



UNIMAID JOURNAL OF PRIVATE AND PROPERTY LAW

(VOL. 1, No.1)

ISSN: 2534-6181



UNIMAID JOURNAL OF PRIVATE AND PROPERTY

LAW

(UJPPL)

ISSN: 2534-6181

PUBLISHED BY

The Department of Private Law

Faculty of Law

University of Maiduguri

P. M. B. 1069

Maiduguri – Nigeria

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Faculty of Law
University of Maiduguri
Maiduguri – Nigeria

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Printed in Nigeria, by
God's will Printers and Publishers
No. 74 Atiku Abubakar Road
Yola, Adamawa State
Tel.: 08060397276/08082021031

Citation:

This edition shall be cited as Vol. 1, No. 1 (June,2016) Unimaid Journal of Private and Property Law, UJPPL

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LEGAL FRAMEWORK REGULATING ISLAMIC FINANCE IN NIGERIA: A CRITICAL APPRAISAL OF HURDLES AGAINST THE EFFECTIVE SHARI'AH GOVERNANCE

By

Magaji Chiroma,^a Aishatu Kyari Sandabe,^b Mohammad Asmadi Abdullah,^c Abdul Haseeb Ansari^d

1. Introduction

Nigeria is one of the modern Muslim majority countries that recognizes the benefit of Islamic financial services within its banking and economic sectors. The country has been classified among the nations which promulgated some provisions of the law that enables the establishment of financial institutions to operate based on interest-free transactions. As a result of this, Nigeria witnessed the operation of its first full-fledged Islamic banking in the year 2012, which has been considered as one of the 'the specialized banks'. Like any other financial institution in the country, the Islamic financial institutions are regulated and controlled by the Central Bank of Nigeria (CBN), which is purely a conventional Bank. The Central Bank Act/Regulations, as well as the Bank and Other Financial Institutions Act (BOFIA) No. 25, 1991 (as amended) are the primary regulatory frameworks for the Islamic financial institutions in Nigeria. These legal frameworks, by their nature, regulate all the financial services in the country in a conventional way. Therefore, they will not be able to cater for all the required and fundamental needs of the shari'ah-based financial institutions. Ordinarily, the fundamental issue required to be catered for by the shari'ah-based financial institutions is to ensure the shari'ah compliant products. This can only be achieved if an enabling environment and a peaceful atmosphere have been put in place.

It is against the backdrop that the article attempts to appraise the legal framework of Islamic finance in Nigeria with a view to identifying the hurdles which stand as stumbling blocks against the effective shari'ah governance within the financial sector.

2. Islamic Finance and its Legal Framework in Nigeria

Islamic finance generally is a system of finance that carries its services and activities based on the tenets of Islamic commercial jurisprudence. It is an engagement in *Mu'āmalat* (Islamic transactions) which comprises of banking business, trading, investments and commercial activities, as well as the provision of financial products and services in accordance with the principles and rules of Islamic commercial jurisprudence.¹⁴⁹⁷

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¹⁴⁹⁷ Central Bank of Nigeria, "Draft Framework for the Regulation and Supervision of Non-Interest Banks in Nigeria" (Nigeria, 2009), 2, BSD/DIR/GEN/NIB/01/008.

This system of finance has been for long (more than three decades now) gaining a ground in a global economy. Many Muslim-dominated and non-Muslim countries have been making efforts to ensure success within their domains. Some of these countries have managed on their own to establish Islamic banks, *takāful* (Islamic insurance) companies and *sukūk* (Islamic bonds) markets in line with the Islamic regulatory framework with the primary objective of ensuring shari'ah compliant products and services.¹⁴⁹⁸

Today, Nigeria is one of the countries that recognizes Islamic finance as one of the key services in the banking industry and economy. The country has witnessed the establishment of the nascent Islamic banking transactions with full-fledged operations in the recent past (i.e in the year 2012). Other Islamic financial services such as *takāful* and *sukūk* are yet to be developed in full fledged capacity. Practice within a short period revealed that even after the establishment of the full-fledged Islamic banking in Nigeria, still the system is dangling due to lack of suitable legal framework in place, which can assist in regulating its activities effectively. This problem cannot be detached from the secular nature of the country and the evolution of the system itself, which derived its legitimacy from the conventional systems and laws.

