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## ISLAMIC BANKING OPERATIONS AND THE INADEQUACIES IN NIGERIAN BANKING REGULATIONS: THE IMPERATIVES FOR REFORM

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**Abstract:** Banking is regulated by laws in addition to supervisory guidelines issued to complement areas not sufficiently provided for by the laws. Regulating all aspects of the banking industry is imperative considering the significant role the banking industry plays in the economy. Nigerian banking laws are promulgated to govern conventional banking activities based on the common law and regulatory institutions are by same laws saddled with the responsibility of supervising the activities of the banks through guidelines from incorporation to winding up. Also, Islamic banking system and its products, which operate in accordance with Islamic financial jurisprudence, are subjected to the application of this legal regime in the country too. However, the two systems are entirely different both in substance and practice, and this paper advocates for additional and or separate legal regime for the regulation of the Islamic banking system in the country. This research, through doctrinal method, examined the current Nigerian legal banking regimes with view to evaluate the operations of Islamic banks within it. It finds that the Nigerian legal framework on banking system is inadequate in several aspects for the operation of Islamic bank such as participation in capital market, banking deposit insurance, banker-customer dispute settlement mechanism etc and thus cannot to cater for its full and smooth operations. As such, the regime is inadequate and weak to hold and sustain Islamic banking operations. The paper recommends reforms in the legal regime to provide for distinct legislations to specifically regulate the operation of Islamic banks in Nigeria to enable the bank bring the desired and expected benefits to the country's economy.

**Keywords:** Banking Regulations, Islamic banking, Supervisory Guidelines, Inadequacies and Reform.

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**1.0 Introduction:** Banking is a key subsector in the modern economic field. A bank is an institution authorized to take deposits for the purpose of extending long-and short-term finance facilities. It is an institution which deals with money and credit; one that accepts money from public, makes the funds available to those who need them. The banking business as a whole entails the accepting for the purpose of lending or investment, of deposit of money from the public, repayable on demand and withdrawable by cheque, draft or otherwise. Banking is one integral part of any financial system its role has long been discerned at various stages of economic development of societies. The purpose of a financial system is to facilitate the flow of funds from savings-surplus-units to savings-deficit-units in the most efficient manner. The banks play the role of an intermediary in the process.

The idea of Islamic banking was gathered and refined from the Islamic principles of commercial transactions and was realized through ijihad. The re-organization of the Islamic commercial activities to provide banking services is in accordance with the universal principle of the shariah that the original state of things is their legitimacy (*ibaha*) and unless there is a cause in the shariah for the illegitimacy of a thing or practice, it should be considered as legitimate. Islamic banking plays the roles of financial intermediaries among others in the Islamic financial system and has emerged as one of the fastest growing industries in the last four decades.

**1.1 Islamic Banking** is a banking based on Islamic law (Shariah). It follows the Shariah rules known as *fiqhmu'amalat* (Islamic rules on transactions). In other words, it is a shariah-compliant banking. The rules and practices of *fiqhmu'amalat* came from the Quran and the Sunnah, and other secondary sources of Islamic law such as *ijma'* (opinions collectively agreed among Shariah scholars), *qiyyas*(analogy) and *ijtihad*(personal intellectual reasoning). The most important difference between Islamic and conventional banking is that Islamic banking is ethical in accordance with the Shariah.

Like any conventional bank, an Islamic bank plays the roles of financial intermediary among others and trustee of people's money with the difference that the Islamic banks reject the receipt and payment of *riba* (interest) on any of its operations. What distinguishes an Islamic bank further from a conventional one is that the bank keeps in view certain social objectives intended for the benefit of society. The bank aims to establish distributive justice free from all sorts of exploitation since from the Islamic point of view, business transactions can never be dissociated from the moral objectives of the society.

Islamic banking also aims at ensuring social justice and human welfare through forbidding all forms of economic activities which are morally or socially injurious, ensuring ownership of wealth legitimately acquired, allowing an individual to retain any surplus wealth and seeking to prevent the accumulation of

wealth in a few hands to the detriment of society as a whole.

**1.2 Bank regulations** are a form of government regulation which subject banks to certain requirements, restrictions and guidelines. This regulatory structure, in form of laws and guidelines, creates transparency between banking institutions and the individuals and corporations with whom they conduct business, among other things. Given the interconnectedness of the banking industry and the reliance the national (and global) economy hold on banks, it becomes apparent why regulatory institutions need to adequately maintain control over them and set standards for their practices at all times. Without this control, the failure of the banks would not only be on the banks or its shareholders, but would create rippling effects throughout the economy leading to systemic failure. In the modern times, banks, conventional and Islamic, have generally assumed increasing importance with critical roles in the economy which prompt heavy and prudential regulations for their control and operations.

In Nigeria, like in many other countries with similar practice today, what obtains in term of banking regulations is termed as "dual banking system," meaning, the practice of a banking system in accordance with the principles of Islamic financial jurisprudence concurrently with another banking system in the light of conventional banking rules and regulations. Since the two systems are entirely different both in terms of substance and practice, then two different legal frameworks would be appropriately required to properly justify the entire banking operations. For the conventional banks, the laws are at least sufficient since they are originally meant for them. But in the case of Islamic banking which is new in the country, a survey has to be taken for the discovery of its legality within the context of the Nigerian laws, and how its establishment and operations are governed under the extant legal regimes on banking, while at the same time having regard to shariah governance.

