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Relevance of Islamic Finance to the Nigerian Economy: The Regulatory Challenges

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INTRODUCTION

Economic development is the process by which the productive capacity of an economy is enhanced by using available resources to reduce risks and remove impediments that are capable of lowering costs and hindering investment. It is about promotion of more intensive and more advanced economic activity through such means as education, improved tools and techniques, more available financing, better transportation facilities, and creation of new businesses.[1] To achieve the ideals of economic development, the significance of the roles to be played by a nation's financial system cannot be overemphasized. The financial system serves as a catalyst for economic development by vigorously seeking to attract the reservoir of savings and idle funds and allocate same to entrepreneurs, businesses, households, and government for investment projects and other purposes with a view of returns. It plays a key role in the mobilization and allocation of savings for productive use and provides structures for monetary management, which is the basis of managing liquidity in the system. It also assists in the reduction of risks faced by firms and businesses in their productive processes, improvement of portfolio diversification, and the insulation of the economy from the vicissitudes of international economic changes. Additionally, the system provides linkages for the different sectors of the economy and encourages a high level of specialization expertise and economies of scale.[2]

For decades, many Nigerian banks were not engaged in strict banking business in terms of savings intermediation. They were trading in foreign exchange, government treasury bills, and sometimes in direct importation of goods through phony companies. A group of people would secure a banking

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license, use their connections to garner some billions of Naira in deposits from one or two parastatals, and use the deposits to trade in government treasury bills, foreign exchange, and open letters of credit for importers. With such a move, a bank could declare billions of Naira in profit.[3] The effect of this scenario is that financial institutions, particularly banks, have not been keen on mobilizing funds from low- and middle-income savers, thereby leaving a high percentage of currency in circulation in the informal sector. The mobilized funds are not allocated to the productive sector or small- and medium-scale entrepreneurs, thereby exacerbating the unemployment rate, poverty level, and infrastructural decay.

At different times, the regulatory authorities wade in to redirect the focus of the financial players toward economic development.[4] In 2004, the Central Bank of Nigeria (CBN) embarked on financial sector reform with the aim of strengthening and consolidating the banking system to ensure a diversified, strong, and reliable banking sector, which would ensure the safety of depositors' money, play an active developmental role in the Nigerian economy, and serve as a competent and competitive player in the African regional and global financial system.[5] The first phase of the exercise pruned the number of commercial banks in Nigeria from 89 to a relatively stronger 24 banks. While that recapitalization may have helped to build and foster a competitive and healthier financial system, it is debatable if the structure of their investments portfolio has the capacity to support the desired economic development objective of the reformers.[6]

Although there was a rapid increase in lending, the share of production sectors of the economy, especially agriculture and mining, was fluctuating between progression and decline over time, suggesting that the new monies were channeled into miscellaneous activities.[7] The banks are still unable to mobilize much of the cash outside the banking system,[8] thereby limiting the impact of the CBN's efforts at price and economic stabilization. Interest rates and poverty levels also remain high and a sizable percentage of the population is excluded from financial services.

Another phase of the reform was started by the CBN in 2009, which was aimed at ensuring that the financial sector contributes to the real economy. The reform was commenced after it was revealed that the investment portfolios of a number of the banks were more of diversionary and miscellaneous than productive. The reform led to the sacking of eight chief executive officers of banks and the subsequent injection of N620 billion (3,856,942.00 USD)[9] to avert the imminent collapse of the banking institutions. The development was followed by a drastic decline in confidence in the existing banking system[10] and gave popularity to and placed high expectations on the Islamic banking system initiated by the regulator in 1998 but fully introduced and licensed in June 2011.[11]

The financial system's avoidance of interest and a number of popular products it parades—like *murabaha* (cost-plus financing); *bay bithaman ajil*

(BBA) (deferred sale); and *sukuk* (Islamic investment certificates)—have played significant roles in the achievements it has recorded so far. While adoption of such products is desirable for macro-economic prosperity, this paper identifies a number of Islamic financial products like *muzara'a* (sharecropping), *musaqah* (irrigation), *musharaka* (partnership financing), *mudaraba* (profit sharing), and *sukuk* (Islamic investment certificate) as those peculiar to fair allocation of the nation's resources and to her real economic development needs. Successful introduction of Islamic finance in Nigeria is not without challenges. The challenges include deep-rooted religious bigotry, which hampers its acceptability, and the difficulty of putting an appropriate regulatory framework in place. The endemic corrupt business environment prevalent in the country is also a matter of serious concern.

This study therefore examines the present state of economic development in Nigeria, the impact of finance thereon, the possibility of Islamic finance improving the situation, and the challenges to be faced in the process. The work is carried out in six parts. Following this introduction, part two looks into the background of the Nigerian economy. In part three the impacts of the existing financial system on the economy as well as the level of financial exclusion in the country are examined. Part four examines the Islamic finance option, while investigation of the regulatory challenges is carried out in part five. The work ends with a conclusion and recommendations in part six.

BACKGROUND OF THE NIGERIAN ECONOMY

Nigeria is richly endowed with human and natural resources. It has a total of about 98 million hectares of landmass, out of which 82 million hectares are arable. The Food and Agriculture Organization of the United Nations (FAO) concluded that most of the country's soil would have medium to good productivity if this resource were managed properly.[12] It has an estimated 37.5 billion barrels of oil reserves, constituting 2.69% of the world's oil, and is the sixth-largest exporter of petroleum products in the world. It has other natural resources like coal, columbite, bitumen, natural gas, tin, iron ore, limestone, niobium, lead, and zinc, most of which are untapped. Based on this endowment, the Constitution of the Federal Republic of Nigeria obliges the government to direct the nation's economic objectives and policies toward ensuring:

a) The promotion of a planned and balanced economic development;
b) That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
c) That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of a few individuals or of a group; and

d) That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions and unemployment, sick benefits, and welfare for the disabled are provided for all citizens.[13]

The Nigerian economy has had a truncated history. In the period 1960–70, the gross domestic product (GDP) recorded 3.1 percent growth annually. During the oil boom era (1970–78), GDP grew positively by 6.2 percent annually—a remarkable growth. However, in the 1980s, GDP had negative growth. In the period 1988–1997, which constitutes the period of structural adjustment and economic liberalization, the GDP responded to economic adjustment policies and grew at 4.0 percent. The boom in the oil sector lured labor away from the rural sector to urban centers.[14] In the last four decades, oil has accounted for not less than 80% of the Nigerian government's revenue and not less than 95% of the country's export earnings.[15]

Nigeria has continued to experience progressive economic growth in the past decade, with an annual average of 7.4 percent. Yet the growth has not been inclusive and transformational. The implication of this trend is that economic growth in Nigeria has not resulted in economic development. The desired structural changes that would make manufacturing the engine of growth, create employment, promote technological advancement, and induce poverty alleviation have not been achieved.[16] Available data has put the national poverty level at 54.4 percent. Similarly, there has been rising unemployment, with the current level put at 23.9 percent by the National Bureau of Statistics (NBS).[17]

Many national economic programs and policies put in place have not been able to change the tide. The first was the National Development Plan, 1962–68, introduced to put the economy on a fast growth path with agriculture, industrial, and manpower development as priority areas. The second National Development Plan, 1970–74, targeted reconstruction and rehabilitation of infrastructure that was damaged during the civil war. The Indigenization Decrees of 1972 and 1974 attempted to put the Nigerian economy in the hands of Nigerians within the context of nationalism. While the third National Development Plan, 1975–80, immensely enjoyed the benefits of the huge oil revenues of the mid-1970s, the execution of the Fourth National Development Plan, 1981–85, was adversely affected by the collapse of international oil prices.[18]

The government adopted a structural adjustment program (SAP) sponsored by the IMF in 1986 for a better market-friendly environment with measures and incentives that would encourage private enterprise and more efficient allocation of resources. However, the program failed to realize the goals of creating wealth and promoting sound economic development as a result of policy reversal. The National Economic Empowerment and Development Strategy (NEEDS) was launched in 2004 with the goal of wealth creation, empowerment, poverty reduction, and value reorientation.[19] The strategy expected to be a catalyst for meeting the Millennium Development Goals (MDGs).