Historically, the modern Islamic banking in Nigeria could be traced as far back as the military era in 1991, when the then military administration of Ibrahim Babangida promulgated a Decree called "Banks and Other Financial Institutions Decree (BOFID as amended)". This Decree recognized the establishment of banks based on *Mushārahkah* (profit and loss sharing).¹⁴⁹⁹ It also recognized the establishment of 'specialized' banks by implication of a specific clause which reads: "and such other banks as may be designated from time to time". This clause gave a room for the establishment of interest-free banks (i.e Islamic banks) in the future.¹⁵⁰⁰ To this effect, in 2010, the agitation for non-interest banks in Nigeria became a reality, when it was finally designated as specialized bank under the country's laws. In fact, Islamic bank is a form of non-interest banks which started a full-fledged operation in the year 2012.¹⁵⁰¹

As mentioned earlier, the municipal laws are the primary regulatory legislations for the Islamic financial institutions in Nigeria. This implies that the operations, services and activities of such institutions are to be conducted in compliance with the conventional laws and principles, which will certainly affect the realization of the shari'ah objective in the operation and activities of the institutions. It causes a serious retardation to the objectives set out to be achieved by the Islamic financial institutions.

Among the objectives generally, is to provide minimum standards for the operation of institutions offering interest-free financial services in Nigeria based on the principles of the shari'ah. Specifically, the major objective of Islamic financial system is to

¹⁴⁹⁸ Olaniwun Ajayi LP, "Islamic Banking – Non-Interest Banking," 1, , <http://www.olaniwunajayi.net/clientalert/NewsLetter on Islamic Banking.pdf>, accessed June 14, 2015

¹⁴⁹⁹ Section 23 Bank and Other Financial Institutions Act (BOFIA) No. 25 1991. Herein after referred to as "the BOFIA"

¹⁵⁰⁰ Ibid. section 63.

¹⁵⁰¹ Basiru Oyeniran Fatai, "Can Islamic Banking Work in Nigeria," *Journal of Sustainable Development in Africa*(vol.?) 14, No. 2 (2012): 28–29; Sanusi Lamido Sanusi (?), "Islamic Finance in Nigeria: Issues and Challenges," in *Lecture Delivered by the Governor, Central Bank of Nigeria, at Markfield Institute of Higher Education (MIHE), Leicester, UK, 2011, 5*, lecture delivered at Markfield Institute of Higher Education (Mihe).

ensure conformity with the legal technicalities and requirements of offering Islamic financial products. It also aims at contributing to the fulfillment of the socio-economic objectives and the creation of a just society and therefore departs significantly from conventional systems.¹⁵⁰²

For this reason, there should be a need to have a specific and distinct regulatory framework for the shari'ah governance, which can be independent and distinct from the current and shadow legal framework provided for by the BOFIA (as amended) and the CBN Guidelines/Regulations.¹⁵⁰³ Although, the CBN Guidelines have provided for the establishment of the committee of experts who should be responsible for the shari'ah governance supervision in the CBN and other IFIs. However, such a committee has always been considered as a subordinate to CBN, hence it shall be bound by the CBN dictates at all times.¹⁵⁰⁴

The committee was formally addressed as "the CBN shari'ah Council", and was later changed to "the CBN Council of Experts" due to legal hurdles. This is to enable the CBN comply with the provision of the laws of the Federation which disallowed the financial institutions (Banks) to use any word or phrase or term that has a religious label or inclination or government patronage.¹⁵⁰⁵ The essential duty of the Council is to advise the CBN on Islamic laws and principles for the purposes of regulating non-interest banking business.¹⁵⁰⁶

3. The Nature of Shari'ah Governance within the Islamic Financial Institutions in Nigeria

It is obvious that the operation and activities of Islamic finance in a diverse country like Nigeria must face some unavoidable challenges such as socio-political, legal, economic and religious challenges.¹⁵⁰⁷ The major challenge indentified is concerning the *modus operandi* of Islamic financial institutions in a society that largely practices conventional system of banking. The whole essence of Islamic finance is to ensure shari'ah compliant products and services, which can be realized and supervised by a committee to be established for that purpose.¹⁵⁰⁸

In Nigeria, the authority to establish the Islamic financial institutions (IFIs) and their shari'ah governing bodies emanates from the authority and mandate conferred on the CBN by various laws of the Federation. The shari'ah governance for the IFIs in

¹⁵⁰² Olaniwun Ajayi op cit, pp.2-3.