This paper therefore examines the provisions of the relevant laws under the Nigerian legal banking regime with a view to assess and evaluate their adequacy for the smooth operations of Islamic banking system in Nigeria like the conventional banking.

## **2.0 Literature Review/Research Gap:**

### **2.1 Islamic Banking under the Extant Nigerian Laws**

#### **2.1.1 Constitutional Basis of Islamic Banking**

In Nigeria, because of the nature of the legal system of the country, there was the argument and or debate in some quarters that establishing an Islamic bank is equivalent to adopting a state religion in a country

which, by virtue of its constitution, is believed to be secular. However, this argument is hardly tenable as the constitution itself has never contemplated this fact, coupled with the establishment of the Jaiz Bank Plc in the country and under the same laws which hitherto were argued to be incompatible with Islamic banking. It is true in Nigeria there is no separate legal regime for the establishment, control and regulations of Islamic banking; it is therefore with support from regulatory institutions' guidelines that Islamic banking is made to operate under or within the context of the conventional banking regime.

For the purposes of citizens' participation in the national economy, the Nigerian economic sector has been classified into major and non-major sectors, the former covering "such economic activities as may from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation" while the later covers all other economic areas that are not within the exclusive scope of the major sectors as so declared by the National Assembly. It is submitted therefore, that banking activities are, in Nigeria within the non-major sector of the economy, therefore any citizen of the country is constitutionally entitled to partake in this area of economic activities. Based on this, Muslims can participate in the banking activities in Nigeria subject to their religious reservations, since the Constitution has given and guarantees the Nigerian citizens a right to practice a religion of their own choice, when it provides:

"Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance".

It is therefore cogently argued that Nigerian Muslims are constitutionally entitled to practice Islamic banking system as part of the practice and observance of their religion.

### **2.1.2 Banks and other Financial Institutions Act (BOFIA)**

The Banks and other Financial Institutions Act is one of the principal Nigerian laws on banking, and to reckon with, when discussing the legal basis of Islamic banking system in Nigeria. The Act, in its definition section, has provided for a profit-and-loss-sharing (PLS) bank as a category of banks with features that resemble those of an Islamic bank. The "the profit and loss sharing bank," according to the provisions of **section 66** of the BOFIA, means:

"A bank which transacts investment or commercial banking business and maintains profit and loss sharing account"

Of all the types of banks under the Act, none fits into this definition; Islamic banking system is the only bank which fits into this definition. This is because Islamic banking system, in its commercial attitude which is more of investments for profit making in which the bank and its customers, clients or partners embark on a particular investment technique with a view of profit making for distribution. So also when losses are incurred, the parties stand to share it, however, subject to the nature of the investment technique embarked on. This is in contrast with the practice of the conventional banks which always stand to gain profit and push all liabilities to the customers.

Further, section 23(1) of the BOFIA exempts the profit-and-loss-sharing banks from the mandatory practice of displaying interest rate in their places of business. This exemption sets a solid foundation for Islamic Banking system. Similarly, the provision of section 52 of the Act empowers the Central Bank Governor to further PLS banks from the general provisions of the Act as he may think fit. In addition to these sections, some provisions of the Act can be said to refer to certain services and products that are typical of Islamic banking only like *ijara* (leasing) and *musharakah* (Islamic partnership).

So, by looking at the distinguished features of the Islamic banking system in relation to these provisions of the Act, it can be rightly concluded that the operations of Islamic banking system in Nigeria is legally recognized.

### **2.1.3 Central Bank of Nigeria (CBN) Act**

This law provides for the establishment of the Central Bank of Nigeria (CBN). The Central Bank is directly empowered by the provisions of this Act and the BOFIA to serve as a watch dog on the operations of banks in Nigeria. The Act charges the CBN with the responsibility of the overall administration of the monetary and banking policies of the federal government. As the apex regulator of all banks and financial institutions, it discharges its responsibility while regulating, controlling and supervising the banking and financial system. For instance, a bank licensed in Nigeria cannot open or close a branch in or outside the country without a prior written consent of the CBN as provided by the provisions of section 6 of the Act. Accordingly, no internal or external arrangement could be carried out by any licensed bank in Nigeria without the consent of the Governor.

To protect the interest of depositors and other customers alike, the Act mandates licensed banks to have with the CBN minimum holding of cash reserves, specified liquid assets, special deposits and stabilization securities. A matter of importance in this respect is the requirement of the law that the CBN shall pay interest on the cash reserves and

special deposit. In the same manner, the CBN is authorized to grant temporary advances to commercial banks in respect of temporary debit balances on their accounts. It does this at an interest rate it may from time to time determine. These provisions are not only inimical but also antithetical to the object of Islamic Banking which seeks to avoid interest in all its ramifications. Sadly, the provision of section 23 BOFIA, which in itself is a mere technical exemption of PLS banks from interest-based transaction, cannot be extended to this situation. This is because the provision of the section relates only to the relationship between the PLS bank and its customers. The implication of this is that while an Islamic bank would operate on interest-free transactions with members of the public, it will be forced to at least pay interest to the CBN on its advances. It is suggested that since the funds of Islamic bank with the CBN are not meant to be kept idle, the proper approach would be that the Central Bank relates with Islamic banks on the basis of profit and loss sharing system. In respect of the funds of an Islamic bank with the Central Bank, the latter Bank acts as *mudarib* while the Islamic banks take the position of *rabb al-mal*. This position becomes reversed when the Central Bank invests in the shares of the Islamic bank and thereby becomes entitled to share in both the profit and loss of the Islamic bank. Sections 24 to 30 of the Act centered on issues bordering on books of account. CBN has power to appoint an independent firm of qualified accountants to prepare book of account of a bank which does not comply with any of the provisions of the law. Equally, on monthly basis, every bank is required to submit to the CBN a statement of its assets and liabilities and an analysis of advances and other assets of the bank. It is suggested that such accountants and auditors should equally be qualified in the field of Islamic Banking and finance and Islamic accounting procedures.

