

A comparative review of the regulation of Islamic banking and finance in Indonesia, Nigeria and the United Kingdom

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Abstract: This study examines the nuances of the regulation of Islamic banking and finance in three major jurisdictions i.e. Nigeria, the UK, and Indonesia. It addresses the challenges and prospects for these legal systems and economies. The research adopts a qualitative methodology, drawing theory from a vast trove of materials from authors in the African, Asian, and European continents. The intention behind bringing this topic into discussion primarily revolves around the undeniable significance that Islamic finance has in certain parts of the world. Islamic banking dominates the global Muslim finance industry, representing 80% of Islamic financial assets. There is growing concern for the subpar usage of the practice in certain jurisdictions. Most of the scholarship on this matter does not question this need, perhaps due to the general acceptance of the conventional banking system worldwide. Previous research works are yet to undertake a comparative assessment of the usage of Islamic banking and finance practices among jurisdictions, spanning representative nations from diverse regions and continents, thus causing a gap in the literature. This article discusses the legal and regulatory provisions, earmarking the practice of Islamic banking and finance in the jurisdictions using available literature. While each jurisdiction recognizes the practice of Islamic finance, those in Indonesia and, to a good extent, the UK, have richer provisions for its development. Thus, while taking cognizance of the socio-cultural contexts, a critical assessment of the regulatory mechanisms in Nigeria is carried out against the background provided by the Indonesian and English legal systems. It is discovered that for the existence of a robust appropriation of the practice in the jurisdictions, especially Nigeria, a forward-looking system must be adopted.

Keywords: Islamic banking; Riba; Nigeria; Indonesia; the United Kingdom.

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1 Introduction.

Islamic banking has turned out to be one of the fastest-developing constituents of the global financial system. As for some Western countries, Islamic finance continues to be at a relatively nascent stage; however, certain factors would more likely aid its increased development¹. These factors have been noted to include government incentives and the processes initiated to bring on an atmosphere suitable

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1. Islamic finance has been greatly impactful in the last decade. The Islamic banking industry has been developing at a sustained proportion, in spite of its relatively blossoming stage. Islamic banking has not stopped dominating the worldwide Islamic finance industry, standing for 80% of complete Islamic finance assets.

for a developing and flourishing Islamic finance market; the developing Muslim population within European jurisdictions; the increased emphasis on optional financial solutions at the start of the European financial watershed; and the great desire for attracting liquidity from upcoming industries².

Islamic finance has been greatly impactful in the last decade. The Islamic banking industry has been developing at a sustained proportion, despite its relatively blossoming stage. Over time, Islamic banks have profited from a demand-focused sectorial market which is growing currently. Nevertheless, due to the huge number of Islamic banks present and the developing interest from traditional entities in this upcoming market, the industry is getting extremely competitive. Traditional financial institutions are progressively discovering the worth of Islamic financial methods and are beginning to weld these into their current financial practices or are starting separate Islamic windows.

This treatise attempts to study the regulation of Islamic banking in the United Kingdom, and Indonesia to create room for improvements and better accommodation of the practice in Nigeria. The regulatory provisions of these jurisdictions are offered a front-row consideration. Despite the colonial past and the international relations of Nigeria and Indonesia with the United Kingdom, it is somewhat surprising to discover a moderately similar Islamic banking system between the three nations over the decades. A critical outlook is given to consider the vagaries of Islamic banking in Nigeria while examining the prospects and challenges that are obtainable given the testimonies of better practice that the UK and, more importantly, Indonesia, offers. It is not argued that Indonesia operates a picture-perfect system, but the serial examination of each of these jurisdictions seriatim, against the backdrop that regular Islamic banking practice provides, offers a touchstone against which stakeholders can draw inspiration for the betterment of each jurisdiction. It is concluded, having examined the gaps, that Nigeria needs to be more pragmatic in establishing institutions that contribute to the optimal appropriation of the benefits of Islamic banking. It is recommended that jurisdictions seeking to fully

2. See Muhammad Akram, Mamoona Rafique and Hassan Alam, *Prospects of Islamic Banking: reflections from Pakistan*, 1 (2) *Australian Journal of Business and Management Research* 125 (2011).

maximize the prospects of Islamic banking and finance must improve their regulatory provisions alongside the conventional banking and finance system as human existence evolves.

1.1. Definition of Islamic Banking.

Expectedly, Islamic banking revolves around the Islamic law – (Sharia). This can be readily appreciated from the varying perspectives that scholars of note from the world of economics and law have given it. Akram³ simply explains that Islamic banking is a system operated in line with Islamic laws as well as the Sharia board that leads the institutions. On a further note, it was posited that Islamic banking refers to a system of banking that is consistent with the ideas of Islamic law as well as its usage via the development of Islamic economies⁴. In a similar vein, Marimuthu and others⁵, stated that Islamic banking can be seen as the running of a bank relying on the principles of Sharia. Ghayad⁶, reasoning in a similar way, perceives Islamic banking as a banking arrangement that works in line with the dictates of Sharia which refers to the Fiqh al-Muamalat which are the Islamic rules on deals⁷. It could be surmised from these definitions that Islamic banking pertains to a form of banking arrangement that works strictly based on Sharia.

Islamic banking must, however, not be mistaken for the concept of Islamic banking window which is run by some commercial secular banks. Interested in putting round pegs in round holes, Akram⁸ thought it well to conceptualize an "Islamic banking window". According to the leading light, the Islamic banking window is a business setup in which traditional banks provide Islamic banking services

3. See Ibid.

4. See Ibid. See also Kosmas Njamike, Introduction of Islamic Banking in Zimbabwe: Problems and Challenges, 12 (8) *Journal of Sustainable Development in Africa* 70 (2010).

5. See Marimuthu Maran, et al., Islamic Banking: Selection Criteria and Implication, 10 (4) *Global Journal of Human Social Science* 52 (2010).

6. See Ghayad Racha, Corporate governance and the global performance of Islamic Bank, 24 (3) *Journal of Humanomics* 207 (2008).

7. José Scheinkman and Jerry Green, In general equilibrium, growth and trade, 81 *Academic Press* 104 (2014).

8. See Id.

and products from their current network. In a nutshell, the Islamic banking window presents a circumstance through which a traditional banking system may offer Islamic banking services or products. Further, it can be thought of as a banking arrangement that meets up exclusively with the profit, loss, and risk-sharing idea of Islamic banking for some of its items⁹.

1.2. Riba (Interest): The Conceptualization.

Riba, also known as "interest" or "usury" has been perceived uniquely. Some of these opinionists refer to it as the same thing, while some attempt to differentiate it from the interests charged in the traditional banking system without striving to take the lead on the argument charts. In the most basic sense of it, Riba means the "excess" or "interest" beyond the idea of a loan¹⁰. It is perceived as an illegitimate practice which has been condemned in the Quran¹¹. Riba, in the business sense of it, has been described as the amount over the principal of a loan that is paid to the owner of the capital due to the extension of maturity available to the debtor as well as the deferment of the repayment of the debt.

Riba has been rightly divided into two parts – Riba al-Fadl and Riba al-Nasihah. The first is the form of Riba that is connected to the quality of express exchange of goods. It is the quality premium in turn for low quality with higher-quality goods. The idea of al-Fadl refers to sales transactions¹². On the other hand, Riba al-Nasihah talks about the increment that obtains on the principal of a debt payable or loan. It is the concept that encourages the practice of lending money for any

9. A credible example can be found in the Nigerian situation when Habib Bank Plc. was allowed to provide some Islamic banking offerings by the Central Bank of Nigeria.