¹⁵⁰³ Ibrahim Mohd Yusof and Mustafa Daud, "The Perceptions of Nigerian Muslim Youths in Malaysia on the Establishment and Operation Of Islamic Banks In Nigeria," *International Journal of Business and Social Science* 2, No. 10 (2011): 155.

¹⁵⁰⁴ Central Bank of Nigeria, "Draft Framework for the Regulation and Supervision of Non-Interest Banks in Nigeria," 3 BSD/DIR/GEN/NIB/01/008.

¹⁵⁰⁵ Section 43 (1) (a) of the BOFIA. The section stipulates that "Except with the written consent of the Governor, 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"

¹⁵⁰⁶ "Framework for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria (the Framework)" by the Central Bank of Nigeria n.d.(are you sure it is not dated?) it is also uploaded unto the CBN website, you need to state the url), Guidelines No. 9 FPR/DIR/CIR/GEN/01/010 available where?. the Guidelines provide: "There shall be an advisory body to be called CBN Advisory Council of Experts to advise the CBN on matters relating to the effective regulation and supervision of IIFS in Nigeria. The qualification, duties, responsibilities etc of members of the Council are contained in guidelines to be issued by the CBN."

¹⁵⁰⁷ Zubair, A.A. and Alaro, A. A., "Legal and Operational Frameworks of Islamic Windows in Conventional Financial Institutions: Nigeria as a Case Study" (University of Ilorin International Conference on Islamic Bank and Finance, October 6-8, 2009, 2009), 2, Dept. of Islamic Law; University of Ilorin and Islamic Research and Training Institute; Jeddah; Saudi-Arabia.

¹⁵⁰⁸ Ibid., 15-16.

Nigeria, which otherwise known as “the shari’ah supervision”, has been carried out by the Shari’ah Advisory Boards within individual financial institutions and that of the CBN at the central level.

The committees among other things are responsible for advising the IFIs on shari’ah matters and give sanction on products and services offered by such institutions to consumers as well as undertake routine internal shari’ah-compliance audit. However, the CBN Shari’ah Advisory Committee, which is currently addressed as “the CBN Council of Expert”, serves as the highest authority on shari’ah-compliance matters and has been given the responsibility to scrutinize and endorse the rulings of individual Islamic bank’s shari’ah supervisory bodies. This is in order to promote harmonization and uniformity of shari’ah rulings, while allowing innovation by permitting individual banks to develop their own products based on the advice of their individual shari’ah supervisory bodies.¹⁵⁰⁹

In Nigeria, it is a fact that the full-fledged operation of Islamic banking entails the carrying out banking activities in accordance with the principles of Islamic jurisprudence. However, the Central Bank of Nigeria (which is conventional in nature) still remains the mother and regulator of all banks in the country. It regulates and supervises the activities of all banks including Islamic financial institutions in the country. Thus, the CBN has designed a regulatory framework for Islamic banking in the country with a view to assisting the going concern of such banks and their shari’ah advisory councils.¹⁵¹⁰

As mentioned earlier, following the amendment of the CBN regulations in line with the provision of BOFIA; the name “Shari’ah Advisory Council” was renamed as “the CBN Council of Experts”. Such amendment was considered and made as a result of criticisms by some citizens in the country.¹⁵¹¹ According to the critics, the establishment of the “CBN Shari’ah Advisory Council (as amended)” contravened the provisions of the 1999 Nigerian constitution,¹⁵¹² which provides that the government should at all times consider and adhere to the “federal character” of the nation in running its affairs.¹⁵¹³

Similarly, they have also lamented on the usage of the word “Shari’ah” written in the phrase: “CBN Shari’ah Council”. They said, the word “Shari’ah” is an Islamic word, therefore, its usage by the CBN in naming one of its unit or division also contravened the provision of the BOFIA.¹⁵¹⁴ Asserting further that it was a clear attempt to Islamize the country contrary to the

¹⁵⁰⁹ Sanusi, *op cit*, pp. 10–15.