If any factor is common to all of the above economic development plans, it is gross mismanagement and policy reversals by successive governments. Corruption coupled with profligate spending has made it impossible to channel the resources to profitable investments to bring about desired economic benefits. As a result, the Nigerian economy has been bedeviled by unemployment and poverty.[20]

The biggest economic problem for Nigeria is infrastructural decay. Virtually all known indices of infrastructure are negative: electricity supply is erratic, taps are dry and the ones that run are sporadic, the level of security provided does not make one secure, most roads are barely motorable, etc. Most people, therefore, make private provision of infrastructural facilities so as to live a decent life. This might be in whole or in part, such as the employment of security guards, making use of fueled power-generating sets, the sinking of wells or boreholes, etc. Knowledge of the cost of provision of infrastructure by individuals, or fixing cars and other automobile engines frequently damaged by bad roads, will enable one to ascertain the amount of money that would otherwise be used either for investment or to improve the standard of living.[21]

David King captured the prevailing economic scene when he observed that Nigeria might be the most challenging and important developing country in the world today. It is by far the world's most populous extremely poor country,[22] but is its sixth-largest oil exporter. It has the smallest manufacturing sector of any large economy in the world, and the greatest concentration of export and government revenue dependence on a natural resource commodity. It is a country of spectacularly failed economic policies, whose GDP per capita is no higher than it was forty years ago. It is a country of rising poverty and return to subsistence. Its social problems are enormous, with half of the adult population illiterate, gender disparities in education, and league-leading infant, under-five, and maternal mortality rates. Public utility services are among the worst in the world, with at least two-thirds of households not connected to electricity, access to water extremely limited, and impossible urban transportation.[23] This observation still suits the current description of the Nigerian economic development as well as it did in 2003.

Impact of the Financial System on Development

Studies have shown that there is a strong and positive relationship between economic development and the financial system. Goldsmith was of the view that financial institution development is of prime importance for real development because the financial superstructure, in the form of both primary and secondary securities, accelerates economic growth and improves economic performance to the extent that it facilitates the migration of funds to the best user.[24] The best user here refers to the sector of the economy where the funds will yield the highest social and financial returns. Goldsmith was quoted to have empirically calculated the values of the financial interrelation ratio (FIR), the ratio of all financial instruments at a given time, to the value of the national wealth. He found that the ratios for developing countries were far lower than those of developed countries and concluded that because the development of financial institutions affects development, the low level of development of the financial superstructure affects development negatively.[25]

Goldsmith's analysis typifies the Nigerian banking sector. Before the 2004–05 reform of the sector, the Nigerian commercial banks were no better than rent-seekers. There were 89 deposit money banks operating in the country, comprising institutions of various sizes and degrees of soundness. Structurally, the sector was highly concentrated, as the ten largest banks accounted for about 50 percent of the industry's total assets/liabilities. Most banks in Nigeria had a capitalization of less than US$10 million. The largest bank in Nigeria had a capital base of about US$240 million. The small size of most of the banks, each with expensive headquarters, heavy fixed costs and operating expenses, and with many branches in few commercial centers, led to a very high average cost for the industry. This in turn has implications for the cost of intermediation and the spread between deposit and lending rates, and puts undue pressures on the viability of the banking industry. Some of the banks were not engaged in strict banking business in terms of savings intermediation; rather, they turned to trading in foreign exchange, government treasury bills, and sometimes even direct importation of goods through phony companies.[26]

The reform resulted in 24 "stronger" banks capable of undertaking funding of large ticket projects and engendering improved customer confidence. The number of bank branches increased from 3,247 in 2003 to over 5,837 in 2010 and employment in the sector rose from 50,586 in 2005 to 71,876 in 2010. Also, the capital market received a boost as several banks recorded successes in their initial public offers (IPOs). The consolidation exercise also impacted the payment system positively as the lower number of banks made it easier to deploy the new automated clearing systems and reduced the length of time spent on the clearing floor.[27] This result appeared so impressive that an observer would hazard a conclusion that it is the level of financial institution development Porter referred to as the best indicator of general economic development.[28]

However, it was discovered shortly after that Goldsmith's condition precedent "facilitating the migration of funds to the best user" was missing. Rather than advancing the funds to productive sectors, some of the banks engaged in subprime lending, margin loans, and other high-risk investments.

According to Balogun, despite the increase in lending to the economy by the financial institutions, propelled by their larger size, the share of the priority sector of the economy, particularly agriculture, solid minerals, exports, and manufacturing, was low and continued to fluctuate between progression and decline over time. Table 1 below depicts distribution of funds to different sectors of the economy.

Table 1. Deposit Money Banks Share of Credit to the Core Private Sector, 2007–11 (Percent)

	2007	2008	2009	2010	2011
1. Priority Sector	**25.9**	**26.2**	**25.2**	**30.4**	**36.1**
Agriculture	3.2	1.4	1.4	1.7	3.5
Solid Minerals	10.7	11.3	12.7	15.3	17.7
Exports	1.4	1.0	0.5	0.6	0.5
Manufacturing	10.4	12.5	10.6	12.8	14.4
2. Less Preferred Sectors	**41.2**	**42.0**	**46.9**	**47.8**	**45.8**
Real Estate	6.2	6.2	8.3	8.7	6.2
Public Utilities	0.6	0.6	0.8	0.7	0.9
Transport and Communication	6.8	7.2	8.3	10.7	17.3
Finance and Insurance	9.4	9.5	13.1	11.3	4.1
Government	3.7	1.9	3.7	4.9	6.8
Imports and Domestic Trade	14.4	16.4	12.8	11.7	10.3
3. Unclassified	**32.9**	**31.8**	**27.9**	**21.8**	**18.1**
Total (1+2+3)	**100**	**100**	**100**	**100**	**100**

Source: CBN[29]

The Nigerian brand of the financial crisis of 2008, which coincided with the global financial meltdown, gave credence to the view that the capital gains of the consolidation exercise were channeled more toward miscellaneous activities.[30] Channeling appropriate funds to agricultural and production sectors will have a positive impact on the nation's economic development.

Financial Exclusion

According to the United Nations Capital Development Fund (UNCDF), inclusive financial sectors are defined by a continuum of financial institutions that together offer appropriate financial products and services to all segments of the population. To operate effectively, inclusive financial sectors need to be supported by sound policy, legal, and regulatory frameworks. They are characterized by:

a) Access at a reasonable cost of all households and enterprises to a broad range of financial services including savings, short- and long-term credit, leasing and factoring, mortgages, insurance, pensions, payments, and remittances;
b) Sound institutions guided by appropriate internal management systems, industry performance standards, performance monitoring, institutional transparency, accountability, and sound prudential regulation;
c) Financial and institutional sustainability as a means of providing access to financial services over time; and
d) Multiple providers of financial services, wherever feasible, so as to bring a wide variety of cost-effective alternatives to customers.[31]

The term "financial exclusion" was conceived in 1993 by geographers who were concerned about limited physical access to banking services as a result of bank branch closures.[32] But it was in the work of Kempson and Whyley in 1999 that it seems first to have been used in a broader sense to refer to people who have constrained access to mainstream financial services.[33] According to a report prepared for the European Commission, financial exclusion refers to a process whereby people encounter difficulties accessing and/or using financial services and products in the mainstream market that are appropriate to their needs and enable them to lead a normal social life in the society to which they belong.[34]

The number of Nigerians who have no access at all to financial services better explains the situation. A survey conducted by Enhancing Financial Innovation and Access (EFInA) group in 2008 put the adult population of Nigeria who should ordinarily have access to financial services at 86.6 million. Of this, 72% of the population lives in a rural area, with the remaining 28% of the population residing in urban areas. Of this, only 20% and 13% of the total adult population engage in subsistence and commercial farming, respectively. On the whole, 21% of adults are currently banked and 5% are previously banked, while 74% of adults are unbanked.[35] Banks credit thus constitutes only 30% of GDP while just 8% of those who have access to financial services own about 90% of the available deposits.[36] By this survey, about 65% of the cash in circulation in the Nigerian economy is outside of the banking system and its attendant implication for price and economic stabilization is *res ipsa loquitor*.