With the establishment of Islamic financial institutions in Nigeria, some additional and specific guidelines were issued by the CBN to complement the existing legal regime in regulating the banking sector. This is with a view of, among others spell out the areas to which an Islamic financial institution should be restricted.

### **2.1.4 Companies and Allied Matters Act (CAMA)**

For any bank to carry out its activities in Nigeria, it must first be registered as a company with the Corporate Affairs Commission, complying with all the legal requirements as it relates to the process of registering a company; then an application is made to the Central Bank, pursuant to the provisions of Banks and Other Financial Institutions Act (BOFIA), for the issuance of banking licence. This is so because for any bank to apply for banking licence in Nigeria, evidence

of registration as a company must be shown to the CBN. The BOFIA provides:

"No person shall carry on any banking business in Nigeria except if it is a company duly incorporated in Nigeria and hold a valid licence issued under this Act".

Also in respect to the Corporate Affairs Commission, which is established by the CAMA, its powers are not specifically for banks, but since before a bank could be licensed the law requires, first of all, it be registered as a company, then the law becomes directly relevant and applicable at the same time. Accordingly, **section 55** of the BOFIA is categorical on the application of the provisions of the Companies and Allied Matters Act. It provides:

"The provisions of this Act shall apply without prejudice to the provisions of the Companies and Allied Matters Act in so far as they relate to banks and to winding up by the Federal High Court".

By this, it could be seen that all the provisions of CAMA that are related to the operations of banks and banking sector are directly applicable, for all intents and purposes, provided they are not in contravention with any of the provisions of BOFIA in which case, the later Act prevails.

An aspect of the Act with direct relevance with the working of licensed banks in Nigeria is the power of the Commission to investigate companies and their affairs. Here, the Commission may appoint inspectors to investigate the affairs of a bank in addition to the investigatory powers of the CBN as conferred upon it by the provisions of BOFIA. The investigation may commence on the application of the bank itself, that of its shareholders or the Commission on the directives of the Federal High Court.

## **2.2 Other Laws and Guidelines Made Pursuant to the Laws**

### **2.2.1 Nigerian Deposit Insurance Corporation (NDIC) Act and the Draft Framework for Non-Interest Deposit Insurance Scheme.**

The protection of the interest of customers and the general public is central to every banking system, thus, the Nigerian Deposit Insurance Corporation Act establishes the Nigeria Deposit Insurance Corporation which is saddled with, among other things, insuring all deposits made by customers to their respective banks.

However, the modus operandi of the Commission does not tally with the practice of Islamic banking system in line with the principles of Islamic law of finance which leans against uncertainty in all dealings. The concept of conventional insurance is built on mere presumptions and speculations, hence, tilting towards uncertainty. Based on this, the insured is under a legal duty to pay premium, which in the case of the Corporation, failure to pay annual premium regularly or special contribution is a good

ground for revocation of licence. But as part of the recent developments, the Nigeria Deposit Insurance Corporation has worked on how to come up with non-interest based bonds for financing infrastructure. Consequent upon that, the Commission came up with a draft for Islamic Deposit insurance known as Draft Framework for Non-Interest Deposit Insurance Scheme.

According to the introduction to the draft framework, the establishment of Non-Interest Banks has necessitated the extension of Deposit Insurance coverage to the depositors of such banks so as to come up with a proper playing environment for all deposit taking financial institutions and to make sure that the interest of holders of Non-Interest Banking products is adequately protected. The issuance of the framework is based on public policy aiming at providing equivalent protection as enjoyed by the conventional banks. The arrangement protects depositors against loss should a non-interest bank fails, to boosts public confidence over the activities of Non-Interest banks, improves a level of competition among the Non-Interest financial institutions and it also helps in containing the cost of resolving failed Non-Interest Banks.

### **2.2.2 Investments and Securities Act (ISA) and Securities and Exchange Commission Rules (Rules on Sukuk Issuance in Nigeria)**

The Act established the Securities and Exchange Commission (SEC) as the highest regulatory authority charged with the administration of the Act on issues relating to the Nigerian Capital Market. The Commission is statutorily saddled with, among others, the responsibility of creating and maintaining a suitable atmosphere for the issuance of shares and other securities to the public by public companies in Nigeria and related matters, including maintenance of fair and orderly market and for the protection of investors and so on.

Accordingly, the Commission is also saddled with the responsibility of preparing and issuing adequate guidelines on the operations of capital markets in Nigeria. Based on this, the Commission has come up with some guidelines on the issuance, regulation and operations of capital market under Islamic law. As a result of that, the New Rules/Amendments to the Rules and Regulations of the Securities and Exchange Commission (Rules on Sukuk Issuance in Nigeria) was issued by the commission.