¹⁵¹⁰ A mere change of name is not supposed to affect the constitution, membership and functions of the Shari’ah Board. There is this maxim in equity that says: “Equity looks at the intent rather than the form”. However, some people may hide under it to bring confusion in respect of the constitution of membership of the Council, thinking that the phrase “Advisory Council of Experts” may include everybody including non-Muslims or non-shari’ah experts, as this could defeat the objective of establishing the Council.

¹⁵¹¹ Paul Tempus Temitope, “Nigerian Factor: Between Reality and Islamic Banking”, <http://igbofocus.co.uk/html/islamic_banking.html>. accessed December 8, 2013

¹⁵¹² Section 16 (1) (d) of the Constitution of the Federal Republic of Nigeria (as Amended), 1999. Hereinafter referred to as “the Constitution”. The section provides as follows: “without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy”. Also Section 14(3) of the Constitution which states that “The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies”. Also Section 43 (1) (a) of the BOFIA. The section stipulates that “Except with the written consent of the Governor, 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”

¹⁵¹³ Section 14 (3) of the Constitution.

¹⁵¹⁴ Section 39 (1) (a) of BOFIA

provision of the country's constitution which advocates secularism,¹⁵¹⁵ they maintained. They have equally lamented that the establishment of Islamic banks generally, was an attempt to impose Islam on the non Muslims in the country, contrary to the provision of the Constitution which provides for the freedom of religion.¹⁵¹⁶

Furthermore, among other challenges faced by Islamic banking activities in Nigeria also include the inability to have a standard, specific and independent legal framework regulating the Islamic financial institutions.¹⁵¹⁷ The Islamic finance in Nigeria, before now, was operating under the supervision of the CBN through the non-interest banking (NIB) services. But later, the CBN under its new rules established a Council of experts known as "The CBN Council of Experts" in order to ensure the shari'ah compliance in the system.¹⁵¹⁸ Worthy of mention is that the 1st Council¹⁵¹⁹ was inaugurated in January 2013 to oversee the Islamic financial activities and shari'ah governance in the CBN banking sector.¹⁵²⁰

Obviously, issues concerning the Islamic financial services and activities always require fit and proper persons to oversee.¹⁵²¹ This includes having qualified and competent personnel that can supervise the activities. In the case of Islamic financial institutions, the experts should fulfill most if not all the requisite qualifications in order to be appointed as members of the shari'ah governing board. In fact, they should not be hand-picked by the Bank management as errant boys, so that the system will not be adulterated, hence the system will be allowed to function in accordance with the objectives of shari'ah.¹⁵²²

It is important to know at this juncture that in Nigeria today, the challenges bedeviling Islamic financial institutions are beyond having a competent body that can supervise their activities. Sometimes, no matter how competent members are, their roles would still remain largely advisory due to inability of having a distinct legal framework and the enforcement power on any decision to be made.¹⁵²³ Another serious lacuna bedeviling the system in Nigeria also lies with the *modus operandi* of the shari'ah advisory boards. The duties of the boards are mostly dependents on the Bank authorities, to the extent that they do issue *fatāwā* only on matters referred to them by

¹⁵¹⁵ Section 10 of the Constitution. The section provides: "The Government of the Federation or of a State shall not adopt any religion as State Religion".

¹⁵¹⁶ Ibid. Section 38. The section provides: "every person shall be entitled to freedom of thought, conscience and religion..."

¹⁵¹⁷ "Regulations and Supervision of Non Interest Bank in Nigeria";, 2011), NDIC FICAN Workshop held in Dutse, Jigawa state capital, November 28, 29, 2011 organized by the Financial Policy and Regulation, Department of Central Bank of Nigeria. It is important to know that in respect of regulation on Islamic banking, countries differ from each other; there are countries with 100% Framework. Such countries are purely Islamic countries?. Example of such countries is the Islamic Republic of Iran and Sudan; there are also countries with plural legal system but with distinct regulations for Islamic banking. Such countries include: Malaysia, Pakistan, Brunei and Gambia; the last category revolves around the countries with plural legal system but with distinct regulation for Islamic banking products. Example of such countries is UK, Singapore and Kenya.