10. See Abraham Ibrahim, *Riba and Recognition: Religion, Finance and Multiculturalism* (Essays from the AASR Conference 2008).

11. See Id. More particularly, Riba translates into any fixed, positive, predetermined rate linked to the amount and maturity of the capital – to wit, such as is guaranteed despite the investment's performance. Once again, Islam forbids the Muslim faithfuls from giving or taking interest no matter the purpose behind the loan transaction as well as its proportion.

12. See Lawal Yekini, *Islamic economics: the cornerstone of Islamic banking*, *Journal of Economics and Engineering* 2010.

length of time on the knowledge that the borrower would give back to the lender at the period's end. This refers to the amount initially lent together with some increase on it, instead of the lender giving him time to pay regardless of profit or loss¹³.

In every contemporary banking transaction, interest comes under *al-Nasiah*. In the present banking system, as money is exchanged for money with delay and excess, it comes under the definition of *Riba* which has been forbidden in Islam regardless of the nomenclature accorded to it. The forbidding of interest is stated in four diverse revelations in the Holy Qur'an. First is the emphasis that it deprives wealth of the blessings of Allah. Secondly, the interest is juxtaposed with the wrongful usage of property that belongs to others. Thirdly, the revelation implores the Muslim faithfuls to steer clear of interest on grounds of their welfare. Finally, the fourth revelation sets up an obvious differentiation existing between trade and interest, imploring Muslims to take just the principal sum and to forgive even this amount if the borrower cannot pay. A further declaration from the Holy Qur'an instructs that those who do not forbid the taking and giving of interest are at war with God and his Prophet. Furthermore, the Prophet opposed not just those who take interest but also those who provide it along with those who compile records of it or are witnesses to such deals, insisting that they are all equally guilty. Therefore, the concept of working with free interest gains recognition and enforcement, in that it meets the prohibitory stance of Islam which may be hard to achieve following the traditional banking system.

1.3. Basic Features of Islamic Banking.

Islamic banking refers to a unique mode of banking arrangement that prohibits all transaction types that are forbidden in Islam. As a result, for any bank to be taken as Islamic, the following simple basics must be observed by its operators¹⁴. To begin with, there is a prohibition of interest – any bank that identifies as Islamic must not

13. See Id.

14. See Abraham, *Riba and Recognition: Religion Finance and Multiculturalism* (cited in note 10). See also Felix Alio and Uhomohibi Toni, *Islamic banking, practices and insights for Nigeria*, 5 (1) *International Review of Business Research Papers* 321 (2009).

partake in any form of interest associated with transactions. It may only involve itself in profit and loss-sharing deals. Also, there is the prohibition of making speculations or *Gharar*¹⁵. Therefore, any deals that bear extreme risks or are, as a result, associated with gambling are avoided. An Islamic bank will refrain from a business with extreme risk in all transactions brought before it. Additionally, there is a social justice system that presupposes that any deals resulting in injustice are prohibited for Muslims by Islam. Therefore, Islamic banks are not expected to engage in any exploitative tendencies towards any party in any transaction. Again, there is the mandatory payment of *Zakat* – Islamic banks are mandated to pay *Zakat*¹⁶ as one of the five pillars of Islam¹⁷. In addition, there is a formula for profit, loss, and risk sharing, the providers of such funds and the engaging entrepreneurs share the risk that is linked with the business and the gains are on common agreement. Fairly, this step is expected to distribute the income generated, improve social justice, and redound to poverty alleviation.

Islamic finance is compliant with the religious law of *Sharia* and bears the unique characteristic of getting along with a secular financial system with the foundational principles of the Islamic faith. As far as Islam is concerned, the idea of floating an economy performing independently of religious criteria must not be sustained as the faith

15. This term literally refers to hazard .

16. The Islamic economic system does not offer debt-oriented finance, which is taken as an unjust, exploitative, and unfair economy, rather, considers institutes a system called *Zakat* which is an obligatory charity or Islamic tax). This interest-free arrangement is taken as an ethical and moral tool of Islamic principles, where the ultimate objective is to pursue the pleasure of God. By eliminating interest and implementing *Zakat*, a viable forum is established as a part of the Islamic economy. Islamic banks develop towards profitability and pooling funds, which is the center of the economy's expansion. The payment of *Zakat* at a nominal rate of 2.5% of their net income remains one of the major pillars of Islam showing the huge role of Islamic banks in reducing inequality between people and mitigating poverty. As an Islamic canvas of taxation, *Zakat* aims to balance the economy via wealth distribution to the economy. See more in Salah Alhammadi, *Analyzing the role of Islamic finance in Kuwait regarding sustainable economic development in COVID 19 era*, 14 (2) *Sustainability* (2022), available at <https://doi.org/10.3390/su14020701> (last visited November 29, 2023)

17. See Yekini, *Islamic economics: the cornerstone of Islamic banking* (cited in note 12).

"marinates every part of the life of the believer"¹⁸. The major sources of the Sharia are the Sunna and the Quran, the actions and sayings of the Prophet Muhammad transmitted orally by way of Hadeeth – the story of the companions of the Prophet. The Sunna and the Qur'an afford room for interpretation as they do not cater to all the questions that challenge the Muslim Brotherhood. In that regard, there is the need to turn to secondary law sources¹⁹.

These secondary sources are referred to as the jurisprudence of Islam (fiqh), relying on the interpretations (Ijtihad) of professionals in certain cases (for example, of unclear or implicit rules) about deductive reasonings (Qiyas) and on the professional consensus of varying schools of thought (Ijma')²⁰. Nevertheless, it is arguable as to whether interpretation is yet possible, as some scholars insist that interpretation was done centuries back²¹. This is more complicated by the divide between the Shia and the Sunni branches of Islam, and the availability of several schools of thought on Islamic jurisprudence within these denominations. Traditional Sunni Islam, for instance, has four major schools of law²². Disparities in the interpretation of the law (fiqh) can bear huge implications for the development of Islamic finance. The dearth of harmonization of Islamic rules, with diverse scholars demonstrating diverse views, could occasion uncertainty on critical matters, to wit, whether certain financial instruments comply with the Sharia.

18. See Ibid.

19. See Ibid.

20. See Ibid.

21. See Felix, Islamic banking: theories, practices, and insights for Nigeria at 329 (cited in note 14).

22. The major schools of law are considered to be the Maliki, Hanafi, Hanbali, and Shafi'i schools. The traditional theory of Islamic law explains the scriptures (Quran and hadith) ought to be explained from the perspective of rhetoric and linguistics. It also consists of approaches for affirming the realness of hadith and for knowing when the legal force of scriptural verses is removed by some passage taken away at some later date. In addition, the classical theory of Sunni law identifies with secondary sources of jurisprudence such as qiyas (analogical reasoning) and ijma (juristic consensus). For further examination, see Vikor, K.S. Shariah In John, L. E. (ed.) *The Oxford Encyclopedia of the Islamic world*. (Oxford University Press).

2 Discussion.

2.1. The legal provisions - the regulation of Islamic banking in Nigeria.

Islamic banking remains the sector of the finance industry that receives the most attention amongst the progressives of Nigeria. Islamic banking in Nigeria is regarded as a way of profit and loss sharing (PLS) banking as stipulated in the relevant laws²³. The development of contemporary Islamic banking in Nigeria can be traced back to 1991 when the Banks and other Financial Institutions' Decree²⁴ (BOFIA) was promulgated. This Decree reckons banks based on profit and loss sharing.