Some of the reasons adduced for lack of access to financial services are illiteracy, poverty, and other factors, which include avoidance of interest-based banking.[37] These factors have been shown by empirical research to be more prevalent among Nigerian Muslims than people of other religious affiliations.[38] Thus, going by a survey conducted by the PEW Research

Institute in 2009 that put the total population of Muslims in Nigeria at 78 million (51.4%),[39] it is only logical to conclude that more than 50% of the unbanked are Muslims.

The extent of economic deprivation Nigeria is suffering as a result of the financial exclusion of its population, particularly rural settlers, will be better appreciated by putting the percentage of the total rural dwellers, shown above, against the percentage of those who engage in farming, which is 45.8%.[40] No level of financial system reform will produce the desired economic development result unless financial resources are channeled toward engaging those idle men and women.

RELEVANCE OF ISLAMIC FINANCE TO NIGERIAN ECONOMY

Islamic finance emerged on the global financial scene about four decades ago.[41] The first modern experiment of Islamic interest-free banking was made in Mit Ghamr, Egypt, in 1963. The Mit Ghamr project was by and large successful from 1963 to 1966. At about the same time, Muslim Bank of West Africa was operating in Nigeria in accordance with Islamic principles before its license was revoked by the then minister of finance, the late Obafemi Awolowo, in 1967.[42] The Islamic Development Bank and Dubai Islamic Bank were both established in 1975. Since then, Islamic banking and finance have made serious inroads to various parts of the world, covering not only the Islamic world but the secular and developed world too. The 2010 survey of financial institutions practicing Islamic finance reveals that shari'a-compliant assets (SCA) rose by 8.85% from $822bn in 2009 to $895bn in 2010. Islamic finance has held a compound annual growth rate (CAGR) of 23.46% from 2006 to 2010.[43] It has also proved to be resilient in the face of the global financial meltdown.

A number of Islamic financial products have been developed over the years to give a variety of choices to users of financial services. They include *murabaha* (cost plus financing),[44] *bay bithaman ajil* (BBA) (deferred payment sale),[45] *bay tawaruq*,[46] *ijarah wa iqtina'* (lease purchase),[47] *bay'al-salam,*[48] *kafalah* (guarantee),[49] and *wakalah.*[50] However, some of the products have inbuilt mechanisms for financial deepening which are peculiar to Nigerian economic development needs and are as such the focus of this study. They include *muzara'a* (sharecropping) and *musaqah* (irrigation), *musharaka* (active partnership), *mudaraba* (profit sharing financing) and *sukuk* (security certificate). *Muzara'a* and *musaqah* products are capable of engaging about 67% of Nigerian rural dwellers, who are still unproductive, in agricultural activities, thereby doubling the input of agriculture to the GDP. *Musharaka* and *mudaraba* products are capable of giving financial access to nearly 74% of the total adults who are unbanked. *Sukuk* is also a veritable product for reversing the nation's infrastructural decay and deepening economic development.

Muzara'a and *Musaqah* (Sharecropping and Irrigation)

Muzara'a and *musaqah* are commercial transactions in which a party commits a particular plot of land belonging to him or to which he is beneficially entitled to another to cultivate or maintain for a specified period of time in return for a share in the produce.[51] These contracts have their validity in the *hadith* of the Prophet Muhammad narrated on the authority of 'Ibn Umar that "the Prophet Muhammad dealt with the people of Khaybar for a specific portion of their output of fruits."[52] Relying on this *hadith*, the majority of Muslim jurists, including Imam Malik, Ahmad, and the famous disciples of Abu Hanifah and Dawud al-Zahiri, render the contract as permissible in analogy to *mudaraba.*[53] *Muzara'a* can function as a contract or lease of land, or the gift of land and its farm implements and hiring only the service of the farmer in cultivating it. Unlike jurists of other schools, the Malikis insist that in *muzara'a,* both the landlord and the farmer must jointly provide the seeds and other inputes.[54]

These modes are suitable for commercial relationships with people in rural areas, especially farmers. In adopting this mode, the bank allocates land and economic trees in its possession to farmers and in addition provides other necessary inputs like seeds, fertilizer, pesticides, implements, and means of production and transportation.[55] If it has insufficient lands, it may use its corporate recognizance to procure agricultural lands from governments under agricultural development programs for allocation. An agreed share of the produce is the bank's return on investment.

Islamic banks have designed *musaqah* as an irrigation scheme, especially in Southeast Asian countries like Malaysia and Indonesia and parts of Africa like Nigeria, where farming has proved to be a vital source of national income. Its use, especially in Nigeria, would be more fortified by the fact that, unlike other schools, the Maliki *madhab* recognizes the operation of *musaqah* in both trees and other agricultural plants.[56] Its practice as such in Iran and the claim of success of similar experimentation by Faisal Islamic Bank, Sudan,[57] is a clear departure from the practice of many Islamic banks that are still finding it difficult to deal with a large percentage of "unbankables."[58]

Bay'al-salam (forward sale) also provides an ideal opportunity by which a bank makes an advance purchase of future crops with its *musaqah* partners. Apart from encouraging rural dwellers to deposit their surplus funds in the bank, the *salam* arrangement also helps them out of marketing problems and protects farmers from price fluctuations during the harvest season.[59] However, it is advisable that the bank have a ready buyer engaging in a *salam* contract to avoid non-salability.[60] Upon finding a ready buyer, which preferably would be a large commercial enterprise using farm produce as their raw material, it is permissible for the bank to contract a parallel *salam* and use the first *salam* in the discharge of its obligation to the third party in a separate contract.[61]

Musaqah products can be developed to create an irrigation system that would improve productivity and change the preset seasonal farming in Nigeria and many parts of the developing world to year-round farming. The two products have the potential to enhance productivity and increase agricultural yield. This in turn improves the per capita income of the partners, encouraging them to save with the bank and improve the contribution of agriculture to the GDP of the nations. Through these factors, employment will be created and the problem of urban migration and congestion will also be mitigated to a reasonable extent.[62]

Musharaka (Partnership Financing)

Musharaka has been acclaimed as the Islamic financial contract most suited to Islamic banking, especially in satisfying the maxim “right follows responsibility.”[63]

Adopting this mode in converting its liabilities to assets, an Islamic bank partly funds projects, sometimes financing commodity trade or industry working capital, submitted to it by a client/partner after a thorough evaluation of the project’s technical and economic feasibility. The other partner contributes his share either in cash or in kind. In practice, the partner is always allowed to manage the project, giving collateral for good management while the bank reserves the right of supervision and, if necessary, intervention.[64] It is also agreed in advance to compensate the partner’s management with between 20 percent and 35 percent of the net profit before the leftover is shared according to the agreed-upon ratio that is always in favor of the partner. The profit ratio is usually up to 45 percent of the profit after management allowance, even though the partner actually contributed about 15 percent of the project capital.[65]

Islamic banks may either adopt a continuing or diminishing *musharaka.* In the former, the bank participates in the equity and receives an annual share of the profits on a pro rata basis. The period of termination of the contract is not specified. The latter culminates in the ownership of the asset or the project by the bank’s partner. In this case, the bank participates as a financial partner, in part or in full, in a project with a given income forecast. An agreement is signed by the partner and the bank through which the bank receives a share of the profit if any is made.

However, the agreement also provides for payment of a portion of the net income of the project as repayment of the principal financed by the bank. The partner is entitled to keep the rest. In this way, the bank’s share of the equity is progressively reduced and the partner eventually becomes the full owner on completion of repayment of the principal project capital. The Jordan Islamic Bank has successfully practiced this diminishing mode of financing in the construction of a commercial market in Irbid, a community college in Jerash, and a hospital in Zerqa.[66] This product is capable of turning around the fortunes of the small and medium scale enterprises (SMEs), which are viewed by conventional banks as volatile establishments with low chances of survival and thus a high investment risk.[67]

Mudaraba (Profit Sharing)

The profit sharing arrangement sometimes referred to as trust financing, trustee profit sharing, equity sharing, and sleeping partnership is another age-old trade arrangement prevalent in the pre- and post-Islamic Arab states. It is a kind of partnership where one partner, called *rabb al-mal* (capital provider), provides the necessary financial capital and the other, called *mudarib* (entrepreneur), supplies the human capital. The two types of capital are invested in commercial enterprise for an agreed-upon general ratio of the net profit. All losses are borne by the capital provider while the entrepreneur loses his efforts. [68]

An Islamic bank acting as the entrepreneur accepts deposits into investment account through this arrangement. In Faisal Islamic Bank, Sudan, the customer signs an undertaking authorizing the bank to invest the deposit in *al-mudarabah al-mutlaqah* (unrestricted investment).[69] Exercising this authority, an Islamic bank, in turn, invests the fund with another entrepreneur by means of second-tier *mudaraba.* Meanwhile, the bank makes the second *mudaraba* a restricted or recursive one—that is, *al-muqayyadah*[70]—which enables the bank to dictate the type of investment to which the fund shall be engaged. The bank provides the 100% capital to the second *mudarib*, retaining the power to monitor the progress but not to interfere in the management of the project.[71] Although the Malliki school of law, where *mudaraba* is required to be unrestricted,[72] is the predominant school in Nigeria, the level of risk involved in *mudaraba al-mutlaqah* will justify adopting the *muqayyadah* type. This product is significant to Nigeria economic development because of its capacity to improve financial inclusion for the great majority of youth who are skilled laborers and who have hitherto been excluded from financial access.