¹⁵¹⁸ Zubair, A. and Alaro, A.A., Op cit

¹⁵¹⁹ The CBN has inaugurated the Financial Regulation Advisory Council of Experts (FRACE) on 14/01/2013, which comprises: Shaykh Sharif Ibrahim Saleh Al-Husaini (as chairman). Other members include: Sheikh Adam Idoko; Dr. Ibrahim Jalo; Dr. Abdulrazaq A. Alaro; Dr. Bashir Aliyu Umar; Executive Director of the International Shariah Research Academy of the Bank Negara Malaysia, Dr. Mohammad Akram Laldin; and Secretary-General of the Shari'ah Supervisory Board of the Central Bank of Sudan, Dr. Ahmad Ali Abdallah (reference); this information should be posted to the body of the work.

¹⁵²⁰ "CBN Inaugurates Council of Experts on Islamic Banking", <<http://forum.ipaidabribenaija.com/business-news/item/14431-cbn-inaugurates-council-of-experts-on-islamic-banking>> accessed December 8, 2013.

¹⁵²¹ Ibid.

¹⁵²² Muhammad Alhaji Abubakar, Interview by author, Maiduguri: Borno state, Nigeria, 16th July, 2013

¹⁵²³ Shaykh Muhammad Ibn Uthman, Interview by the author, Kano: Nigeria, 19th August, 2013

the financial institutions.¹⁵²⁴ This is contrary to the convention of an ideal *fatwā* issuing body in an Islamic financial institution which ordinarily, is to be operated in two modes, namely: as a research committee (*Lajnat al-Bahth*) and as a supervisory committee (*Lajnat al-Ishrāf wal Raqābah*).¹⁵²⁵

Progressively, in an attempt to enhance shari'ah governance in Islamic financial institutions in Nigeria, the CBN in collaboration with some institutions, have made efforts to establish other strong supervisory units, which render effective supervisions and services to the Islamic financial institutions in the country. The collaborated institutions include Bayero University Kano (BUK) which itself has established an International Institute of Islamic Banking and Finance (IIIBF) for graduate degrees and professional training programmes for Islamic finance practitioners. Similarly, there are also established centers for Islamic banking and finance training in some departments of economics in some Nigerian institutions for the purpose of strengthening the Islamic financial institutions of higher learning.¹⁵²⁶

4. Hurdles against the Effective Shari'ah Governance in the Nigerian Islamic Financial Institutions

The practice of Islamic system of finance has nearly come to stay in the Nigerian banking sector, especially looking at the solid foundation that has been laid in the sector, by the tenure of the past CBN Governor, Malam Sanusi Lamido Sanusi. However, despite all the legal basis and statutory backings that brought the Islamic financial activities in Nigeria to light, still, there exist some obstacles bedevilling the smooth running of the system. Most of such problems have direct bearings with the nature and effectiveness of the shari'ah governance within the Islamic financial institutions in the country.¹⁵²⁷ These *inter alia* include among other things:

(i) Lack of a Distinct and Comprehensive Legal Framework

From the inception of modern Islamic financial services in Nigeria, the entire system has been regulated by the municipal laws, regulations and guidelines such as the BOFIA and the CBN Act and CBN Regulations or Guidelines. These legislations in most cases do not consider the objectives of shari'ah in commercial transactions. Lack of a robust and comprehensive legal framework regulating Islamic finance is indeed a serious lacuna in the operation of Islamic financial transactions, especially at the level of Islamic contracts and financial products or entities.¹⁵²⁸ A distinct and comprehensive legal framework can assist the Islamic financial institutions to have a smooth running of their activities in line with the *Maqāsid al-shari'ah* (the objectives of shari'ah). That is to say, the shari'ah-based legal framework accords the shari'ah advisory bodies a well-defined structure and framework to meet up the objectives of Islamic commercial transactions.

¹⁵²⁴ Ibid.