Also, the provisions of the Decree identify specialized banks and feature them in the definition of such other banking institutions may be given from time to time. Such profit and loss sharing banks deal in commercial and investment business and keep profits and loss sharing accounts. In Islamic banks, there are account holders that keep their funds on a profit and loss sharing arrangement known as Musharakah²⁵. The keeping of these accounts in Islamic banks has made society refer to them as profit and loss-sharing banking institutions.

The enactment of the Bank and other Financial Institutions Act (BOFIA 2020) marked the cessation of a single financial arrangement in the country. The fiscal market turned out to be more competitive ever since BOFIA 2020 was legislated²⁶. It was at this time that non-interest financial institutions were properly recognized and established under the financial system of Nigeria. During the original promulgation of BOFIA, profit and loss-sharing banks became exempted from certain regulations and requirements²⁷. Mournfully, this exception has been struck out in the recent amendments by taking away the

23. See Mubarak O., et al Laws of Islamic banking in Nigeria: critical review and best practice proposal, *International Journal of Academic Research in Business and Social Sciences* 45 (March 2020).

24. See S. 23 and 61, BOFIA Decree 1991.

25. See Maxwell J. Fry, *Money, Interest and Banking in Economic Development* (Johns Hopkins University Press 2nd ed. 1994).

26. See Mubarak, *Laws of Islamic banking in Nigeria: critical review and best practice proposal* (cited in note 23).

27. See Abubakar S. *Socio-economic and legal challenges of Sharia-compliant banking operation, its developmental impacts and the struggles of the believers:*

power of the CBN Governor from such an exemption²⁸. Therefore, all specialized banks become subject to comprehensive treatment under the Act similar to their conventional peers.

Moreover, the amendment that took place in 1998 concerning the limited profit-loss sharing (PLS) banks was amended and increased to the extent that banks may provide more Islamic banking products with the written consent of the CBN Governor²⁹. However, the latest amendment is yet to clarify the time factors in securing such consents – daily, sporadically, quarterly, or yearly? It is observed in general that BOFIA is not competent enough to contribute significantly to Islamic banking progress in Nigeria. Whereas the amendments of the BOFIA, instead of strengthening the existing provisions - added more ambiguities to the area of non-interest financial services. Apart from this, the dearth of expedient adjustments, necessary enhancements, and substantial insertions upon its original 1991 promulgation, obstruct the entire development of Islamic banking in the country³⁰. Therefore, firm amendments are highly sought for the whole legal framework to facilitate the notable workings of Islamic banking in Nigeria.

2.2. Certain Lacunas in Islamic Banking Legislation in Nigeria.

A critical assessment of the whole amendments made after the initial promulgation of BOFIA 1991 reveals that no attention was given to restoring the presence of the Sharia Advisory Board (SAB). The consequence of this omission means that suitable verification cannot be carried out on every banking product, and a wrong decision can be made where the consultations of the experts are absent.

BOFIA continues to be reckoned as the most comprehensive legislation that discusses Islamic banking in Nigeria. The Act is deemed to have shunned some important aspects that can fasten the progress

epistemological lessons from Nigeria 8(5) *Journal of Islamic Economics, Banking and Finance* (2012).

28. See Central Bank of Nigeria Act 2007.

29. See *Ibid.*

30. See Mubarak, *Laws of Islamic banking in Nigeria: critical review and best practice proposal* at 43 (cited in note 23).

of Islamic banking all over the country³¹. This has rendered it inadequate for non-interest financial bodies in Nigeria. It is felt that those who drafted the Act posed some challenges to Islamic banking operations in the country. Nevertheless, BOFIA remains a major place to sufficiently administer Islamic banking operations, BOFIA is bereft of certain essential aspects of a systematized Islamic banking system.

Nigeria's banking system is comprehensively regulated by the Central Bank of Nigeria Act (CBN Act) 2007; the Banks and Other Financial Institution Act (BOFIA)³²; and the Companies and Allied Matters Act (CAMA)³³. In the past years, Nigerian regulatory bodies have made announcements regarding several regulatory ideas that will provide the framework for developing a sturdy Islamic finance hub. These have been categorized rightly under certain guidelines which seem to not have the force of law as do other legislative pronouncements.

2.3. Guidelines for the Regulation and Supervision of Institutions offering Non-Interest Financial Services in Nigeria.

The Guideline is provided in pursuance of the non-interest banking regime of Regulation³⁴ on the Scope of Banking Activities and Ancillary Matters, No 3, 2010³⁵. Considering the Guidelines, the non-interest finance and banking models are widely grouped into non-interest finance and banking built on the jurisprudence of Islamic

31. For instance, there is almost no provision made for Shariah compliance in BOFIA. Also, Islamic banking consumers are wrongly grouped or shunned in the BOFIA Act. Also, the Act is passive about setting up a Shariah Advisory Board responsible for ascertaining the extent of complying with any specified product. See generally El-Mubarak I., et al., *Laws of Islamic banking in Nigeria: critical review and best practice proposal* 10(3) *Intl. J of Acad. Res. in Bus. & Social Sci.* 29 - 42, available at <https://dx.doi.org/10.6007/IJARBS/v10-i3/7020>. It may however be argued that Islamic banking has been facilitated under the Specialized Bank groups only that this vehicle might not just be accommodating enough for the unhindered practice of Islamic banking and finance.

32. Cap B3 Laws of the Federation 2004.

33. Cap C20 Laws of the Federation 2004.

34. See S. 33(1)(b) of the CBN Act; Ss. 23(1); 52; 55(2); 59(1)(a); 61 of BOFIA and S 4(1)(c).

35. These shall be read together with the provisions of other relevant parts of the CBN Act, CAMA, BOFIA, and circulars/guidelines issued by the CBN from time to time.

commerce on one hand, and non-interest banking and finance built on other established non-interest ideas on the other hand. The non-interest banks are to be categorized into two. First, the national non-interest bank shall possess a capital base of N10 billion and will work in each state of the Federation including the FCT. Second, the regional non-interest bank, which shall bear a capital base of N5 billion, and will work in at least six states and a maximum of 12 contiguous federation states, which lie within not more than two geo-political zones and the Federal Capital Territory.

A non-interest financial body with this model will make sure that its Memorandum and Articles of Association (MEMART) show that its business activities will be carried out in line with the ethos and practices of Islamic commercial jurisprudence. The body providing Islamic fiscal services will deal with businesses making use of exclusively financing instruments that comply with the ideals expected of the model and sanctioned by the Central Bank of Nigeria.

The Islamic banking institution may issue charges such as fees or commissions as may be expedient in line with the ethos under the Guidelines and the Guide to Bank Charges. The funds obtained as fees and commissions shall be part of the income of the bank and shall not be shared with depositors. Considering S. 39 (1) BOFIA, the licensed and registered name of an Islamic Bank may not include the word "Islamic"; anything otherwise will require the consent of the Governor of the CBN. The financial body shall, nevertheless, be identified by some uniform symbol created by the CBN. All the symbols, as well as promotional items of the Islamic financial institution, shall have this symbol to aid recognition by customers as well as the public.