Sukuk (Islamic Investment Certificates)

Sukuk are investment certificates issued by a special purpose investment vehicle (SPV). Usually the owner of an asset who desires to raise capital leases the asset on the principle of *al-ijara muntahia bittamlik*. The rent paid by the obligor is distributed to the certificate holders. On the certificate due date, the obligor buys back the asset, the proceeds of which are used to redeem the investment certificates, which may also be traded in the market before the redemption date.[73]

Aside from raising funds for capital projects that can translate to economic development, sovereign *sukuk* are useful to governments because the cost of financing does not fluctuate along with the financial condition of the issuing sovereign. This is because the value and yield of the *sukuk* is derived from the performance of its underlying asset. The issuing sovereign enjoys flexibility in making financial decisions without external influence, as the fund raised is the equivalent of a private sector fund.[74]

REGULATORY CHALLENGES

As part of the ongoing reform of the financial sector, the CBN has adopted an Islamic banking system. It issued a fairly comprehensive framework for the regulation and supervision of institutions offering non-interest financial services in Nigeria in January 2011, which is analyzed later in this section.[75] It also gave full approval to the first full-fledged Islamic bank (Jaiz International Bank Plc) and an Islamic window for Stanbic IBTC Bank in June 2011. The adoption is a policy focused on enabling economic growth and ensuring that the financial sector contributes to the real economy.[76]

However, the adoption has also generated a heated debate arising from the religious tensions prevalent in the country. Some non-Muslims, including the umbrella body of Christians, criticized the policy as a ploy to Islamize the country. Other pitfalls, too, have plagued the project, including an insufficient legal and regulatory framework, inadequate manpower on both the operation and regulatory sides, and a low level of awareness about the workings of the financial system.

Religious Rivalry

Religious rivalry in Nigeria predates the establishment of Islamic banking. Similar debates came up when Nigeria joined the Organization of Islamic Conference (OIC) in 1986, and when some states in northern Nigeria adopted a shari‘a penal code in 1999–2000. The argument always centers on the different interpretations of the provisions of Section 10 of the Constitution of the Federal Republic of Nigeria. The section states that: “The Government of the Federation or a State shall not adopt any religion as State Religion.” Some argue that the provision makes Nigeria a multi-religious state, while others view it as secular state. The proponents of secularity of the Nigerian state thus declared the introduction of Islamic law as unconstitutional and discriminatory.[77] In introducing Islamic financial tools, the CBN has been viewed by some leading figures among Nigerian non-Muslims as using a public institution to promote religion, for which reason they have mounted strong opposition.[78]

Robust Enabling Law

The substantive laws that have direct bearing on the activities of Islamic banks in Nigeria include: the Banks and Other Financial Institutions Act, 1991 (BOFIA) (as amended), and the Central Bank of Nigeria Act, 2007. While Section 9(2) of BOFIA recognized profit and loss sharing (PLS) banks as one of the categories of banks that can operate in Nigeria, the law does not have sufficient provisions for the day-to-day operations of Islamic banks.[79] Furthermore, the provisions of BOFIA 1991 as they relate to PLS banking are so scanty that they only define and recognize PLS banking in matters of interest and unspecified peculiar products.

Rather than enlarging the scope of operations, the subsequent amendments up to 1999 became highly stringent on banking products other than *musharaka* and *mudaraba.* Additionally, no particular product of the banking system was specifically defined nor were provisions made for its internal regulatory control to ensure compliance of its operations with the object of the bank's establishment. Therefore, the existing banking laws in Nigeria are essentially lacking in the requisite comprehensiveness and would as such require amendments. The enactment of a complete set of comprehensive laws for the new system would be a better option.[80]

In the meantime, the CBN, subsequent to the initial general framework, has continued to issue guidelines to ensure the smooth operation of Islamic financial institutions in the country. These include: *Guidelines on Shariah Governance for Non-Interest Financial Institutions in Nigeria* and *Guidelines on Non-Interest Window and Branch Operations of Conventional Banks and Other Financial Institutions*. It has also issued Guidelines on Corporate Governance for Non-interest (Islamic) Financial Institutions in Nigeria,[81] while it indicated ongoing efforts to issue operational, product compliance, risk management, and capital adequacy guidelines.[82]

It is still premature to examine the efficacy of these regulations and guidelines at the moment because they are just being implemented. Yet there have not been any complaints, to the knowledge of these authors, about their implementation, despite the continued opposition by some groups. For instance, the initial Guideline on Shariah Governance was seriously challenged by public commentators for establishing a shari'a advisory council for the CBN and committee for all non-interest financial institutions (NIFIs) in its section 4. The complaint was that the composition of the council and committee was discriminatory against non-Muslims.[83] Some groups have even declared the introduction of non-interest banking an attempt to Islamize Nigeria.[84] This probably necessitated the change in its nomenclature to *Guidelines on the Governance of Advisory Committees of Experts (A.C.E.) for Non-Interest (Islamic) Financial Institutions* in Nigeria.

The efforts of the CBN may also have prompted the proposition of the *Draft Framework for Non-Interest Deposit Insurance Scheme* by the

Nigeria Deposit Insurance Corporation.[85] The framework makes provisions to accommodate the peculiarities of Islamic deposit money banks in terms of shari‘a compliance of their activities and governance structures.[86] However, the differential premium assessment system (DPAS), which focuses on the risk profile of each non-interest financial institution it seeks to adopt in the determination of their contribution to the scheme, would need reexamination in view of the existing distribution pattern of return on investment of the fund.[87] Similar steps have been taken by the Nigerian Security and Exchange Commission by proposing amendments to their rules and regulations. The rule, which will govern the administration of *sukuk*, provides for the establishment of a shari‘a advisory council for the commission and board for fund managers. It also made prescription of the content of a trust deed; includes a shari‘a adviser in the composition of the investment committee; and insisted on sharia-compliant investment in portfolio management.[88]

The latest guideline issued for the regulation of Islamic finance in Nigeria is the one by the National Insurance Commission of Nigeria (NAICOM)[89] These guidelines appear comprehensive but have yet to take effect and, when they do, they cannot take the place of substantive law. Thus, it is easy to do away with them by successive administration of the apex bank.

Conflict of Making Regulations and Making Laws for Islamic Finance

Attempts by the CBN to enlarge the scope of the statutory provisions enabling Islamic banking through guidelines and regulations could pose serious challenges. Although the framework and regulations made by the CBN governor are within the powers vested in them under the law,[90] such delegated powers do not extend to assuming the law-making powers of the legislators.[91] What appears to be usurpation of legislative powers presents on Section 10 of the framework[92] shown below:

> 10.1 Branding: In line with the provisions of Section 39 (1) of BOFIA 1991 (as amended), NIFIs shall not include the word “Islamic” as part of their registered or licensed names.
>
> Whereas section 39 (1) BOFIA provides:
>
> 39. (1) Except with the written consent of the Governor
> (a) No bank shall, as from the commencement of this Decree, be registered or incorporated with a name which includes the words “Central,” “Federal,” “Federation,” “National,” “Nigeria,” “Reserve,” “State,” Christian,” “Islamic,” “Moslem,” “Quranic,” “Biblical.”