¹⁵²⁵ Mufti Hassan Kaleem, "Meet the Scholar," http://www.deloitte.com/view/en_XD/xd/viewpoint/2064992d33587210VgnVCM200000bb42f00aRCRD.htm. accessed October 9, 2013

¹⁵²⁶ Shehu Usman Rano Aliyu, "Islamic Banking and Finance in Nigeria: Issues, Challenges and Opportunities," 2012, 11–12 MPRA PAPER NO. 42573.

¹⁵²⁷ Ibrahim Mohd Yussof and Adewale Abidin Mustafa Daud, "The Establishment and Operation of Islamic Banks in Nigeria: Perception Study on the Role of the Central Bank of Nigeria," *Australian Journal of Business Management Research* Vol 1., No. 2 (n.d.): 14–15. (are you sure an Australian Journal will not have dates?)

¹⁵²⁸ Sanusi Lamido Sanusi, op cit pp? See also Fatai, op cit, pp.36–37.

(ii) Legal Constraints and Restrictions

As much as Islamic financial services in Nigeria are continued to be controlled and regulated absolutely by the conventional system and municipal laws, the Islamic financial institutions will continue to suffer some restrictions. They can face many challenges which may limit and probably affect the effectiveness of shari'ah governance within the sector. For instance, from the current Nigerian banking system, the BOFIA have explicitly forbids the usage of any word that has to do with religious inclination in any financial institution in Nigeria. Based on this, the CBN in its continued day-day legal and policy reforms, has changed the phrase "The CBN Shari'ah Advisory Council" to "The CBN Advisory Council of Expert" in order to comply with the requirement of the law.¹⁵²⁹ The removal of the word "Shari'ah" from the phrase,¹⁵³⁰ may imply so many things including the involvement of other experts who do not have Islamic background or even non-Muslims to clamour for participation in the board, thus, agitating to the effect that the principle of "federal character reflection" should be invoked. That is to say, all appointments and composition of the Government in the country (including the CBN appointments) should reflect the federal character of the country.¹⁵³¹ Below is the detail of the constitutional provision concerning the above "federal character" issue:

"the composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies."¹⁵³²

If one should go by the letters and wordings of the above provision only, may erroneously subject the composition of the CBN Council of experts to the requirement of a federal character of a thing, thereby neglecting the basis upon which it is founded. To this effect however, the antagonists of Islamic banking have maintained that the CBN and its banking activities forms part of the civil service in the country, hence it belongs to all citizens. They had also erroneously believed that the provision of the CBN Guideline on Non-Interest Financial Institutions (NIFI, 2011), which provides for the constitution of the "CBN Shari'ah Council" as unconstitutional.¹⁵³³ It violates the right to freedom of religion as enshrined in the Nigerian constitution;¹⁵³⁴ it also contravenes the principle of the Nigerian secularism as provided for in the Constitution, which states that the Government of the Federation or of a state shall not

¹⁵²⁹ Rule 9 "Framework for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria (the Framework)." The Rule provides that "There shall be an advisory body to be called CBN Advisory Council of Experts to advise the CBN on matters relating to the effective regulation and supervision of IIFS in Nigeria. The qualification, duties, responsibilities etc of members of the Council are contained in guidelines to be issued by the CBN." This should be moved to the body and the qualifications should be itemized and discussed.

¹⁵³⁰ Section 43 (1) (a) of BOFIA.

¹⁵³¹ Abdul Azeez Maruf Olayemi, "The Legality of Islamic Banking in Nigeria: A Critical Approach," *Prime Journal of Business Administration and Management (BAM)* Vol. 2, No. 2 (n.d.); 461-63.

¹⁵³² Section 14 (3) of the Constitution.

