



**Syariah Aspect of Business And Finance  
(GIM6213)**

***Al-Hisbah in Islamic Finance***

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## Definition

### Literal meaning:

- Hisbah is to anticipate God's reward, to denounce other personal wrongful behavior.

### Technical meaning:

- Al-Mawardi describes *Hisbah* as enjoining what is right when it is found to be neglected and forbidding what is wrong when it is found to be practiced.
- According to Al-Ghazali, *Hisbah* as a “comprehensive expression” for the duty of enjoining the good and forbidding evil.
- Al-Hisbah is an act of enjoining good and forbidding evil as well as making improvement to the living condition of the public.



## Cont.

- Hisbah is a religious institution under the state authority.
- The state that appoints officials of the state to carry out the responsibility of enjoining what is right whenever people start to neglect it, and forbidding what is wrong, whenever people start to engage in it.
- The purpose of this is:
  - to safeguard society from evil and crime
  - to protect peoples' faith
  - to ensure the welfare of the people in both religious and worldly manners according to the Law of Allah.

## Cont.

- This is based on the Quranic Injunction which states:  
"Let there arise from you a group calling to all that is good, enjoining what is right and forbidding what is wrong. It is these who are successful."(Q.3:104).
- Allah's Messenger (may the peace and blessings of Allah be upon him) said:  
"Whosoever among you sees an act of wrong should change it with his hands. If he is not able to do so, then he should change it with his tongue. If he is not able to do so, then with his heart, and this is the weakest of faith."



## Cont.

- Allah has made it obligatory upon all Muslims to enjoin good and forbid wrongdoing to the extent of their knowledge and abilities.
- Hisbah is a religious institution, meaning that it is one of the official offices of a Muslim state, one that specializes in fulfilling the obligatory task of enjoining what is right and forbidding what is wrong.
- The Hisbah is the official means of carrying out this duty.



## **Institutionalization of Hisbah**

- The Hisbah is essentially organized around:
  - Safeguarding the prescription and implementation of Allah's injunctions and prohibitions from being violated.
  - Protecting the honor of the people.
  - Ensuring public safety.
  - Monitoring the marketplace, manufacturing concerns to make sure that the laws of Islam are upheld by these entities
  - ensure that quality standards are maintained.



## Cont.

- The Hisbah carries out these responsibilities in conjunction with the appropriate government agencies and other relevant establishments.
- Islamic social order aims to bring a stable and secure society filled with love.
- Whereby the members of society work together in righteous and wholesome activities.
- With the implementation of Hisbah, the purpose of Shari`ah which is described as the Goals or Maqasid Al Shari`ah can also be achieved.





## Cont.

- ‘The very objective of Shari`ah is to promote the welfare of the people, which lies in safeguarding their faith, life, intellect, posterity and wealth.
- The impact of Hisbah is an environment that allows everyone to carry out the responsibility of being *Daiyah* on Earth and to fulfill their purpose for existence, which is to worship Allah.
- Allah says: "I did not create Jinn and mankind except to worship me."
- The need and preservation of social order is integral to enable a society to leave in peace and harmony in accordance to the Shari`ah principles and rules.



## Al Hisbah and Economic Activities

- In the Quran trade is encouraged and riba' is prohibited.
- The conduct of trade should not cause harmful to the parties to trade such as fraud and other behavior.
- Trade should involve lawful and good product and services that remove any form of uncertain contractual condition that could lead to dispute.
- Trade should be done through promote mutual
- Consent and mutual good will.

## Cont.

- Specific actions have been introduced in the past to supervise market practices based on Hisba.
- **Examples:**
- It is necessary for the governor who is seeking justice for his people to supervise the market and entrust a person with the duty of observing the market practices and test to determine the correct measures on the instruments for weights (mawaazin) and the measures of capacity
- (makaayil).

## Cont.

- If the official appointed finds someone who has changed them, the person will be punished according to the offence committed and in consultation with the Governor.
- The Governor must not ignore a situation where counterfeit coins (mubahrajah) appear in the market, or coins which have been mixed with copper (nuhaas).
- He should be strict in the matter and investigate the person who produced them.