An Islamic financial company shall make sure that relevant disclosures are issued by what is known as Profit Sharing Investment Accounts (PSIA) holders in some timely and workable way and ensure that the right execution of investment contracts takes place³⁶. Likewise, they are to apprise their prospective PSIA clientele working under loss-bearing, profit-sharing contracts, by way of writing that the risk of loss stays with the clientele and that the company will not

36. See Mubarak, *Laws of Islamic banking in Nigeria: critical review and best practice proposal* at 42 (cited in note 23).

partake in the loss unless there is established negligence or some misconduct for which the body is liable.

In pursuance of this Guideline, there are just two companies that presently offer Islamic finance services in Nigeria. These are Jaiz Bank, a full-blown Islamic lender operating in Nigeria since 2012, and Nigeria-Stanbic IBTC, a unit of South Africa's Standard Bank³⁷. Sterling Bank has been offered "approval in principle" to start an Islamic finance arm as well.

2.4. Guidelines on the Regulation and Supervision of Non-Interest (Islamic) Microfinance Banks in Nigeria.

In April 2017, the Central Bank of Nigeria issued the Guidelines on the Regulation and Supervision of Non-interest (Islamic) Microfinance Banks in Nigeria. This Guideline is to offer a level-playing ground for the traditional microfinance bank and the non-interest (Islamic) microfinance bank. It offers the mode of operation and other working requirements that operators of Islamic microfinance banking need to work with.

Despite the innate restrictions in Islamic banking, there are chances for the market to develop. Islamic financial bodies afford varying finance and banking services and products that can cater to the needs of the Nigerian banking public as stated herein. As anticipated, the coming of the non-interest (Islamic) Microfinance Banks in Nigeria should spark a trend of healthy competition in the microfinance sector which leads to reducing interest rates. This will help drive the Nigerian economy and ensure its steady development since Nigeria has battled with recession in recent times.

3 The United Kingdom

One positive aspect of the Islamic finance industry in the United Kingdom is that it accounts for an almost non-discriminatory regime. Every financial institution that is authorized by the Financial Services

37. See Felix, Islamic banking: theories, practices, and insights for Nigeria at 332 (cited in note 14).

Agency (FSA) and that operates in the UK, or looking to be so, is subject to the same standards. This is so despite its country of origin and the sectors that it looks to specialize in, or its religious ethos. This stance is entirely in line with the six Principles of Good Regulation earmarked in the FSMA³⁸. The provisions deal with allowing for innovation and preventing undue barriers to entry as well as expansion in the financial markets. In this regard, a level-playing field operates irrespective of the status of the bank's methodologies. It is noted that while the FSA is enthusiastic about the exclusive development of Islamic banking in the UK, it is resolved by the UK authorities that it would not be appropriate or within legal possibility to differ its standards for a certain category of institution. According to Sir Howard Davies in the September 2003 Speech in Bahrain, the approach of the FSA can be summarized as "no obstacles, but no special favors"³⁹.

Every organization looking for authorization is expected to offer a reliable business plan as well as meet and proceed in meeting the five basic benchmarks referred to as the "Threshold Conditions". These are set out in the FSMA and referred to in extensive detail in the FSA Handbook. These five conditions⁴⁰ are; first, the organization must have the right legal position for the activities it looks forward to undertaking. This identifies, for instance, that European directions put specific restrictions on the legal form that a firm taking deposits or performing insurance contracts may assume. Second, for an organization that is incorporated in the UK, its headquarters and management must also be in the UK. Third, in the event that the individual or firm possesses close connections with another individual or organization, these are possibly not going to avoid the workable supervision of the organization. Fourth, the organization has sufficient resources, both financial and non-financial, for the activities that it attempts to carry out. Lastly, the organization is "fit and proper". This is connected to its relationship with other individuals, consisting of employees and shareholders; the form of the activities it seeks to undertake, and the necessity to carry out its affairs prudently and soundly. In applying

38. See The Financial Services Markets Act (FSMA) 2000 (Regulated Activities) (Amendment) Order 2010.

39. See Ainley, M et al *Islamic finance in the UK: regulation and challenges* Financial Services Authority (2007).

40. See *Ibid*.

the provisions of the FSMA to organizations seeking to become Islamic banks, there are several areas where additional work or clarity is required. For some time now, they have not indicated any challenges that could not be dealt with. This is because of the cooperation between the FSA as well as the applicants to create pragmatic solutions. The FSA has spotted three major areas of likely difficulty that are identifiable with Islamic situations. These are the regulatory definitions of the products, the place of Sharia teachers, and financial promotions.

3.1. Regulatory Conceptualization of Products.

Defining products provided by Islamic organizations remains a major factor that organizations and the FSA are required to consider as part of the authorization process. As earlier clarified, the structure of Islamic products is based on a range of contracts that can be accepted under Sharia law⁴¹. As such, while their economic impact is identical to or the same as traditional products, the underlying structure might substantially differ. Consequently, firms need to evaluate if Islamic products can be accepted within the Regulated Activities Order.

3.2. The Role of Sharia Teachers.

The place of the Sharia Supervisory Board (SSB) also needs to be considered by the FSA. The market defines the major objectives of the SSB teachers as having to do with establishing Sharia compliance in every one of the products and deals of the entity. In practice, Sharia teachers assess a novel product or deal and, if satisfied that it complies with Sharia, issue an authorization⁴². It is however critiqued that the FSA is only a secular and not a religious organization, hence it might be incompetent in judging the appropriateness of the Islamic products as sanctioned by the SSB.

41. See Ibid.

42. See Ibid.

3.3. Financial Promotions

A reflection on the statutory aim of protecting consumers underscores the requirement of the FSA that all advertising should be fair, clear, and void of misleading people. This has proven to be important for Islamic finance as the products remain new and their structure varies from more traditional products⁴³.

The process that greeted the authorization of the first retail Islamic bank in the UK was one that has a lot of lessons leading to the successful adoption of an improved template for the creation of four additional Islamic banks in the country. This first Islamic bank, created back in 2004, is known as the Islamic Bank of Britain (IBB). The process took about 2 years to complete. One of the major issues that arose concerned the seemingly conflicting interpretations of the certainty or uncertainty of funds kept as "deposits" in the account of the conventional or Islamic bank respectively. The idea of a "deposit" suggested keeping a profit-and-loss sharing account where Sharia law demands that a customer accepts the risk of loss of initial capital in case the Islamic bank becomes insolvent⁴⁴. This position is inconsistent with the FSA's interpretation of the legal perception of the certainty feature that characterizes "deposits" even in the event of the insolvency of the bank.

The UK boasts of one of the most developed Islamic financial markets in the West turning up as one of the major destinations for foreign institutions compliant with relevant Sharia provisions. The country continues to be home to the first full-blown retail bank that is Sharia-fit and presently has five Islamic banks⁴⁵. London in particular remains an essential financial hub, with mainstream global firms and the Middle East's biggest conventional banks that offer Islamic products in the city. Islamic financing operations launched in the UK in the 1980s at a time when the London Metal Exchange offered Sharia-compliant overnight deposit aids drawing from the Marabah idea.

The major legislation governing Islamic finance in the United Kingdom (UK) is encapsulated in the Finance Act 2005 as amended in

43. See Ibid.

44. See Ibid.

45. See Ibid.

the Finance Act 2007⁴⁶. The FA 2005 features Islamic finance transactions as an optional financial plan and takes a comparatively direct approach to weld Islamic finance instruments with the traditional legislative atmosphere⁴⁷. For instance, anything described in some Islamic finance instrument as gain will be approached in the same manner as provided for under the stipulations of the previous Acts⁴⁸ that relate to interest. This is specifically essential when consideration is given to the tax treatments of Islamic finance instruments.