¹⁵³³ See (FPR/DIR/CIR/GEN/01/010) 2011 (name the document, this is just the internal reference number in CBN)

¹⁵³⁴ Section 38 of the Constitution.

adopt any religion as state religion;¹⁵³⁵ and that the guidelines equally contravene the provision of the BOFIA 1991 (as amended).¹⁵³⁶

(iii) Ethno-religious and Political Factors

There is a lot of misconception and controversy about the establishment of Islamic banking in Nigeria. It happened as result of politics and ethno- religious diversity in the country. Religion has become a volatile and sensitive issue over the years.¹⁵³⁷ As a result of that, people of different faiths do not trust one another talk more of tolerance and understanding each other. This indeed affects the implementation of government policies, especially those related to religious matters, no matter how beneficial they are to the nation. To this effect, the establishment of shari'ah advisory council of the CBN and IFIs, being 'an Islamic affair', has been subjected to criticisms, especially by non-Muslims; based on the view that it is an attempt or move to exclude them from participation in the country's economy contrary to the provision of the Constitution.¹⁵³⁸ However, the fact is that Islamic banking does not in any way preclude non-Muslims from participation in the nation's economy. More so, one of the world's major players in the Islamic financial sector nowadays includes the United Kingdom (UK), which is no doubt originated as a Christian Kingdom.¹⁵³⁹

(iv) Inadequate Manpower and Technical Know-how

Islamic finance in Nigeria is not all about the establishment and setting up the legal framework, but also the ability to run and maintain the system in accordance with its objectives. In the recent past, it has been identified that after the establishment of Islamic banking and other financial institutions in Nigeria, some challenges have begun to emerge. Such challenges include inadequacy of knowledge, skills and technical capacity to regulate and supervise the institutions; shortage of Muslim scholars who are vast and capable of working in conventional system and assist in harmonization of Islamic principles with contemporary developments.¹⁵⁴⁰ Although in early 2013, the CBN has inaugurated the Council of Experts within its domain, which according to some opinions, has not effectively been able to achieve the objective of which it was set up.

5. Conclusion

From the foregoing discussion, it is evident that in Nigeria, the Islamic financial institutions and their activities operate under the control and supervision of the CBN and within the purview of the conventional laws and regulations to be enacted in the country from time to time. Despite the conventional nature of the banking and other financial institutions in Nigeria, yet, Islamic financial institutions have been brought into light with a view to carrying out services in accordance with the principles of shari'ah. In the end, the article revealed the factors militating against the effectiveness

¹⁵³⁵ *Ibid.* sec. 10.

¹⁵³⁶ Section 43 (1) (a) of BOFIA. The section provides: "Except with the written consent of the Governor, 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""

¹⁵³⁷ Sanusi, *op cit*, pp.19–21. See also Fatai, *op cit*, pp. 36–37.

¹⁵³⁸ Section 16 (1) (d) of the Constitution. The Section provides: "without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy".

¹⁵³⁹ Abdul Azeez Maruf Olayemi, *op cit*, pp.461–463.

¹⁵⁴⁰ Sanusi, *op cit*, pp.19–21.

of shari'ah governance within the Islamic financial institutions in Nigeria, which include among other things, lack of a distinct, independent and comprehensive shari'ah-based legal framework; existence of some legal constraints; ethno-religious and political problems; and lack of adequate manpower. It is based on these hurdles, the article recommends the following:

- i. That the Nigerian Government should enact a distinct, independent and comprehensive legal framework for smooth running of the Islamic financial institutions in line with the *Maqāsid al-Shari'ah* (objectives of shari'ah).
- ii. That the Nigerian Government should amend some of the provisions of its existing laws relating to banking sector, especially those provisions standing as obstacles or oust-clause against the shari'ah governance within the Islamic financial institutions. Similarly, interpretation of some provisions of the laws should also be facilitated and sought from the court of law (by way of originating summons). This may probably clarify some pending issues such as the meaning and intent of the lawmakers regarding the phrase "The CBN Advisory Council of Experts". The court will be able to make clarification on whether or not the phrase covers all persons who are learned in shari'ah regardless of their religion.
- iii. The Nigerian Government should create awareness among the public about the legality and operation of Islamic financial institutions in the country. This can be achieved through broadcast and programmes in the mass media or by way of organizing periodic seminars. At the same time, the Government should do everything possible to make people desist from politicizing the economic and related matters in the country, as it has a negative effect on sustainable development. Hence, people should not divert their attention towards a religious sentiment, thereby neglecting the economic benefit accrued to the nation.
- iv. The Government should focus largely on how to sustain and strengthen the Islamic financial institutions in the country, thereby ensuring the shari'ah compliant products. This can be achieved by training and re-training of personnel to specialize and become skillful in the field of Islamic commercial jurisprudence.