Therefore, the relation of the Commission with banking business in Nigeria pertains to the issuance of the securities (shares) of a newly formed bank and in trading with the banks' securities in the capital market.

### **2.2.3 Central Bank of Nigeria Regulations on the Scope of Banking Activities & Ancillary Matters**

The relevant portion of this regulation to Islamic banking system in Nigeria is the provisions of **Section 4** thereof which adopts mutatis mutandis all what the Banks and Other Financial Institutions Act (BOFIA) provides in relation to the types of banks allowed to operate in Nigeria. It provides:

"From the effective date, the only types of banks that will be permitted to carry on banking business in Nigeria shall be limited to the following types as contemplated under BOFIA: (a) Commercial banks; (b) Merchant banks and (c) Specialized banks, which include *non-interest banks*, microfinance banks, development banks and mortgage banks.

The *non interest banks* referred to in section 4 (1) (c) may be authorized by the CBN to carry on banking business on a regional or national bases in accordance with rules, regulations, and guidelines on licensing, authorization, operation and conduct of business that the CBN may issue from time to time" The above provisions give an additional support to the legality and operations of Islamic banking system in Nigeria.

### **2.2.4 Central Bank of Nigeria Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria**

To cater for Islamic financial institutions in Nigeria, some additional and specific guidelines were issued by the CBN to complement the existing legal regime regulating the banking sector. This is with a view of, among others, spelling out the areas within which an Islamic financial institution cannot go beyond. In relation to the principles upon which transactions are regarded as permissible, the guidelines divide the non interest financial institutions into:

- i. Full-fledged Islamic bank or full-fledged Islamic banking subsidiary of a conventional bank;
- ii. Full-fledged Islamic microfinance bank;
- iii. Islamic branch or window of a conventional bank;
- iv. Islamic subsidiary, branch or window of a non-bank financial institution;
- v. A development bank regulated by the CBN offering Islamic financial services
- vi. A primary mortgage institution licensed by the CBN to offer Islamic financial services either full-fledged or as subsidiary; and
- vii. A finance company licensed by the CBN to provide financial services, either full-fledged or as a subsidiary.

This part of the guidelines makes it more vivid and clear, the areas covered by the operations of Islamic banking system in Nigeria and it gives similar opportunity to other institutions not necessarily Islamic financial institutions.

Islamic banks and other non-interest financial institutions are mandated to have, as part of their governance structure, internal compliance review mechanism to ensure compliance with the principles of the models. They must also have, as part of their governance structure, an Advisory Committee of Experts (ACE). The committee is to, among others, look into, review and approve, where appropriate, all contracts or products offered or to be offered by an Islamic bank. But in the case of new products or services to be rendered by the bank, a prior written approval by the CBN is required.

The regulations also reiterate, in a more specific language, the provisions of section 39 BOFIA which is to the effect that "the registered or licensed name of an IIFS shall not include the word "Islamic" except with the consent of the Governor of the CBN."

On Audit, Accounting and Disclosure Requirements, Islamic banks are mandated to keep their practice in compliance with the provisions of the circular issued by the Central Bank and other requirements as provided by the relevant provisions of BOFIA and CAMA, respectively. Other standards that must be complied with include but not limited to:

- a. Accounting and Auditing Organisation for Islamic Financial Institution (AAOIFI);
- b. Islamic Financial Services Board (IFSB); and
- c. Nigerian Accounting Standards Board (NASB).

All Islamic banks are also required to come up with appropriate policies, strategies and procedures in maintaining adequate liquidity to fund their operations. They are also prohibited from investing their funds in interest bearing securities or activities. Because of the peculiar nature of Islamic banking, it must comply with both domestic and international guidelines on risk management. Accordingly, for a bank to be registered and licensed as an Islamic bank, the above must be complied with, in addition to the sole purpose of avoiding all the non-permissible commercial dealings as enumerated by the guidelines.

It is worthy of note that on the establishment and operation of Islamic banking system in Nigeria and, looking at the totality of the extant provisions of the Nigerian financial laws and regulations relevant to the take-off and operations of Islamic banking, none has Islamic banking in contemplation and there is no way the banking system could have been licensed under them. Therefore certain stratagems have to be devised to accommodate Islamic banking under them. According to **Abdulkadir Abikan**, the Central Bank of Nigeria (CBN) as the apex regulator of the banking industry would retain its supervisory role in that regard in its relationship with Islamic banks but with slight adjustment. Essentially, its examination and oversight function would be continued to be

handled by the existing relevant units while shariah compliance issues will be handled by its shariah council. While these arrangements will, in the short run sustain Islamic banking in Nigeria, in the long run however, lack of a definite legislation on these issues poses great danger to the sustainability of the system over time.

On adjudication of Islamic finance dispute in Nigeria, there are perceived legal and constitutional hurdles in that regard. Disputes in any human endeavour are inevitable as human interactions come with unavoidable disputes; thus dispute as a result of Islamic banking and finance transactions are inevitable. According to **Abdulfatai Sambo**, the need to anchor the practice of Islamic finance on a sound legal and constitutional footing for effective dispute resolution becomes not only necessary but also crucial. This is because the constitution of the country provides for courts with appropriate jurisdictions on various matters, and particularly the superior courts of record which are not conferred any jurisdiction in matters of islamic finance.

It follows therefore that a gap exist in the extant legal and institutional framework, especially as regard the establishment and smooth operations of Islamic banks in Nigeria; there is the need then to have a robust piece of legislation to entrench the system fully and appropriately in the country, supplemented with specialized guidelines where necessary.