The apparent contradiction in the two provisions is that, while the substantive law gives rights to the citizens, subject to the discretion of the governor, to use “Islam” or “Islamic” as part of a bank’s name, the regulation foreclosed the possibility of even applying for the use at all and this cannot be the correct position of the law. This point was directly made to the CBN governor at a colloquium in June 2011[93] and the contradiction was removed in the revised edition of the framework issued the same month.[94] Nonetheless, just as it was easy for the CBN to amend the framework to comply with the substantive law, it would be as easy for any new administration of the Bank to do away with all of the guidelines and the framework.

Another contradiction is evident in the designation by CBN of non-interest banks in Nigeria as specialized banks under what it called the "new banking model,"[95] pursuant to Section 66 of BOFIA.[96] Although the law empowers the governor to so do, it does not exclude any specialized bank from charging interest in its operations. The only category of banks excepted by BOFIA from operating on an interest base are profit and loss sharing (PLS) banks,[97] which were envisaged by the law as a distinct category of banks in Nigeria.[98] Thus, making non-interest banks into specialized banks is not within the contemplation of the law.

The challenges of the CBN in sponsoring an executive bill to the National Assembly for a comprehensive law on Islamic banking will be appreciated by the following scenario. On May 25, 2005, while the operating license of Jaiz International Bank Plc. was awaiting approval, some Muslim members of the National Assembly entered a motion at the House of Representatives for a resolution of the House urging the federal government of Nigeria to facilitate the nation's membership in the Islamic Development Bank (IDB).[99] This was to encourage IDB to invest in the Islamic banking system of the country.[100] Because of the religious divides between members of the House, the motion attracted a heated debate, which nearly resulted in a physical challenge. The federal government had to endorse the nation's membership in the Bank on June 8, 2005, unilaterally subscribing to 250 units of its shares.[101] The foregoing notwithstanding, the CBN will still need to take necessary steps to have a new set of laws passed for effective regulation of Islamic banking in the country.

Challenge of Raising the Initial Share Capital

The 2004–05 bank reforms put a daunting challenge in the path of the establishment of Islamic banking in Nigeria and still constitute a clog in the promotion of other Islamic banks after the issuance of the first license. The reform had raised the minimum capital base for banks from 2 billion to 25 billion Naira.[102] The reform took off at a time when the promoters of Islamic banking had fulfilled all the requirements and were expecting the operating license by the CBN. The promoters had thought that since the dateline for the new capital base was the end of 2005, the license being applied for in December 2003 would first be issued. Then the new banking system would be allowed, like other existing banks, to struggle and raise more capital to comply with the new requirements.[103]

However, the CBN, which was interested in getting rid of the low portfolio banks from the system, would rather grant partial approval to the promoters subject to their raising the balance of N23 billion from the capital market.[104] This gave the promoters a daunting task, which seemed almost impossible. This is against the background fact that virtually all the banks that met the N25 billion capitalizations had to go through merger or acquisition processes to raise the capital despite their existing assets and capitals. It is on record that nine banks had to merge to form the new Unity Bank Plc.,[105] while the new Springbank Bank Plc. is made up of six old banks merged together.[106]

The lead author herein had done a sufficient critique of the legal implications of the reforms for contravening BOFIA's banks categorization policy.[107] The law and its various amendments had categorized banks with different capital base commensurate to their size, coverage, and kind of operation.[108] The reform removed the categorization by "legislating" equal capital base for all banks and, by that act, it took the first Islamic bank eight years to raise the minimum required capital. The Senate attempted to foil this usurpation of legislative powers by attempting to amend BOFIA to restore the categorization policy,[109] but her efforts were aborted by political maneuvering which ensured that the amendment suffered from the requisite concurrent passage by the lower legislative House of Representatives.[110] The CBN has started taking steps to amend the law along the lines earlier proposed by the senate, by which banks will be categorized according to paid-up share capital as follows: (a) Mega banks with minimum share capital of N25 billion; (b) Medium banks with minimum paid-up share capital of N10 billion; and (c) Small banks with minimum paid-up share capital of N5 billion.[111] If this is achieved, it will go a long way toward encouraging more promoters to seek license and operate more Islamic banks.

CONCLUSIONS AND RECOMMENDATIONS

This study explored the state of the Nigerian economy and the impact of the Nigerian financial system on the country's developmental efforts. It was shown that the nation is richly endowed in human and natural resources that should have a positive impact on the Nigerian people if properly managed. It was also shown that for much of the nation's history, the financial system was not able to properly mobilize funds for best productive purposes. In the absence of such opportunities, the bankers were rather trading in foreign exchange and government treasury bills, and sometimes engaging in the direct importation of goods through spurious means. Despite the various financial reforms experimented with by the country, the great majority of its citizens are still excluded from the mainstream financial system. The distribution of bank capital is extremely disproportionate to the number of banked individuals. All these factors account for the high level of poverty and deprivation in the country despite the impressive level of economic growth achieved in recent years.

Regulatory authorities embarked upon several financial sector reforms that were supposed to ensure that financial institutions deployed funds to the real sectors of the economy. The desired result has not been achieved, leading to the adoption of the Islamic financial system. Of the various products of Islamic finance, *muzara'a, musaqah*, *musharaka*, and *sukuk* are uniquely suited to reviving Nigerian economic developmental efforts. The absence of robust enabling laws for Islamic financial institutions, including those for *takaful* and an Islamic stock market, are among the other initial challenges facing the regulatory authorities.

Based on the foregoing conclusions, the following recommendations are presented for a development-driven Islamic finance system in Nigeria:

1) Religious and social organizations should intensify efforts to raise awareness of the working and benefits of Islamic banking, not only to the Muslim population but also to the general public.
2) The CBN and other regulatory authorities should provide incentives to motivate the emerging Islamic banks to give priority to *muzara'a*, *musaqah*, *musharaka*, *mudaraba*, and *sukuk* as suitable products for remedying the current economic situation.
3) Necessary steps should be taken to sponsor a bill in support of Islamic banking in Nigeria. Such a bill ought to make clear the peculiar features of Islamic finance in terms of product development and internal regulatory needs. This step will also free CBN from the dangers of assuming lawmaking powers in the name of issuing regulations and guidelines.
4) The CBN, along with other regulatory authorities, commercial banks, and educational institutions, should work closely to address the human resource needs of the emerging Islamic financial system.
5) The CBN should be cautious about issuing operating licenses to commercial banks until it is satisfied that they have sufficiently trained personnel to run the system. Alternatively, it should launch a pilot project of Islamic finance giving approval to selected commercial banks until required human capital is made available.
6) BOFIA should be amended to restore the categorization policy and allow medium and small sized banks to attract particular segment of the market by providing services to the customers fulfilling their peculiar needs.