However, the Finance Act 2007 extended the coverage of the previous Act to consist of sukuk with a view to providing a way out for the inaugural sukuk issuance by the government by offering some response to the anomaly brought about by hitherto not offering for the tax-deductibility of profit spreads under a sukuk⁴⁹. This makes it a more costly way to raise finance when placed side by side with traditional bonds with tax-deductible interest payments. Before introducing FA 2007, an issue emerged relating to a likely sukuk⁵⁰ issuance by some UK brand was if, for the ends of the Financial Services and Markets Act 2000, sukuk would be taken as an equivalent of a traditional bond or of a joint investment scheme. In response, the Financial Services and Markets Act⁵¹ brought on several amendments to address this issue and give confirmation that sukuk should be governed in the same way as traditional bonds.

Notably, the 2010 Order introduced a slew of consequential amendments to other regulations and legislation⁵². These amendments operate to enlarge the scope of those regulations to account for optional finance investment bonds. The amendments display an

46. See Dewar John, Hussain Munib *The Islamic finance and markets law review: United Kingdom The Law Reviews* (2022) available at <https://www.thelawreviews.co.uk> (last visited November 29, 2023).

47. See *id.*

48. See *id.*

49. See *id.*

50. See Ainley, M. et al. *Islamic finance in the UK: regulation and challenges* (cited in note 39).

51. FSMA 2000 (Regulated Activities) Order 2010.

52. These include the FSMA 2000 (Regulated Activities) Order 2001, the FSMA 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

intentional approach observed by successive administrations to treat Islamic finance as a subset of the world of traditional financial instruments⁵³. Praiseworthy, this approach shows that the Islamic finance niche will be approached with the same benchmarks as the traditional finance industry in the United Kingdom, and parties in contract need to anticipate being held subject to the same extents of examination from the regulators in the UK and courts as their traditional mates.

It is worth observing that financial transactions that are entered into with a person who is not otherwise bound by regulation under the FSMA may be subject to regulation under the Consumer Credit Act 1974 (CCA)⁵⁴. The only exception may be when such agreement is entered into predominantly or wholly for business ends, or one of the other exemptions under the CCA 2006 is applicable. In the year 2005, the Sanctuary Building Sukuk was started, the first corporate sukuk in Europe and the first to come from the UK. Built on the same framework, the second corporate sukuk was made by International Innovative Technologies (ITI) Ltd in 2010⁵⁵. The British government undertook a consultation with the legislative framework for optional finance investment bonds that are built to have economic features similar to traditional debt instruments. Following the consultation, the government brought on measures explaining the regulatory treatment of corporate sukuk that cut down the legal cost implications for this sort of investment and took away undue obstacles to their issuance. In March 2013, the UK Government set up the first Islamic Finance Task Force.

The UK continues to be a transnational provider of the professional legal expertise expected for Islamic finance, with about 25 main law firms offering legal services in this sector. Specialist services are likewise available for advice on listings, tax, regulations, transactions, management, compliance, and information technology, and operations systems⁵⁶. Islamic banking started in the UK in the 1990s at a time when corporations from the Gulf Cooperation Council (GCC) got the idea of Islamic mortgages and provided mortgage financing

53. See Filippo di Mauro, Caristi, Pierluigi, et al. *Islamic finance in Europe* 146 European Central Bank – Eurosystem, (2013).

54. See *id.* at 38.

55. See *ibid.*

56. See *ibid.*

shortly thereafter. Nevertheless, these instruments were thought to be highly pricey because of the double stamp duty applicable. The removal of the double taxation administration in 2004 led to an increased demand for Islamic home financing.

The Bank of England and the Financial Services Authority (FSA), the two banking regulators, have been open to the creation of Islamic finance in the UK. The Islamic finance sector carries on under a single piece of law that applies to every sector, to wit, the Financial Services and Markets Act 2000⁵⁷. Therefore, there remains a level-playing ground for traditional and Islamic products thus helping the markets take care of the needs of local minority consumers. The UK government's facilitation of a fiscal and regulatory framework for Islamic finance accounts for the following: the abolition of capital gains tax and stamp duty (land tax) for sukuk issuances and Sharia-compliant home mortgages; the reform of plans for bond issues such that returns and income payments are approached identically to interest; and the FSA initiatives to make sure that the regulatory treatment of Islamic finance is in tandem with its statutory principles and objectives.

4 *Indonesia.*

Indonesia's Islamic banking has always been a reference point when it comes to developing Islamic banks in Southeast Asia. This is partly because the country boasts of a majority Muslim population of about 90% of more than 270 million people. In an internal competition, the Islamic banking market structure in Indonesia has been described as one that is regulated by several market authorities⁵⁸ that have ended up producing amazing results for its economy⁵⁹.

57. See *ibid.*

58. See Mala Chajar Matari Fath, HosenNadrattuzaman and Al Arif Nur Rianto, M. An analysis of market power and efficiency of Islamic banking in Indonesia and Malaysia 9(1) *Jurnal Ekonomi & Keuangan Islam* 1–16 (2023) available at <https://doi.org/10.20885/JEKI.vol9.iss1.art1> (last visited November 29, 2023).

59. When it comes to profitability, results reveal that Islamic banks in Indonesia have immunity from losses when nonperforming loans (the rate of default) is lower than 8.5%. With respect to capital position, it was underscored that the industry is less probable of getting bankrupt when the default probability is lower than 9%. But when the default probability exceeds 9%, the sum expected gets higher than the capital

Islamic banking in Indonesia is regulated by the Indonesia Government Act of 1998, giving room for Commercial and Rural banking houses to concentrate their activity on traditional and/or Islamic principles. By virtue of this, traditional and Islamic banking possess unitary identical regulation as supervised by Bank Indonesia. As a result, No. 21 of 2008 improved the Islamic Banking regulation offering a better definition to the Islamic Banking and Business Unit⁶⁰. This Act enables people to partake in Islamic Banking in one part (business unit) or a subdivision of the Conventional banking or full-fledged.

The Indonesian Ulama Council⁶¹ simply verifies the principles of Shariah, recommending the Shariah Supervisory Boards for banks⁶². Bank of Indonesia (Similar to Nigeria's CBN and the UK's Financial Conduct Authority) likewise codified some Islamic banking products which defined the varying contracts well⁶³. As a result, the framework of Indonesia is a traditional financial system that regulates Islamic

available. More so, the authors revealed that no liquidity threat exists for Islamic bank in Indonesia based on value at risk (VaR) capped at 99% confidence. Even though the share of most Indonesian Islamic banks is little, the assets of the banks are rated to be the fastest growing in the sample drawn with a CQGR that is equal to 2.86%. The analysis presented by Mansor et al s work reveal that Indonesian Islamic banks are the most impacted by the COVID-19 shock, showing that supplementary liquidity needs to be put to sustain greater capital adequacy ratio (CAR) apart from reinforcing the nonperforming financings provisions See also Mansour Walid, Ajmi Hechem, and Saci Karima, Regulatory policies in the global Islamic banking sector in the outbreak of COVID-19 pandemic J Bank Regulations 23, 265 – 87 (2022).