### **3.0 Research Method:**

The method employed for the purpose of this research is the doctrinal and or non-empirical. Through the doctrinal method, the research examined the current Nigerian legal banking regimes with view to evaluate the operations of Islamic banks within it. In doing so, the relevant statutes, subsidiary legislations and other textual legal literatures were analysed; this results in the findings of the research, and based on them recommendations are proffered.

### **4.0 Research Findings**

Islamic banking system is new in the Nigerian banking industry. The system has just commenced its operations with the tag 'profit and loss sharing' banking system. In Nigeria, the banking sector is now dual in nature; Islamic and the conventional banking systems. However, the principal banking laws and the operations of other institutions that are necessarily incidental to the banking activities are not primarily meant for Islamic banking. They are laws and institutions passed and established mainly for the operation of the conventional banks. To some experts, however, the laws are capable of accommodating the Islamic banking system as a child of necessity and it is on that premise the first Islamic bank in Nigeria, Jaiz Bank Plc, got its licence. The main justification here is that the laws, especially the Banks and Other Financial Institutions Act (BOFIA)

has recognized what is known and termed as "Profit and loss Sharing" banking system which is seen as a major, if not an exclusive feature of Islamic banking system. Therefore, with the entry of Islamic banking system into the Nigerian Banking industry, it has been argued dispassionately for a new regime in favor of the system and pursuant to which some guidelines are issued by some the relevant institutions to complement the lacuna in the existing laws, so as the activities of Islamic banks may be within the ambit of the laws of the land. Therefore, Islamic banking system in Nigeria stands amid some challenges emanating from the banking legal regime especially as the laws are not meant for the system.

The banking sector is always central to the economic development of every nation in the modern world. In fact, it is one of the determining factors in measuring the status of a nation in view of being either a developed or a developing country. In line with this, a banking business cannot be left without proper regulations through concrete legislation as no country will allow its banking sector to mere regulatory institutions' guidelines i.e. without specific laws to regulate it. This is because guidelines can easily be changed and they are not sure means of banking regulation. Therefore the current Nigerian legal banking regime is said to be inadequate as it cannot cater for all the needs and demands of the dual baking system being practiced in the country. Absence of specific laws that should provide for and take care of the peculiar nature of Islamic banking generally and in particular its participation in the capital market and deposit insurance are the most pressing challenges.

In addition, lack of dispute settlement mechanism is another challenge as there is no court in the country with jurisdiction on Islamic commercial and or financial matters. Under section 251 of the 1999 Constitution, it is clear that generally, the Federal High Court is conferred with an exclusive jurisdiction to hear and determine, as a court of first instance, all issues bordering on banks and banking activities. But where the dispute arises out of bank-customer relationship, both the Federal and State High Courts can be said to have jurisdiction to entertain it. In any case, this position is highly problematic to the Nigerian Islamic banking system.

### **5. Findings**

Islamic Banking System is unique with respect to its operating principles. This is so especially when the fact that the principles regulating the entire system are uniformly generated from the classical Islamic financial jurisprudence. However, in terms of practice and implementation the system may differ from one country to another due largely to the influence of the

conventional system and the importance of the sector to modern economies. That is why every country guides and protects its banking sector religiously as a symbol of its economic status. For this reason alone, the system may be well developed in one country than in another and which make it possible for a country with a less developed system to borrow from the other's practice. Islamic banking system in Nigeria stands to learn a lot from similar system obtainable in countries such as Malaysia.

From the Nigerian laws and examined and regulatory institutions guidelines made pursuant to these laws it can be rightly observed that the current legal banking regime in the country, which is supposed to be for dual banking system, is inadequate and cannot sufficiently cater for both conventional and Islamic banking systems. At best, it can be argued it minimally suffices for the conventional system, which it is originally made to govern. In view of the challenges and criticisms against the system as highlighted, it is suggested that, borrowing a leave from countries such as Malaysia, Nigerian banking legal regime should be reformed to adequately provide for Islamic banking system; laws should be enacted to govern Islamic Banking from incorporation to winding up and in matters of capital market and deposit insurance; court should be created or the existing ones have their jurisdiction expanded, manned by the appropriate personnel/experts to handle matters of Islamic banking and finance. Awareness should equally be created among the Nigerian populace about Islamic banking not being for muslims only but for the benefit of the country and all citizens.

## **6. Recommendations**

Success can only be attained and sustained by best result. The success of the Islamic bank rests on the support of both the Nigeria government and regulatory institutions. The government should actively support the bank by creating the required

and enabling banking environment where special policies will be developed to establish non-interest financial transactions. Special resolutions should be developed and constantly reviewed in response to global developments. The government should realize that Islamic banking is still at an infant stage in the country and so protection policies should be in place to ensure the survival and sustained growth of the bank. Regulatory institutions should ensure that Islamic banks are managed properly, remain transparent and not liable to local or international suspicion.

Harmonization between Islamic principles of transaction and conventional banking and finance should stand out as a priority in case separate legal regimes are attained. Research and development of Islamic finance should be extended generally through both private and public initiatives. This harmony can only be achieved by juxtaposing conventional banking and finance theories and Islamic legal principles to create a practicable synthesis of the two. Whatever course Nigeria takes in this respect, its future policies and practices ought to develop based on a culture of rigorous research into all aspect of Islamic finance through collaboration with academicians and institutes researching in other countries.