Endnotes

1. See Encarta Dictionary, electronic version, 2009.
2. S. M. Nzotta, *Money, Banking and Finance, Theory and Practice* (Owerri: Hudson Jude Publishers, 2004), 169.
3. Charles Chukwuma Soludo, "Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century," An address delivered to the Special Meeting of the Bankers' Committee, held on July 6, 2004, at the CBN Headquarters, Abuja, 5.
4. Starting with the enactment of the Banking Ordinance of 1952, the deregulation of baking in 1986 through the consolidation of banking of 2005 and insurance in 2007, see also S. M. Nzotta and E. J. Okereke, "Financial Deepening and Economic Development of Nigeria: An Empirical Investigation," *African Journal of Accounting, Economics, Finance and Banking Research* 5:5 (2009): 53.
5. (Charles Chukwuma Soludo, *Consolidating the Nigerian Banking Industry*).
6. E. D. Balogun, "A review of Soludo's *Perspective of Banking Sector Reforms in Nigeria*," MPRA Paper No. 3803, posted November 7, 2007 / 03:28, page 8, accessed September 1, 2011. Available at http://mpra.ub.uni-muenchen.de/3803/.
7. Ibid.
8. An estimated 65% of the cash in circulation in the Nigerian economy is still outside the banking system. See CBN, "Questions and Answers on the Central Bank of Nigeria (CBN) Policy on Cash Withdrawal/Lodgment Limit," accessed on September 23, 2011, available at http://www.cenbank.org/Out/2011/pressrelease/gvd/Revised%20QnA%20on%20CBN%20POLICY%20ON%20CASH%20WITHDRAWAL%20LIMIT.pdf.
9. Mid-market rates: 2013-07-26 18:34 UTC, conversion made on XE Currency Converter at http://www.xe.com/currencyconverter/convert/?Amount=620000000&From=NGN&To=USD.
10. A poll published by NOI Polls in September 2010 showed that only 10% of Nigerians have confidence in the banking system; see NOI POLLS, "The Nigerian Banking Sector August 2010 Snap Poll," accessed September 15, 2011, available at http://www.noi-polls.net/Poll-Results/the-nigerian-banking-sector-aug-2010-snap-poll.html and compare with similar poll conducted by the same organization in 2009 where 71% of the people had confidence.
11. A. A. Abdul-Razzaq, "Non-Interest Banking and the Enabling Nigerian Laws: The Need for an Unprejudiced Assessment," *Journal of International Banking Laws and Regulations* 4 (2013): 141; see also I. A. Abdulqadir, "Interest-Free Window of the Habib Nigeria Bank: A Test-Run for Islamic Banking System in Nigeria?" *Confluence Journal of Jurisprudence and International Law* 3:1 (2009): 141–150.
12. Helen Chapin Metz, ed., *Nigeria: A Country Study* (Washington: GPO for the Library of Congress, 1991), available at http://countrystudies.us/nigeria/57.htm.
13. Constitution of the Federal Republic of Nigeria, 1999 (as amended).
14. A. H. Ekpo and O. J. Umoh, "An Overview of The Nigerian Economic Growth and Development," accessed on September 1, 2011, available at http://www.onlinenigeria.com/economics/.
15. Movement for the Survival of Ogoni People (MOSOP), "The Adverse Impacts of Oil Pollution on the Environment and Wellbeing of a Local Indigenous Community: The Experience of the Ogoni People of Nigeria," A paper presented to the UN Department

of Economic and Social Welfare on August 27, 2007, available at http://www.mpr.gov.ng/index.php?option=com_content&view=article&id=19&Itemid=2.

16. L. S. Sanusi, "Growth Prospect for the Nigerian Economy," A convocation lecture delivered at the Igbinedion University Eighth Convocation Ceremony, Okada, Edo State, November 26, 2010, 3.
17. FGN, *Social Statistics in Nigeria* (Abuja: NBS, 2012), 35.
18. (L. S. Sanusi, *Growth Prospect*).
19. Nigerian National Planning Commission (NNPC), *National Economic Empowerment and Development Strategy* (Abuja: NNPC, 2004), x.
20. F. Mete and S. T. Adekunle, eds., *Nigerian Economy: Essays on Economic Development* (Morrisville: Lulu Press, 2005), 2.
21. T. O. Asaolu and P. O. Oladele, "Public Enterprises and Privatization Policy: The Nigerian Experience," in F. Mete and S. T. Adekunle, eds., *Nigerian Economy* 23 (2006): 316.
22. T. K. David, *USAID/Nigeria Economic Growth Activities Assessment* (Arlington: IBM Business Consulting Services, 2003), 1.
23. Ibid.
24. R. Goldsmith, *Financial Structure and Development* (New Haven: Yale University Press, 1969).
25. Samuel Mbadike Nzotta and Emeka J. Okereke, "Financial Deepening and Economic Development of Nigeria: An Imperical Investigation," *African Journal of Accounting, Economics, Finance and Banking Research* 5:5 (200): 52–66.
26. (C. C. Soludo, *Consolidating the Nigerian Banking Industry*).
27. L. S. Sanusi, "Banks in Nigeria and National Economic Development," keynote address at the Seminar on Becoming An Economic Driver While Applying Banking Regulations, organized by the Canadian High Commission in Joint Collaboration with the Chartered Institute of Bankers of Nigeria (CIBN) and the Royal Bank of Canada (RBC) on March 7, 2011, 6.
28. R. Porter, "The Promotion of Banking Habits and Economic Development,"*Journal of Development Studies* 1:4 (1966).
29. Central Bank of Nigeria, Annual *Report 2011*, 92.
30. Eight commercial banks out of twenty-four had to be given life support by the CBN by injection of N620bn into the system and their management teams dissolved to pave way for improved corporate governance (L. S. Sanusi, *Banks in Nigeria and National Economic Development*, 2011).
31. United Nations Capital Development Fund accessed on September 20, 2011, available at http://www.uncdf.org/english/microfinance/.
32. A. Leyshon and N. Thrift, "Geographies of financial exclusion: financial abandonment in Britain and the United States," *Transactions of the Institute of British Geographers* New Series 20 (1993): 312–341.
33. E. Kempson and C. Whyley, *Kept Out or Opted Out: Understanding and Combating Financial Exclusion* (Bristol: Policy Press, 1999), 4.
34. European Commission, *Financial Services Provision and Prevention of Financial Exclusion* (EU: Directorate-General for Employment, Social Affairs and Equal Opportunities, March 2008), 9.
35. EFInA, *Access to Financial Services in Nigeria Survey 2008* (Abuja: EFInA, 2008), 7–8, 14.

36. Charles Chukwuma Soludo, "Making Finance Work for the Poor," paper delivered at the convocation lecture of Federal University of Technology, Oweri, Imo State on 15 February, 2008, 5.
37. Ibid., 18.
38. I. A. Abdulqadir, "Islam in Nigeria by the Year 2020: Awakening a Collective Consciousness," *Al-Asaalah Journal of Arabic and Islamic Studies* 3:2 (2012): 170–177.
39. T. Miller, ed., "Mapping the Global Muslim Population: A Report on the Size and Distribution of the World's Muslim Population," *Pew Research Center Report,* October 2009, accessed on March 8, 2011, and available at http://pewforum.org/newassets/images/reports/Muslimpopulation/Muslimpopulation.pdf.
40. Agricultural sector has consistently contributed an average of 40% to the GDP, and it contributed 41.59% to the GDP in Q2, 2011; see National Bureau of Statistics, accessed on September 14, 2011, and available at http://www.nigerianstat.gov.ng/.
41. For further details on earlier operations of Islamic finance, see W. J. Fischel, *Encyclopedia of Islam* 2 (1992): 382–3; I. A. Abdulqadir and J. Zainudin, "Islamic Financial Services: The Way Forward for the Financial Regulatory Authorities," *University of Ilorin Law Journal* 1:1 (2006): 147–148; I. A. Abdulqadir, "Islamic Banking as Non-Interest Banking: Fact or Fiction?" *Shariah Law Report* 1 (2012): 49.
42. A. K. Musa, "The Need for Islamic Banking in Nigeria," paper presented at the International Conference on Islamic Banking and Finance, organized by Crescent University, Abeokuta, March 19–22, 2010, 3 (although there is no detailed evidence of its operational modus yet).; O. A. Ajayi, *Law and Practice of Banking* (Ibadan: Andy-P Corporate Bureau, 1999), 57, reported two decided cases involving the bank and its customers viz: *Nigerian Breweries Ltd. v. Muslim Bank of West Africa* (1963) and *United Nigerian Insurance Ltd. v. Muslim Bank of West Africa* (1972).
43 *The Banker*, accessed on August 8, 2011. http://top500islamic.thebanker.com/index.cfm?fuseaction=top500.home&CFID=1277573&CFTOKEN=93128769.
44. *Murabahah*: Lit. "Cost plus financing"; Tech.: Sale of goods with an agreed-upon profit mark-up on the cost. Islamic financial institutions operate the product either to the purchase order of the customer or without purchase order.
45. This is also called *bay al-muajjal*: Lit.: "Deferred payment sale"; Tech.: This transaction is a sales contract whereby an immediate delivery of goods purchased is made while postponing the payment of the price to a later date. It refers to sale of goods purchased by a bank for a customer at a price agreed to by both parties on a deferred payment basis or by periodic instalments. See Glossary, *Journal of Islamic Banking and Finance* 28:3 (July–September 2011): 127. This product was widely used in Malaysia along with *bay al-inah* (buyback sale) and was for a long time, before *sukuk* became popular, the leading product despite the enormous criticism it attracted for being very close to lending on interest. See for instance Frank E. Vogel and Samuel L. Hayes, *Islamic Law and Finance: Religion, Risk and Return* (The Hague: Kluwer International, 1998), 139; and Muhammad Anwar, *Islamicity of Banking and Modes of Islamic Banking* (Malaysia: IIUM, 2002), 4. The practice has also attracted a number of court cases. See for instance, *Bank Islam Malaysia Berhad v. Adnan Bin Omar* [1994] 3 CLJ 735; *Dato' Haji Nik Mahmud Bin Daud v. Bank Islam Malaysia Berhad* (1996) 1 CLJ 737; *Bank Islam Malaysia Berhad v. Shamsuddin Bin Haji Ahmad* [1999] 1 LNS 275; *Bank Kerjasama Rakyat Malaysia*

v. Emcee Corporation [2003] 1 CLJ 625; *Malaysian Merchant Bank Bhd v. Silver Concept Sdn Bhd* [2005] 5 AMR 381; and *Affin Bank Berhad v. Zulkifli Bin Abdullah* (2005) MLJU 568.