## Cont.

- When identified the person, he should warn (nakaal) them and give an order to punish them by parading them (tawaf) in the market area, by driving (sharada) them from behind so that they will fear the severity of the penalty in the Hereafter which has been revealed for them and they will also be detained for a certain period of time according to the opinion of the governor.
- The governor then must entrust a trustworthy person to observe the matter so that the peoples' silver coins (darahim) and gold coins (danair) will be sound and the coins (nuqud) will be protected.

## Essential Elements of Al-Hisbah

- According to al-Imam Abu Hamid Al-Ghazali there are four major elements:

### 1. Qualification of Al-Muhtasib.

- Al-Muhtasib is literally a judge (Qadi) who takes decisions on the spot, in any place at any time, as long as he protects the interests of the public.
- His responsibilities are almost open-ended in order to implement the foregoing principle: commanding the good and forbidding the evil of wrongdoing.



## Cont.

- Al-Muhtasib and/or his deputies as full judge must enjoy high qualifications.
- Being mature, wise, pious, sane, free, just, and learned scholar (faqih).
- He has the ability to ascertain right from wrong.
- The capability to distinguish the permissible (halal) from the non-permissible (haram).
- Al-Muhtasib is entrusted to secure the common welfare and to eliminate injuries to society as a whole.
- He must be appointee (fully authorized), by the state. (governor).

## Conditions of the process of Al-Hisbah

- Conditions of the process of Al-Hisbah are imperative to define exactly what is and what is not strictly forbidden.
- That is why al-Muhtasib is to ensure observing four conditions of the forbidden
  - (1) it is already defined as (munkar) wrongdoing or evil by Shari`ah law.
  - (2) it has actual presence, not a mere hearsay, or after the munkar/ evil is done.
  - (3) it is declared to the public without resorting to spying in order to identify the said forbidden act.



## Cont.

- So if the person is doing the sinful in his house without declaring that to the public, and there is no sign of that, it is not allowed to enter to his house without his authorization and permission.
- (4) it is known, not necessarily subjected to Ijtihad of rigorous and robust interpretation. Therefore if the matter is subject to disagreement and different view from scholars it is not subject to hisbah.



## Who is subjected (accountable) to al-Muhtasib?

- The nature of Al-Muhtasib's tasks is comprehensive.
- It comprises practically all aspects of society as well as everything in day-to-day life.
- This is not restricted to fellow human beings, but also extended to prevent damages caused by animals! Cases of environmental pollution are not excluded too.
- Administration of judiciary premises is another area of concern to the Muhtasib, whenever a judge gets unnecessarily angry that may lead to an irrational judgement.

## Managing an Islamic Economy, and Towards a Just Society.

- The duties of Al-Muhtasib involved every aspect of human, animal and environmental life.
- The rights of each one of these categories should be protected according to Shari`ah law, order, norms (`urf) and socially accepted practices.
- Management and control of economic activities at large.
- especially those related directly to Suk (Market).
- Prophet Mohammad (PBUH) assumed the role of first Muhtasib.
- Omar Ibn Al-Khattab laid the foundation of Al-Hisbah.
- During Abbasid period (mid 8th century) Al-Hisbah had become a full-time institution.



## **Degree of Al-Muhtasib**

- Imam Abu Hamid Al-Ghazali had outlined TEN degrees of Al-Muhtasib's actions.
- These should be applied gradually with great care and consideration.
- Seeking knowledge of the forbidden (Al-Munkar) without spying nor forcing others to solicit secret information. Here al-Muhtasib is not a trespasser.
- To inform the violator of the forbidden lest he/she is then ignorant about the wrongdoing. The right to know is imperative before applying any punishment.
- To forbid verbally, say, advising not to do.
- To obstruct the forbidden through preaching, advice and fearing the punishment of Allah.
- To chide or to scold with strong wording, after Al-Muhtasib being a kind and discreet reminder.