60. See Delle Foglie Andrea et. al., The regulators dilemma and the global banking regulation: the case of the dual financial systems]. of Banking Regulation 249 – 63 (2023), available at <https://doi.org/10.1057/s41261-022-00196-2> (last visited November 29, 2023).

61. See Lindsey Tim, Monopolising Islam: the Indonesian Ulama Council and state regulation of the Islamic economy, Bulletin of Indonesian Economic Studies (July 2012) available at <https://doi.org/10.1080/00074918.2012.694157> (last visited November 29, 2023). See also Fenwick Stewart, Eat, pray, regulate: the Indonesian Ulama Council and the management of Islamic affairs33(2) Journal of Law and Religion 271 – 90 (2018) available at <https://doi.org/10.1017/jlr.2018.23> (last visited November 29, 2023).

62. See Waemustafa Waeibrorheem, Abdullah Azrul, Mode of Islamic bank financing: does effectiveness of Shariah supervisory board matter?9(37) Australian J. of Basic & Applied Science 458 - 63 (2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2769667 (last visited November 29, 2023).

63. See Ningsih Ayup, Disemadi Hari Breach of contract: an Indonesian experience in akad credit of Sharia banking 19(1) Jurnal Wacana Hukum Islam dan

banking and issues licenses with a particular local law but cannot be compared with the hitherto Fully Dual Banking System⁶⁴. Islamic banking cannot execute independent entities or Islamic channels, but this can occur exclusively in the subsidiaries of traditional banks⁶⁵.

Through this traditional financial system, efforts are geared towards ensuring that policies that enliven the Islamic banking architecture are introduced at time. For instance, it has been discovered⁶⁶ that spin-off policy has implications for efficiency in the Islamic banking industry in Indonesia. The operational efficiency declines after implementing the spin-off policy in the spun-off banks. The outcome, in the view of the researchers, contradicts the objective of the Islamic Banking Act⁶⁷ which is seeking to promote the growth of the Islamic banking sphere. From an asymmetric relationship point of view, analysts have established that conventional and Islamic banks affect financial stability in the short and long run. Nevertheless, traditional banks add to financial stability more favorably than Islamic banks do⁶⁸.

Islamic finance continues to play a huge role in the development narrative of the economy of Indonesia. The Indonesian government, via the Financial Services Authority (OJK)⁶⁹ and the Ministry of Finance (MoF), seeks to offer an equal opportunity for both traditional and Islamic finance sectors. The Ministry of Finance, OJK, and Bank

Kemanusiaan 89 – 102 (2019), available at <https://doi.org/10.18326/ijtihad.v19i1.89-102> (last visited November 29, 2023).

64. This system connotes that both conventional and Islamic banking systems are perpetuated at the same time by an economy.

65. See *ibid.*

66. See Nur Rianto Al Arif, Ismawati Haribowo, Ade Suherlan, Spin-off policy and efficiency in the Indonesian Islamic banking industry Banks and Bank Systems, 13(1), 1–10 (2018), available at https://www.researchgate.net/publication/322584119_Spin-off_policy_and_efficiency_in_the_Indonesian_Islamic_banking_industry (last visited November 29, 2023).

67. Islamic Banking Law No. 21 of 2008.

68. See Fakhrunnas Faaza, Nahda Katiya, Chowdhury Mohammad Abdul Matin, The contribution of Islamic and conventional banks to financial stability in Indonesia 22(1) Etikonomi, 213 – 32 (2023), available at https://www.researchgate.net/publication/369279492_The_Contribution_of_Islamic_and_Conventional_Banks_to_Financial_Stability_in_Indonesia (last visited November 29, 2023).

69. OJK is the exclusive authority saddled with the duty of overseeing the capital markets, banking, insurance and other non-banking financial bodies.

Indonesia (Indonesia's Central Bank) have areas committed to Islamic finance in their respective organizational frameworks⁷⁰. Bank Indonesia released its Blueprint on the Development of Shariah Banking in Indonesia in 2002. OJK released its Roadmaps for Shariah Capital Markets (2015 – 2019), the Development of Indonesia Shariah Financing (2017 – 2019) and the Shariah Non-Bank Finance Industry (2015 – 2019)⁷¹.

Prior to 2008, Islamic finance was regulated majorly by legislation relevant to traditional finance. In 2008, however, the government provided a platform for Islamic finance by the issuance of Law 19 of 2008 on Sovereign Sukuk, Law 21 of 2008 on Shariah Banking and Government Regulation 56 of 2008 on Sovereign Sukuk Issuing Companies⁷².

4.1. Major Legislation for Islamic Banking, Insurance and Capital Markets.

The major legislation applicable to Islamic banking is Law 21 of 2008 on Shariah Banking. Islamic capital markets are governed by Law 8 of 1995 on Capital Markets, which comprehensively governs all activities related to capital markets⁷³. Nevertheless, sovereign sukuk are OJK Regulation 18/POJK.04/2015 relevant to Sukuk Issuance and Requirements which became enacted on November 10, 2015, but was amended by OJK Regulation 3/POJK.04/2018, which was enacted on March 26, 2018. Islamic insurance is governed by Law 40 of 2014 on Insurance⁷⁴. The Insurance Law governs both traditional and Islamic finance. As far as this Law is concerned, traditional insurance and reinsurance companies that boast of Islamic openings are expected

70. See Nastiti Nur Dyah, Kasri Rahmatina Awaliah, The role of banking regulation in the development of Islamic banking financing in Indonesia 12(5) Intl J of Islamic and Middle Eastern Finance and Management, 643 – 62 (2019).

71. See Dewi Gemala, The legal protection for applying Islamic contract law in banking regulation in Indonesia and Turkey 15(1) Indonesian J of Intl Law Article 5 (2017), available at <https://doi.org/10.17304/ijil.voll5.1.719> (last visited November 29, 2023).

72. By the amendment introduced by the Government Regulation 73 of 2012.

73. See *ibid.*

74. See Nastiti, N. Kasri, R. The role of banking regulation in the development of Islamic banking financing in Indonesia at 643 – 62 (cited in note 70).

to spin off their Islamic openings into Islamic insurance companies within 10 years of the enactment of the law, or after the investment funds and tabarru (premium) funds of the policyholders consist of at least 50% of the sum of the insurance funds, investment funds, and tabarru funds of the company⁷⁵.

4.2. Central Authority.

The Indonesia Ulema Council (MUI) has the responsibility for determining whether a transaction or product is compliant with the Shariah or not. Concerning Islamic finance, the relevant authority is the National Shariah Board of the MUI (DSN-MUI). Law 40 of 2007 on Limited Liability Companies stipulates that every company that intends to take part in Shariah-compliant business activities must set up a Shariah supervisory board consisting of one Shariah expert at least⁷⁶. This board offers counsel to the board of directors of the company and otherwise oversees the company's activities to make sure they are compliant with the Shariah.

More so, the banking sector, Bank Indonesia and OJK regulations further stipulate that the responsibilities and tasks of a Shariah Supervisory Board of a Shariah bank are to offer counsel and opinions to the board as well as administer the activities of the bank to ensure the principle of Shariah are complied with⁷⁷. In the capital markets area, OJK Regulation 16/POJK.04/2015 on Capital Markets Shariah Experts legislated on November 15, 2015, particularizes the tasks, duties and authority of a Shariah expert in capital markets⁷⁸. It is noteworthy that several articles in this regulation have since been rescinded by OJK Regulation 79/POJK.04/2017 on the Registration of Profession Certification institutions in the Capital Markets Business⁷⁹.