46. A sale of commodity to a customer by a bank on deferred payment at cost plus profit; the customer then sells the commodity to a third party on a spot basis and gets instant cash. Ibid., 132.
47. A contract by which an Islamic bank finances equipment, building, or other facilities for a client at an agreed rental together with an undertaking from the client to make additional payment on an account which will eventually permit the client to purchase the equipment or the facility. The rental as well as the purchase price is fixed in such a manner that the bank gets back its principal sum along with some profit which is usually determined in advance. See Mohammad Akram Khan, *Islamic Economics and Finance: A Glossary* (New York: Routledge, 2003), 85–86.
48. Lit. "Advance sale," also called *salaf*. The variation in the name relates to what the same transaction is called in different locations; while s*alaf* is of Iraqi origin, the same transaction is known as *salam* in Hijaz and they are now synonymously used. See M. A. H. Umar, *Shariʿah Economic Framework of Bai' al-Salam in the Light of Contemporary Application* (Jeddah: Islamic Development Bank, Research Paper No. 33, 1995), 17. Tech. it is a sale agreement which involves advance payment for specifically described goods that are to be delivered at a later but definite date; it is an exception to the general rule of Islamic law against the sale of any good not existing at the time of bargain (Mohammad Akram Khan).
49. *Kafalah*. Lit. "Guarantee." Tech.: Contract or assurance made by financial institution to third parties that its customer would fulfill his obligations towards the said third party, thereby assuming liability of its customer in the event of default or breach of contract by its customer. See I. A. Abdulqadir, "Contract of *Kafalah* (Guarantee): A Veritable Product of Islamic Financing?" *University of Ilorin Law Journal* 3–4 (2007–08): 209–210.
50. *Wakalah*. Lit. "Representation, agency." Tech.: Contract of agency by which a person delegates his business to another and substitutes the other in his own place, the latter is called the *wakil*, or agent, and the former is called *muwakkkil*, or principal. See Moahmmad Akram Khan, *Islamic Economics and Finance,* 192.
51. Ibn Qudamah Abd 'Allah, *Al-Mughni - al-Shar' al-Kabir,* reprt. (Beirut: Dar al-Kitab al-'Arabi, 1983), vol. 5, 555 and 581; see also Articles 71 and 74, "Regulation Relating to the Granting of Banking Facilities," Tehran (1984).
52. Reported by the six major narrators of *ahadith* as authentic, see *Sahih Muslim,* vol. 3 (1978 ed.), 810.
53. Wahabah Al-Zuhayli, *Al-Fiqh al-Islami wa-Adillatuh*, Mahmoud A. El-Gamal, trans., vol. 1 (Damascus: Dar al-Fikr, 2003), 522–523.
54. Ahmad Al-Dardir, *Al-Sharh Al-Kabir* (Egypt: Matbaʿah Al-Babi Al-'alabi) vol. 3, 372.
55. See Articles 72 and 75, Iranian Regulation, 1984.
56. See Al-Dardir, *Al-Sharh Al-Kabir,* n. 58, 713–714.
57. A. R. Hamdi, "The operation of Faisal Islamic Bank Sudan," in A. Hoque, ed., *Readings in Islamic Banking* (Bangladesh: Islamic Foundation, 1987), 296.
58. News Item, "Why banks withhold N28b SMEEIS fund, by SMEDAN boss," *The Guardian,* Wednesday, February 23, 2005, 34. The term originally belonging to the conventional banks has crept into the practice of Islamic banks, referring to the

inability of the poor segment of the community to benefit optimally from banking facilities for having no collateral security.

59. M. Azizul Huq, "Islamic Banking and some Possible Impacts," in *Thoughts on Islamic Banking,* edited by M. A. Rasheed (Dhakka: Islamic Economics Research Bureau Publication, 1982), 169–170. It is also a commonplace in Nigeria that a lot of farm produce, especially the perishables, get destroyed or farmers are forced to sell them at a giveaway price during the harvest period for lack of means of transporting them to the cities or preserving the excess.
60. M. Kahf and Tariqullah Khan, *Principles of Islamic Finance (A Survey)* (Jeddah: Islamic Research and Training Institute, Research Paper No. 16, 1992), 18.
61. Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), "*Salam* and Parallel *salam*," *Shari'ah Standards 2003,* clause 6/2 (Manama: Bahrain, 2003), 167.
62. L. A. Abdulqadir, *Islamic Banking under the Existing Laws in Nigeria: Problems and Prospects* (Kuala Lumpur: International Islamic University Malaysia, 2007), 215.
63. A. M. Yaacob and H. Ibrahim, eds., *Islamic Financial Services and Products* (Kuala Lumpur: Institute of Islamic Understanding, 1999), 3. The legal maxim found its root in the *hadith* of the holy Prophet narrated by Abu Hurairah, in which the former was reported to have said: "The mortgage is not closed on the mortgagor who mortgages it, its benefit is for him as much as its responsibility." See Al-Naisaburi, Muhammad Ibn Abdullah, *Al-Mustadrak 'ala al-Sahihain* (Beirut: Dar al-Kitab al-ʿilmiyyah, vol. 2, 1990), 58.
64. The collateral here does not secure the business risk inherent in the partnership which cannot be secured under the Islamic law and, unlike in conventional banking, the partner's satisfaction of financial requirements through collateral is not enough to cause an Islamic bank to finance a project having no prospect of profitability. See A. R. Hamdi, "The operation of Faisal Islamic Bank in Sudan," in Hoque n. 61, 292.
65. Ibid., 290–291.
66. M. A. Shahadah, "Experiences of Jordan Islamic Bank," in *Investment Strategy in Islamic Banking: Applications, Issues and Problems* (Amman: The Royal Academy for Islamic Civilization Research, 1987), 11.
67. Seun Adesida, "How Banks Frustrate Entrepreneurs," *Daily Sun*, Thursday, February 8, 2007, 24.
68. Muhammad Taqi Usmani, *An Introduction to Islamic Finance* (The Hague: Kluwer Law International, 2002), 13; Bank Islam Malaysia Berhad (BIMB) offers distribution in a ratio of 70 percent to the customer and 30 percent to the Bank and the ratio may also vary from time to time. See Bank Islam Malaysia Berhad (BIMB), *Islamic Banking Practice from Practitioner's Perspective* (Kuala Lumpur: 1994), 32.
69. (Hamdi, in Hoque n. 61, 297).
70. The practice of restricted *mudarabah* is based on the Abu Hanifa and Ahmad Ibn Hanbal's classification of *mudarabah* into restricted and unrestricted types by which *rab al-mal* can determine the extent of the use of the fund, see Al-Kasāni ʿAla` al-Din Abu Bakr, *Bada'iu al-Sana'i' fi Tartib al-Shara'iu*, (Beirut: Dar al-Kitab al-ʿArabi. 1982), 5, 62–63; The Malikis and Shafiʿis, on the other hand, require all *mudarabah* to be unrestricted to give an entrepreneur unfettered freedom to search for the most profitable opportunities in the market. See Ahmad Al-Dardir, *Al-Sharh Al-Kabir* (Egypt: Matbaʿah Al-Babi Al-Halabi,), 3, 521.