It is in record that the practice of Islamic banking and finance in successful countries like Malaysia enjoys full government support. Malaysia, like Nigeria, is a multi-racial and multi-religious country whereby non-muslims account for a large number of Islamic banks' customers. Thus, the role of the public in the success of Islamic banking in Nigeria is very vital. Non-muslims in Nigeria can benefit equally from the services provided by Islamic banks as their Muslim counterparts. The Nigerian financial system has accommodated Islamic banking in its neutral role as service provider based on the original value proposition of Islamic financial intermediation.

## **References:**

1. The word "bank" is said to have been derived from the Italian word 'banco', meaning shelf or bench, on which the ancient moneychangers used to display their coins. The bench of a medieval banker or money changer was broken by the people if he failed in business and this probably is the origin of the word "bankrupt". Paul Brian, Encyclopedia of Banking and Finance, Smith & Johnson, Boston, 1993; p. 55. Also see similar related text in Encyclopedia Britannica.
2. According to the Banking and Other Financial Institutions Act (BOFIA) "banking business" means the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business" – s. 66 Banks and other Financial Institutions Act, cap B3 LFN 2004.
3. Study of the history of finance reveals that the practice of banking has existed in one form or another dating back to 575 BC when people used to deposit their money in temple treasuries. These temples used to act as banks and extend finance to individuals and the State. Over time, such operations moved from religious institutions to private banks. The 'Igibi' bank of Babylon, which

- existed in 575 BC, not only acted as an agent for clients, extending finance on the basis of signatures, but also accepted deposits and gave loans for agriculture – Ayub Mohammed, op cit., p. 179.
4. From a small beginning on a modest scale in the early 1970s, Islamic banking has recorded tremendous growth to become a key player in the world's finance industry. What started as a small rural banking experiment in the remote villages of Egypt has now reached a level where many mega-international banks are offering Islamic banking products. The practice of Islamic banking now spreads from East to West, all the way from Indonesia and Malaysia towards Europe and the Americas and receives wide acceptance by both Muslim and non-Muslim. The size of the industry that amounted to a few hundred thousands of dollars in 1970s has reached hundreds of billions of dollars in recent years - MunawarIqbal and Philip Molyneux, *Thirty Years of Islamic Banking: History, Performance and Prospects*, Palgrave Macmillan Ltd, New York, USA, 2005, p. 1.
  5. M. Kabir Hassan and Mervin K. Lewis, *Handbook of Islamic Banking*, Edward Elgar Publishing Limited, Cheltenham, UK, 2007, pp. 1-4
  6. MunawarIqbal& Philip Molyneux, *Thirty Years of Islamic Banking: History, Performance and Prospects*, Palgrave Macmillan, New York, USA, 2005, pp. 7-15
  7. Ibid.
  8. Wikipedia, *Banking Regulations*, available at [http://en.wikipedia.org/wiki/Bank\\_regulation](http://en.wikipedia.org/wiki/Bank_regulation), last accessed 20th December, 2014
  9. In the case of conventional banking system, no ethical or religious principles are placed for mandatory observance. It is basically a creditor/debtor relationship in which some principal amounts would be given to a customer relying on collateral and on an agreement that certain fixed percentage will be periodically paid to the bank until when the loan is finally written off. In an event where the customer is in default, the bank will sell the collateral and realize the principal amount and even the interest. This has some negative repercussion to the entire economic system.
  10. The Nigerian laws to be examined for the purpose of this paper are the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Bank and other Financial Institutions Act (BOFIA), the Central Bank of Nigeria (CBN) Act, the Nigerian Deposit Insurance (NDIC) Act, the Companies and Allied Matters Act (CAMA) and the Regulatory guidelines issued pursuant to these laws.
  11. Section 10 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides to the effect that the Government of the Federation or of a State shall not adopt any religion as a State Religion. From constitutional point of view, some non Muslim erroneously criticized the establishment of Islamic banking in the country, arguing that Nigeria is a secular state and any attempt by any person, group of persons or corporate body to establish any banking policy with religious semblance will amount to adopting that religion as a state religion and thereby contradicting the provisions of section 10 of the constitution. In the view of DrNasir A. Ahmad of the Department of Islamic Law, Faculty of Law Bayero University, Kano, Nigeria in his paper "Islamic Banking and Finance in the Context of Nigerian Laws", presented on Thursday, the 9th day of August, 2012, at the Seminar of the International Institute of Islamic Banking and Finance" (IIIBF) Bayero University, Kano, some scholars construe this section loosely to give Nigeria a secular look in trying to separate all religious activities from the affairs of the state. He further argued that contrary to the practice world over, the Nigerian constitution does not in any way support secularism and that could be clearly seen in the various practices of the governments which include the oath of office and oath of allegiance which end with the phrase "So Help Me God," the way the governments supports religious education through religion propagation in public owned media, declaration of religious public holidays and how governments sponsor buildings of places of worship. The author shares this view to the effect that establishing Islamic Banking in the country does not and cannot amount to adopting Islam as a State religion.
  12. Jaiz Bank Plc is the first and so far the only Islamic Bank licensed and established in Nigeria. As a regional bank, the bank has begun operation on the 6th January, 2012 with 3 branches in Abuja, Kano and Kaduna. The Regional license allows the Bank to operate geographically in a third of the country. Today the bank has developed and establishes additional branches in other parts of Northern Nigeria. The Bank is being positioned to be a national bank offering its services to all regardless of religious beliefs – see Jaiz Bank Plc, About Us, available at <http://jaizbankplc.com/index.php/about-us>, last accessed 22nd December, 2014.
  13. On the criticism that establishing Islamic Bank in Nigeria is akin to adopting Islam as a State religion and other criticisms by the non-muslims on the practice of Islamic banking and finance in Nigeria generally, see EghesEyieyen, CEO Pharez

