerous conferences and publishing articles on many topical questions and issues in a rapidly evolving marketplace.

Does operating as a Shariah compliant firm limit your scope of work? Does it affect your practice?

Like I said, operating as a Shariah compliant firm does significantly limit the scope of work to those matters that are appropriately deemed to be permissible and to those clients that are engaged in sanctioned businesses.

However, there are many areas that are open to us and Agha & Shamsi employs experienced international lawyers to provide a one-stop shop as well as world-class transactional counsel on modern complex transactions, whether in relation to large-scale projects, real estate, construction, dispute resolution, mergers and acquisitions or private equity transactions. Agha & Shamsi provides multi-disciplinary legal services in complex cross-border transactions with a focus on the GCC.

continued...

Taking the Road Less Travelled (continued)

Agha & Shamsi has made a move many would describe as courageous to establish a Shariah compliant law firm in the midst of a global economic crisis which has affected the Islamic finance industry as well. Could you comment on that?

While the decision to establish the firm was philosophically driven, we believe that it also makes commercial sense and will be a successful model. The Islamic finance market, even though still nascent, has outperformed the conventional one during these trying times.

“It is also worth noting that the Islamic finance world has proven to be far more resilient during the global financial crisis than its conventional counterpart”

From this standpoint, creating a dedicated Shariah compliant only service provider to address a burgeoning and an almost US\$800 billion market may also be viewed as astute.

It is also worth noting that the Islamic finance world has proven to be far more resilient during the global financial crisis than its conventional counterpart.

While conventional assets have depreciated by anywhere from 30% to 60%, depending on the asset class and geography, over the course of the past 18 months, Islamic finance assets on a global basis have increased by more than 30%. The reason for this is, of course, that at its core, Islam prohibits the products that have been the culprits behind the conventional crises.

How is the firm performing? What are your large deals and how extensive are your activities?

Agha & Shamsi in its first six months of operations has performed beyond my expectations. We have represented, for example, a large Saudi sponsor in connection with project documentation for a large steel project; a member of the Saudi royal family in a joint venture general manufacturing project in the kingdom; an American company in a joint venture in Abu Dhabi; a UAE entity in structuring and documenting novel Islamic financing arrangements with a strategic investor; and another UAE entity in reviewing and advising on its Islamic Ijarah documentation.

We are currently pitching for very interesting work in relation to Islamic arbitration and a large cross-border restructuring.

Does Agha & Shamsi foresee setting the trend for other law firms to establish standalone Islamic establishments?

Given that the sources of revenue for most international firms come from proscribed areas as well as inextricable links with the conventional system, I surmise that this will not be an easy decision.

Furthermore, law firms are risk averse and for a firm to create a structure that sets up an independent “Islamic” establishment will have to consider many issues that may render the structure inopportune and

weigh the liabilities associated with missteps. It would be great if “pure play” independent competitors emerge.

Is Agha & Shamsi a GCC centric Shariah compliant law firm? Are there plans to expand the firm’s business outside of the UAE and Saudi Arabia?

At the moment, in terms of client representations, Agha & Shamsi has been focused on the Middle East and North Africa (MENA) countries. However, from the outset, we have been a firm that has a global perspective. Besides MENA, Agha & Shamsi’s lawyers have extensive experience in providing legal counsel for projects in Europe, North America, the Commonwealth of Independent States and Southeast Asia.

The firm directly, and through its affiliates, offers qualified legal advice under the laws of UAE, Saudi Arabia (through affiliation), England & Wales, New York and Connecticut, other US states through affiliation (California/Texas/Virginia/District of Columbia), the Russian Federation, China (through affiliation) and Japan (through affiliation).

Thus, Agha & Shamsi’s ambit extends beyond the GCC, giving the firm potential to become a global player as a transactional law firm and simultaneously open a unique gateway to uncompromised “genuine” benefits of Shariah compliance. The firm’s multilingual professional team speaks English, Arabic, Spanish, Russian, French, Dutch, Portuguese, Italian, Hindi, Urdu, Malayalam and Kashmiri.

Being the first Shariah compliant law firm, how receptive has the market been towards Agha & Shamsi?

While it is still very early, we are very pleased with the reception we have had from our clients and the market. ☺

Strategic CFO Summit
 27-28 Oct 2009
 Hyatt Regency & Galleria,
 Dubai, UAE
www.kavaq.com/redmoney
 or email at: redmoney@kavaq.com
 Organized By Media Partners
 KAVAQ Islamic Finance news