71. (Vogel and Hayes).
72. Ahmad Al-Dardir, *Al-Sharh Al-Kabir* (Egypt: Matbaʿah Al-Babi Al-Halabi) vol. 3, 521.
73. Simon Archer and Rifaat A. Abdel-Karim, *Islamic Finance; Innovation and Growth* (London: Euromoney Books, 2002), 204; K. Owens and Y. Thompson, "Sovereign *Sukuk*: A Way to Revive the Celtic Tiger," *Accountancy Ireland* 43:2 (April 2011): 34.
74. Ibid.
75. Central Bank of Nigeria, *Framework for Regulation and Supervision of Institutions offering Non-Interest Financial Services in Nigeria* (CBN: Abuja, Circular No. FPR/DIR/CIR/GEN/01/010) issued on 13 January, 2011. The initial framework was updated and reissued in June 2011 following expression of concern by this lead author to the CBN governor the same month on a contradiction between S. 10 of the framework and S. 43 BOFIA, 1991 (as amended) relating to the use of "Islamic" as part of a bank's name; some structural changes were also made based on opposition to the system, particularly by Christians.
76. L. S. Sanusi, *Banks in Nigeria and National Economic Development*, n. 30, 8.
77. Emmanuel Addeh, "CAN Opposes Islamic Banking," *The Punch*, Friday, June 24, 2011, 8.
78. For instance, the opposition of the Christian Association of Nigeria (CAN) was voiced in a press release published in the Nigerian *Daily Trust* of October 19, 2011, page 60; see also CAN President, "Islamic Banking is a plot to Islamize Nigeria," *PM News* of July 25, 2011, accessed August 11, 2012 (*http://pmnewsnigeria.com/*); and A. A. Abdul-Razzaq, *Non-Interest Banking,* op. cit. page 141.
79. Apart from S. 9, only sections 23 on exemption from interest charging, 39 on name clauses, and 61 on the definition of PLS are specifically related to Islamic banking.
80. I. A. Abdulqadir, "Islamic Banking under the Existing Laws in Nigeria: Problems and Prospects," (Malaysia: IIUM, 2007), 354.
81. Central Bank of Nigeria, Circular No. FPR/DIR/CIR/GEN/01/010, issued on 13 January, 2011, Abuja.
82. Central Bank of Nigeria, "Guidelines for the Regulation and Supervision of Institutions offering Non-Interest Financial Services in Nigeria," issued June 2011; this was a revised edition of the Framework issued in January 2011.
83. See, for instance the editorial, "Sanusi's Many Controversies (2)," *Business Day,* Wednesday, August 3, 2011, accessed on December 3, 2012, and available at http://www.businessdayonline.com/NG/index.php/analysis/columnists/25492-sanusis-many-controversies-2.
84. Christian Association of Nigeria President, "Islamic Banking is a plot to Islamize Nigeria," *PM News*, July 25, 2011, accessed on March 15 2013 at *http://pmnewsnigeria.com/;* For a detailed analysis of the controversy, D. O. Alao and E. M. Alao, "Islamic Banking: The Controversy over Non-Interest Banking in Nigeria," *Arabian Journal of Business and Management Review* 1:1 (2012): 70–74.
85. Copy on file with the authors and is available at the corporation website: http://www.ndic.org.ng/draft-framework-for-non-interest-deposit-insurance-scheme.html published in September 2011, accessed January 3, 2012.
86. See SS. 4-8 of the Draft Framework; the provisions are a clear departure from the interest-based orientation of NDIC Act 2006 (as amended) which has been criticized as not being sufficient to accommodate non-interest deposit money banks. See Abdulqadir I. A., "Islamic Banks' Participation in Deposit Insurance Scheme: A Legal Appraisal," *NDIC Quarterly* 21:1 (March, 2011): 17–38.

87. Ibid., 33.
88. SS. 1, 2, 3, 5, and 6 of the Proposed Amendments to the Rules.
89. A. Sola, "NAICOM Issues Guidelines on Islamic Insurance," Daily Independent, Friday, April 12, 2013), electronic version accessed on May 15, 2013 and available at http://dailyindependentnig.com/2013/04/naicom-issues-guidelines-on-islamic-insurance/. A copy of the guideline is available at: http://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEUQFjAE&url=http%3A%2F%2Fwww.proshareng.com%2Fnews%2Fdownload.php%3Fitem%3DUNLISTESECURITIEAUG.pdf&ei=AI3pUdiOGMuO7QbR14DYDQ&usg=AFQjCNEZm81mofsM36o189PhX-4fjVSAe6A&sig2=iNt2hh2nv_JFB8ZWwvFXkw&bvm=bv.49478099,d.ZGU.
90. See S. 57 BOFIA 1991 (as amended), Cap. B3, Laws of the Federation of Nigeria (LFN), 2010.
91. For a detailed reading on the extent of the lawmaking powers of the CBN governor, see I. A. Abdulqadir, "(Il) Legality of the 200–2005 Reform of the Nigerian Banking Sector," *University of Maiduguri Law Journal* 8 (2010): 330–334.
92. The Framework for the Supervision and Regulation of Institutions offering Islamic Financial Services in Nigeria issued on January 13, 2011.
93. A colloquium on Islamic Banking: Challenges and Prospects organized by Nigerian Institute of Advanced Legal Studies on June 6, 2011, at the Institute.
94. The new section 10 now subjects inclusion of "Islamic" in the name of a bank to consent of the CBN governor in line with the substantive law.
95. CBN: S. 1, Guideline for the Regulation and Supervision of Institutions offering Noninterest Financial Services in Nigeria, issued in June 2011.
96. (S. BOFIA).
97. (S. BOFIA).
98. (S. BOFIA) For a critique of the change in the categorization by the CBN without amendment of the law by legislators, see I. A. Abdulqadir, (Il)Legality of 2004–2005 Reform," 103, 328–330.
99. I. Ibanga, "Reps suspend debate on Nigeria's membership of Islamic Bank," *The Punch,* Thursday, 26 May, 2005, 1–2.
100. One of the crucial responsibilities of Islamic Development Bank is to be closely associated with the establishment and development of Islamic banks by way of assistance in the mobilization of new and additional resources in member countries. See Islamic Development Bank, *30th IDB Annual Report 1425H (2004–2005)*, 93.
101. Y. Kabiru, "FEC Approves Nigeria's Membership of IDB," *Daily Triumph,* Thursday, June 9, 2005, 1–2.
102. C. C. Soludo, "Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century," An address delivered to the Special Meeting of the Bankers' Committee, held at the CBN Headquarters, Abuja, on July 6, 2004, page 7.
103. Idowu Sowumi, "Islamic bank to get license by December—Adegbite," *This Day,* Tuesday, August 10, 2004, 4. The late Dr. Abdullateef Adegbite was the secretary general of the Nigerian Supreme Council for Islamic Affairs, under whose auspices the Islamic banking system was being promoted.
104. Yusuf Kabiru, "CBN Okays Islamic Banking, JAIZ secures approval," *Daily Triumph,* Tuesday, May 31, 2005, 1 and 2.
105. These are the former New Africa Bank, Tropical Commercial Bank, Centre-Point Bank, Bank of the North, NNB, First Interstate Bank, Intercity Bank, *Societe*

Bancaire and Pacific Bank. See CBN, "Component members of the consolidated banks," *Banking Supervision: Bank List 2,* issued January 27, 2006.

106. These are the former Guardian Express Bank, Citizens Bank, Fountain Trust Bank, Omega Bank, Trans International Bank, and ACB (Ibid.).
107. For detailed readings on this, see I. A. Abdulqadir, "(Il)Legality of 2004–2005 Reform," n. 103, pages 323–335.
108. (BOFIA)
109. M. Jamiu, F. Adetutu, and O. Mumeh, "Senate dares CBN, categorizes banks," *Daily Independent,* Friday, February 4, 2005, 1 and 2.
110. Honourable Usman Bugaje, former chairman, Nigerian House of Representative Committee on Foreign Affairs, confirmed that the executive worked on the leadership of the House to ensure that the BOFIA and CBN amendment bills were not given concurrent passage as same would frustrate its recapitalization policy. Interview by the author at International Islamic University Malaysia, Al-Tabari Conference Room, on February 14, 2006.
111. See M. Jamiu, F. Adetutu, and P. Mumeh, "Senate dares CBN, categorizes banks," *Daily Independent,* Friday, February 4, 2005, 1 and 2.