- Consulting Ltd, "The CBN, Islamic Banking, The Law and Appropriate Regulation of Non-Interest Financial Institutions in Nigeria", available at [www.http://ndn:nigeriadailynews.com/templates](http://www.ndn:nigeriadailynews.com/templates), last accessed 20th December, 2014; Lewis Akpogena, "Islamic Banking in Nigeria: What Christians are Against?" available at <http://www.pointblanknews.com/Articles/artopn3942.html>, last accessed 20th December, 2014 and EghesEyieyien CEO, Pharez Consulting Ltd., "A Critical Analysis of Shariah Banking in Nigeria", available at [www.proshareng.com](http://www.proshareng.com), last accessed 20th December, 2014. However, there are Christians of high caliber in Nigeria that share contrary opinion with fellow Christians on the establishment of Islamic banking. For instance Bishop GoodluckAkporo, Christ Temple International Ministry, argued vehemently against the position of Pastor Ayo Oritsejafor, President of the Christian Association of Nigeria (CAN) who was reported arguing that the operations of Jaiz bank is a total disregard to the Nigerian Constitution and the Bank and Other Financial Institutions Act, (BOFIA). See "Bishop Urges Christians to Embrace Non-interest Jaiz Bank", available at <http://www.leadership.ng/nga/articles/28888/2012/07/04/bishop>, last accessed 20th December, 2014.
14. See Section (16)(4) of the 1999 Constitution of the Federal Republic of Nigeria, CAP. C23 Laws of the Federation of Nigeria 2004 (as amended).
15. Ibid., Section (16)(4)(b), where the phrase "economic activities" is interpreted to include activities directly concerned with the production, distribution and exchange of wealth or of goods and services"
16. Ibid., Section (16)(4)(c), where to "participate" is interpreted to include the rendering of services and supplying of goods.
17. Ibid., Section 38(1).
18. This is so because in Islam, Muslims are enjoined to reflect the practice of their religion in all aspects of their life on the authority of Quran 2:208 which provides: "O you who believe! Enter perfectly in Islam (by obeying all the rules and regulations of the Islamic religion) and follow not the footsteps of Satan. Verily, he is to you a plain enemy" - Abdullah Yusuf Ali, *The Meaning of the Glorious Quran: Text, Translation & Commentary*, Kazi Publications, Chicago, USA, 1995.
19. And since in Islam, the operations of the conventional banks involve some unlawful elements, which, *inter alia*, include the prohibition of interest (ribah), involving in other un-Islamic investments like gambling, piggery, liquor, to mention but a few, Muslims should then be allowed to explore the religious options they have for an alternative banking policy which is in four walls with their religious requirements and in no way contradicts the constitution.
20. Banks and Other Financial Institutions Act, CAP.B3, Laws of the Federation of Nigeria 2004.
21. These banks include commercial banks, merchant banks, profit and loss sharing banks and community banks, among others - See section (9)(2) of the Banks and Other Financial Institutions Decree No. 25 of 1991.
22. For instance, section 20 of the Act empowers a bank, with the consent of the Central Bank of Nigeria, to engage, either on its own account or on commission basis, on whole sale or retail trade which may be done through import or export trade. The section extends to commercial dealings like equipment leasing which is one of the products issued by Islamic banks under the concept of ijara (leasing). Similarly, Section 21 of the Act also allows a bank to acquire shares in small and medium-scale industries, agricultural enterprises and venture capital companies. This section is seen as a support to the concept of Islamic partnership (musharaka) being one of the products offered by Islamic banks in their operations.
23. See sections 37-41 CBN Act and sections 30-38 BOFIA.
24. Ibid, S. 7(1) a-e. This re-structuring may be in form of merger, arrangement and sale, arrangement and compromise, management buyout, or take over, to mention but a few.
25. Ibid, S. 15. CBN is empowered to prescribe the specific amount to be deposited from time to time.
26. See Section 29 (b) CBN Act.
27. Ibid., section 27 (1)(v)
28. Abikan A.I., "The legal framework for Islamic Banking In Nigeria" in Dandago K.I. et al. (eds.), *Essentials of Islamic Banking and Finance in Nigeria*, Benchmark Publishers Ltd., Kano, 2013, p. 113.
29. Supra, BOFIA, S. 24.
30. Ibid, S. 25
31. Section 2, Banks and Other Financial Act (BOFIA), CAP. B3, Laws of the Federation of Nigeria, 2006.
32. Supra, note 46, BOFIA S. 13(2)
33. Companies and Allied Matters Act, Cap C20, LFN, 2004, Ss 314 -315
34. Act No. 102, LFN, 2006
35. Act No. 102, LFN, 2006
36. NDIC Act, S.23(3)
37. Bashir Ibrahim Hassan, "Jaiz: The Exciting Future of non-interest banking", Weekly Trust Newspaper, Saturday, March 23, 2013.
38. Paragraph 2 to the framework under review.