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- To affect change manually, like forcing a man not to wear silly clothing, or breaking a jar of wine, or pulling the aggressor out of a house which is not his ... etc. The purpose here is to get rid of the forbidden physically.
- Threatening with things may become worse in the near future, if the aggressor is not reprimanded.
- Applying physical punishment without using any weapon so as to avoid any damage or any bleeding.
- To use suitable weapons indicating that serious actions that might take place.
- To enforce regulations by resorting to a cadre of police.

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This stage has two conditions:

- A) To affect change manually only when it is necessary.
- B) To affect change manually according to what is needed.



## Cont.

- The above measures are carried out by Al- Muhtasib.
- But he is required not to choose a stronger punishment unless a milder one is either ineffective or seems to carry no weight to the person already admonished.
- This is because al-Muhtasib operates in a system of checks and balances.
- His actions should not involve a greater mischief than the one he wants to forestall

## Islamic Financial Services Industry: Regulation, Governance & Auditing

- In the present context of the Islamic financial services industry, the regulatory organs of the state refer to the statutory bodies enacted under the Ministry of Finance or equivalent, which vary among jurisdictions.
- this refers to the financial authorities such as the Central Banks, Monetary Authorities, Securities Commission and other relevant institutions that are vested with the power to implement the legislation through guidelines and requirements, monitor statutory compliance through supervision, physical inspection and examination of premises and documents, enforcement of the act as well as prescribe punitive measures for non-compliance.





## Cont.

- The relevant authorities such as National Shari`ah Advisory Council advice on implementing, monitoring, enforcement and punitive measures for non-compliance can be effectively advocated and implemented.
- Corporate governance organs such as **the Auditors, Shari`ah board or committee, Audit committee, Risk management committee and Internal Audit department** or division provide complements
- Regulatory and supervisory functions.

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- This is done by ensuring effective internal control system as well as risk management system that provide reasonable assurance in the form reports, opinions and communications that promote transparency and market discipline.
- Shari`ah Boards and external auditors are independent either by shareholder resolution or approval of the financial authority their functions differ in providing reasonable assurance on Shari`ah compliance to the investment public, which include investors and stakeholders.

## Shari`ah board

- The Shari`ah board or committee formulate Shari`ah opinions and rulings for the financial institution as well as endorse the financial institution's product and activities which are approved by the Board and executed by the Management.
- Prior to expressing an opinion on the financial institutions on its products and activities it undertakes a comprehensive Shari`ah Review to ascertain that in all material respects the financial institution is Shari`ah compliant



## Cont.

- The Shari`ah Board or Committee within the given framework does assume the role of both advisor and reviewer.
- It prescribes the adoption of relevant Shari`ah principles and rules in providing Shari`ah solutions to the financial institution and express opinion in a report to the investment public based on both the Shari`ah review and internal Shari`ah review conducted by Shari`ah compliance officer on the status of the financial institution

## External auditors

- External auditors similar to Shari`ah board are appointed by the BOD and approved by the shareholders as well as licences granted by the financial authority.
- In the performance of audit, the auditor attest the financial reporting system and expresses an opinion that the preparation of financial statements and reports are in accordance to international reporting standards as well as Shari`ah principles and rules

## Cont.

- Compliance to Shari`ah principles and rules refer to the correspondence of reporting of financial reality to religious consideration.
- For example Murabahah financing is reported in a manner that is consistent with the Murabahah contract principles, rules and conditions.
- By expressing an opinion the auditors provide reasonable assurance on the reliability of the financial statements

## Conclusion

- There is a need to institute Hisbah for the nation as well as the Islamic financial services industry to fulfill the commandment of Allah s.w.t.
- The strategy to establish such a system requires a careful study of existing regulatory mechanisms and organs of governance as well as the level of financial industry literacy in terms of understanding and implementing the Shari`ah principles and rules from the counter desk staff to the Board of Directors

*Thank You  
&  
Wassalam*