75. See *ibid.*

76. See Waemustafa, W. Abdullah, A. Mode of Islamic bank financing: does effectiveness of Shariah supervisory board matter? at 159 (cited in note 62).

77. See *ibid.*

78. See Dewi, G. The legal protection for applying Islamic contract law in banking regulation in Indonesia and Turkey at 23 (cited in note 71).

79. See Nur Eka Pradata, Retno Muljosantoso, Islamic finance and markets in Indonesia Soemadipradja & Taher (2019) available at <https://www.lexology.com/library/detail.aspx?g=6add72f6-d54f-4f3d-b837-8e7a6c24c345> (last visited November 29, 2023).

4.3. Authorization Requirements for Islamic Banks in Indonesia.

For an Islamic bank to carry on business in Indonesia, the bank must first secure a permit from the OJK. The business needs to be set up in Indonesia as a limited liability company with 1 trillion Rupiahs as the minimum paid-up capital. The supervening regulations restrict the ability of specific categories of parties to maintain shares in commercial banks, which includes Shariah banks (category). Where the party specializes in the finance sector, whether as a bank or otherwise, it is allowed to hold up close to 40% of the capital of the bank⁸⁰. If the party is a person, he or she is allowed to hold up close to 20% of the capital of the bank (or up to 25% of the capital of the Shariah bank)⁸¹.

The applicable regulations further stipulate that if shareholders are associated with one another, through share ownership, family of acting as one, they will be approached as one party. Thereby, their max share ownership will be restricted to the greatest of the limits that applies to the relevant category for one party. The prevailing regulations likewise adopt a single-presence policy, which is to say that a controlling shareholder of a bank cannot be the shareholder in control of another; the only exception being that a bank is a traditional bank, and the other bank is a Shariah one, or that one of the banks remain a joint-venture one⁸².

Foreign institutions seeking to provide Islamic banking services in Indonesia must meet the following requirements. First, they must commit to rendering support to developing the Indonesian economy via its works⁸³. Second, they must secure a recommendation from the overseeing authority in their residence country (if it functions in the finance sector)⁸⁴. Third, they must satisfy the required rating requirements concerning the applicable regulations⁸⁵. Fourth and lastly, they

80. See Lindsley, T. Between piety and prudence: state shariah and the regulation of Islamic banking in Indonesia 34(107) *Sydney Law Review*, 107 - 27 (2012).

81. See *ibid*.

82. See *ibid*.

83. Nastiti, N. Kasri, R. The role of banking regulation in the development of Islamic banking financing in Indonesia at 643 – 62 (cited in note 70).

84. See *ibid*.

85. See *ibid*.

need to establish a PT Company⁸⁶. These requirements for setting up a Shariah bank established in question are likewise relevant. However, the PT Company needs to be a joint-venture PT Company with a maximum of 99% shareholding of its paid-up capital.

4.4. Requirement or Specific Disclosure for Takaful, Sukuk and Islamic Funds.

All financial institutions that intend to carry out Shariah business must make a report gathered by its Shariah supervisory board with OJK. This requisite standard is also applicable to a person⁸⁷ that, yet, among other things, has a Shariah unit; is an investment manager managing Shariah investments; offers other Shariah services, and some part of its operational work is conducted based on Shariah ethos in the capital markets. As part of compliance with the reporting standards applicable to equivalent traditional businesses, certain standards are expected⁸⁸. A takaful operator⁸⁹ must make quarterly and annual filings to report to OJK on its compliance with its Shariah Supervisory Board (SSB). Again, an SSB must make annual reports filings with the shareholder of the issuer of the Shariah or public company that it supervises on the outcomes of its supervision of Shariah compliance in the capital markets by that company or issuer⁹⁰.

Furthermore, a Sukuk operator needs to file reports on Sukuk issuance and yearly reports on the Sukuk operator's activities, which include financial reports to the Ministry of Finance. Also, a Shariah supervisory board needs to prepare yearly reports for the investment manager on the outcomes of its oversight of Shariah compliance in

86. See *ibid.*

87. Even though it does not state that its works in the capital market revolve around the principles of Shariah.

88. See Dewi, G. The legal protection for applying Islamic contract law at 31 (cited in note 71).

89. A takaful operator establishes a fund to administer and manage the pools of funds that policyholders contribute. See Hamzah Al-Zaquan Ahmed. Indonesia takaful firms boost agents, products before spin-off Reuters (2014) available at <https://www.reuters.com/article/islamic-insurance-indonesia-idUKL3N0L32TT20140217> (last visited November 29, 2023).

90. See Waemustafa, W. Abdullah, A. Mode of Islamic bank financing at 161 (cited in note 62).

the capital markets by the Shariah mutual fund that it oversees⁹¹. Afterwards, the investment manager needs to submit the report to the OJK. Finally, an SSB is expected to prepare yearly reports for the investment manager's director on the outcomes of oversight of Shariah compliance in the capital markets on Shariah real estate investment funds by way of collective investment deals. Afterwards, the investment manager needs to make submissions of this report to the OJK⁹².

4.5. Sanctions and Remedies.

Sovereign sukuk can exclusively be issued by any business unit that has secured a statement of compliance from the DSN-MUI. Corporate sukuk can exclusively be issued by a business that has secured such a statement of compliance from its SSB or elected Shariah expert team⁹³. OJK may make impositions of administrative sanctions on company issuers who fail to secure a statement of compliance⁹⁴.

In the capital markets area, OJK has decided that the Shariah expert of a business takes responsibility for the Shariah compliance of Shariah services or products that are offered by such business. Nevertheless, the relevant OJK regulations do not particularly provide for any remedies or sanctions in the event that the products are presented as compliant with the Shariah. Rather, any report relating to this matter may lead OJK to assess the licenses of the Shariah expert team members⁹⁵. Products that are not listed are not much regulated and it is the responsibility of the Shariah supervisory board to make sure that the relevant company becomes Shariah-compliant for the issuance and marketing of the products⁹⁶.

4.6. Courts with jurisdiction to hear Islamic finance matters.

91. See *ibid.*

92. See Nur P., Retno M., *Islamic finance and markets in Indonesia* Soemadipradja & Taher (cited in note 79).

93. See *ibid.*

94. See Franzoni Simona, Ait Allali Asma, *Corporate governance of Islamic banks: a sustainable model to protect the participatory depositor?* *Journal of Banking Regulation* (2023), available at <https://doi.org/10.1057/s41261-022-00214-3>.

95. See *ibid.*

96. See *ibid.*

The Law on Islamic banking in Indonesia expects parties to resolve their disputes before the Religious Court⁹⁷ with the exception that an alternative dispute resolution mechanism has been agreed on between the parties before then. The Insurance Law expects that every insurance company will get its members from a mediation institution that will function as the venue for disputes existing between the company and policyholders, partakers, and other beneficiaries. In the legal year 2014, OJK enacted Regulation 1/POJK.07/2014 on ADR Institutions for the Financial Sector. Under the Regulation, disputing parties may resolve disputes via these new bodies or the court, where amicable settlements fail⁹⁸. The enactment demands that each financial services sector set up an ADR body by coordinating with the suitable business association. With respect to this OJK Regulation, six ADR bodies were set up and recognized by OJK. Each body bears jurisdiction over a distinct sector – these different sectors include capital markets, insurance, pension funds, guarantees, banking, pawnbroking, venture capital, and financing.