39. Ibid.
40. Investments and Securities Act (ISA), Laws of the Federation of Nigeria, 2007, Act No. 29.
41. Ibid, in the Preambles to the Act.
42. Ibid., Section 13, paragraphs a-z. The SEC regulates capital market generally and especially in relation to public offer, sale of securities and invitation to the public. Generally, the Act has provided for detailed provisions regulating issuance of securities by companies in Nigeria, banks inclusive.
43. The rules were issued by the Securities and Exchange Commission pursuant to the provisions of section 313(6) of the Investments and Securities Act, 2007.
44. Regulation No. 3, 2010. This and other regulations issued by the CBN were made pursuant to the provisions of section 57 of the Banks and Other Financial Institutions Act (BOFIA).
45. Hereinafter referred to as "the Guidelines", available at <http://www.cenbank.org/Out/2011/pressrelease/gvd/Non-Interest-Banking-Guidelines-20-June-2011.pdf>, last accessed on 22nd day of December, 2014. These guidelines are issued pursuant to the Non-Interest banking regime under Section 33 (1) (b) of the CBN Act 2007; Sections 23(1) 52; 55(2); 59(1)(a); 61 of Banks and Other Financial Institutions Act (BOFIA) 1991 (as amended) and Section 4(1)(c) of the Regulation on the Scope of Banking Activities and Ancillary Matters, No. 3, 2010. It shall be read together with the provisions of other relevant sections of BOFIA 1991 (as amended), the CBN Act 2007, Companies and Allied Matters Act (CAMA) 1990 (as amended) and circulars/guidelines issued by the CBN from time to time.
46. The Guidelines, item 1.
47. In relation to corporate powers, the guidelines mandate that the Memorandum and article of Association must specifically state that the commercial operations of the institution must be carried out in accordance with the principles of Islamic commercial jurisprudence – the Guidelines, item 3.2S
48. Ibid, item 8.2. NB: By item 8.1 of the regulations, all Islamic banks are subject to the provisions of Guidelines on corporate governance for non-interest financial institutions issued by the CBN, the provisions of the Code of Corporate Governance for Banks in Nigeria issued by the CBN and any subsequent amendments thereto and all relevant provisions of BOFIA and CAMA.
49. Ibid., item 10.2 and all literature or marketing materials of an Islamic bank must carry the names of the Advisory Committee of Experts that certified the products or services, as the case may be. See also item 10.3. In addition to the above, the establishment of Central Bank Advisory Council of Experts is also provided for by the regulations. The council is "to advise the Central Bank on matters relating to the effective regulation and supervision of non-interest financial institutions" – see item 9.1 of the Guidelines.
50. Ibid, item 10.1. However, the guidelines allow an Islamic bank to have a uniform symbol designed by the CBN to be affixed on all its promotional materials to facilitate recognition by customers and the general public.
51. Ibid, item 12 generally.
52. Ibid, item 13.2.1 and 13.2.2
53. Ibid, item 14.0. These guidelines include CBN Prudential Guidelines, Risk Management Guidelines issued by the Basel Committee on Banking Supervision and IFSB Guiding Principles of Risk Management for Institutions offering Only Islamic Financial Services.
54. The non-permissible dealings include uncertainty or ambiguity that affects the subject matter of the transactions, terms or conditions therein; Gambling; Speculation; Unjust enrichment; Exploitation or any acts that may be calculated to give birth to unfair trade practices; Dealing in arms and ammunitions, pork, alcohol and pornography; and any other product, transaction, goods or services that are not in compliance with the principles of Islamic commercial jurisprudence - the Guidelines, item 1.
55. Abikan A.I., 'The Legal Framework for Islamic Banking in Nigeria' in Dandago K.I. et al., (ed.) *Essentials Of Islamic Banking And Finance In Nigeria*, Benchmark Publishers Limited, Kano, 2013, pp. 106 - 119
56. Sambo A.O. and Abdulkadir B.A., 'Shariah, Constitutional and Adjudication of Islamic Finance Disputes in Nigeria', in Dandago K.I. et al., (ed.), (op cit.), pp. 120 – 132.
57. See note 12 supra
58. In today's economic world, a banking system can either be Islamic or conventional in nature. The two systems are in operation throughout the countries of the world. In some countries, only the conventional banking is allowed to operate, while in some such as Sudan, Islamic banking system is the only one that is allowed to operate. Yet in other countries such Nigeria and Malaysia both systems are allowed to operate concurrently.
59. Malaysia for instance, operates similar system Malaysia only that its system is highly regulated by distinct and separate laws empowering its operations. Most importantly, the Malaysian Central Bank Act has categorically recognized the practice of Islamic bank and also makes some

provisions for its operations. There is also the Islamic Banking Act which is the main Act regulating this sector of the nation's economy. Many other laws are in place to facilitate the operations of the Islamic banking sector.

6o. See N.D.I.C v F.M.B. (1997) 2 N.W.L.R pt 490, p.735. A part from this, both the Federal and State High Courts cannot, as a matter of law, administer

the principles of Islamic law. This is because the constitution does not list out Islamic law among the laws to be applied by these courts. More so, determination of any dispute on the principles of Islamic law of finance is to be conducted in accordance with the principles of Islamic Law of Evidence, these courts have no power to apply Islamic Law of evidence as was held in the case of KOWA v. MUSA (2005) All FWLR (pt 290) p.1113.

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