5 *Concepts of contract in Islamic finance.*

First is Mudarabah which is a profit-sharing partnership distinguishing responsibility for capital outlay and controlling. The guidelines of Bank Indonesia weld Mudarabah into the regulatory regime of financial services. Mudarabah agreements may be entered into concerning savings and lending deals. In saving deals, the bank acts as the fund manager while the customer acts as its owner while both agree on the formula for profit sharing and expenses chargeable to the customers. In lending deals, the bank acts as Shahibul Maal and the customer as Mudarib. The bank can supervise but may not manage the business of the customer. Both parties need to concede to the profit-sharing arrangement⁹⁹. Second, is the Murabahah which is the

97. See Bintoro Rahadi Wasi, Sharia business and the challenge of dispute settlement in Indonesian Religious Court (2016) available at <https://doi.org/10.21564/2414-990X.133.70649> (last visited November 29, 2023).

98. See *ibid.*

99. See Riyadi Selamet et al., Optimization of profit-sharing financing at Islamic banking in Indonesia *Jurnal Keuangan dan Perbankan* 25(2) (2021) 260 – 79 available

"cost plus profit agreement". These agreements are usually utilized in financing. In line with Bank Indonesia Guidelines, in Murabahah deals, a bank acts as *Shahibul Maal* to buy certain goods, and the customer acts as the buyer of those goods¹⁰⁰. The parties need to ascertain the quality, quantity, specifications, and costs of the goods. Moreover, the bank may grant a reasonable discount to the customer at any time and may likewise demand compensation from the customer in the event that the agreement is canceled up to the amount of the goods canceled¹⁰¹. Third, there is *Musharakah* is the partnership agreement for profit-sharing joint ventures. These sorts of agreements represent a different form of agreement that can be leveraged in financing. In line with Bank Indonesia guidelines, under a *Musharakah* agreement, the bank as well as the customer interacts as partners as they provide goods or capital jointly to finance a specific activity. The customer is expected to cater to the management of the business on its own but may also be expected to do so with the bank. The agreement does specify financing and profit-sharing terms, neither of which can be revisited unless the parties concede¹⁰². Fourth, there is *Ijarah* which is the lease to own agreement. In line with Bank Indonesia guidelines and an important MUI fatwa, in financing deals involving *Ijarah* agreements, the bank acts as the provider of the fund for the procurement of the lease object and as lessor, with the customer as lessee¹⁰³. The object leased can consist of movable or immovable goods but must be capable of being particularly valued and recognized. The bank and the customer need to agree on the price and term of the lease per time¹⁰⁴. Fifth, Shariah scholars talk about *Wadiah* which represents an agreement for safekeeping. In line with Bank Indonesia guidelines, *Wadiah* agreements can be utilized in safekeeping deals. In such deals, the bank acts as the receiver of deposited funds, while the customer acts

at <https://doi.org/10.26905/jkdp.v25i2.5212> (last visited November 29, 2023).

100. See Manangin Susi Aryani et al., *The nature of Murabahah financing in Islamic banking in Indonesia* 25(7) *IOSR J. of Humanities and Social Science (IOSR-JHSS)* 7, 16 – 30.

101. See *ibid.*

102. See Riyadi, S. et al., *Optimization of profit-sharing financing* at 263 (cited in note 99).

103. See Nur P., Retno M., *Islamic finance and markets in Indonesia* Soemadipradja & Taher (cited in note 79).

104. See *ibid.*

as the depositor¹⁰⁵. The bank may not guarantee any reward, incentive, or bonus to the customer. Nevertheless, the bank may, at its own discretion, gift the customer a portion of the profits garnered from the funds deposited.

However, there are some regulatory hiccups to Islamic banking in Indonesia. The major hiccup is noted to be the lack of some regulation on the rights of the holders of sukuk where there is default, bankruptcy or possible substitution of the relevant assets. Previously, any relevant conflicts existing between the accounting benchmarks adopted in Indonesia and Shariah principles would have been catered to via revisions to accounting benchmarks¹⁰⁶. The Board for Shariah Accounting Standards of the Association of Indonesian Accountants then issued Financial Accounting Standard 110 Revision 2015 effective from 1 January 2016¹⁰⁷.

Microfinance has been one of the relevant features of the Indonesian Islamic finance regime as well as markets for Islamic finance products. The Indonesian government issued Law 1 of 2013 on Microfinance Institutions and introduced implementing regulations one year later. Microfinance institutions can complete traditional and Shariah deals and can exclusively be set up and owned by entities or individuals of Indonesian extraction¹⁰⁸. Moreover, the development of financial technology (fintech) in Indonesia has likewise turned out to be a notable characteristic of the Indonesian Islamic finance administration.

Generally, fintech business is governed by OJK Regulation 77/POJK.01/2016 on Information Technology-Based Lending Services which was enacted in December 2016¹⁰⁹. Nevertheless, the regulation does not offer any hint vis-à-vis fintech businesses that operate in line with Shariah ethos. As an option, the DSN-MUI issued Fatwah No. 117/DSN-MUI/II/2018 which may be leveraged as a hint for

105. See *ibid.*

106. See Nastiti, N. Kasri, R. The role of banking regulation in the development of Islamic banking financing in Indonesia, at 643 (cited in note 70).

107. See *ibid.*

108. This is to mean that direct or indirect foreign proprietorship is banned.

109. See Nur P., Retno M., Islamic finance and markets in Indonesia, Soemadipradja & Taher (cited in note 79).

companies planning to do business related to fintech in line with the principles of Shariah in Indonesia.

6 *A Critical Outlook of Islamic banking in Nigeria.*

6.1 *The Prospects for Islamic Banking in Nigeria.*

The BOFIA (as amended) provides for the setting up and regulation of profit and loss-sharing banking institutions in Nigeria.¹¹⁰ Thankfully, Islamic banks come under this category of profit and loss-sharing banking organizations¹¹¹. Also, Nigeria remains the most populous Black Country on the planet with a population estimated at 220 million people according to the World Population Census's latest statistics. A sizeable rate of the population – whether Muslim or non-Muslim – long for non-interest facilities afforded by Islamic banking.¹¹² The Islamic finance industry remains a multi-billion industry creating a global reach and drive. In line with the consolidation of the banking sector, Nigerian banks have created an increased desire to work at global level which brings the possibility of strategic conglomerates and connections with other world financial bodies providing Islamic financial services¹¹³.

The economic solutions and advantageous ratings by international rating bodies have enhanced the profile of Nigeria as an effective investment destination¹¹⁴. A meaningful outcome of the worldwide fiscal crisis is the developing interest and demand for Islamic financial products and services the world over. Amid the crunch, Islamic financial bodies have shown huge resilience demonstrating their traditional approach to business and concentrating on the simple

110. See ss. 9, 23, and 52 of the BOFIA Act (2020).

111. See Noor Ahmed Memon, Islamic banking: present and future challenges 3(1) *Journal of Management and Social Sciences*, 1–10 (2007).

112. See Saleh Ali Salman, Zeitum Rami, The Development of Islamic Banking in Lebanon: Prospects and Future Challenges 9(2) *Review of Islamic Economics*, (2022); See also Oyeniran Basiru Fatain. Can Islamic banking work in Nigeria? 14(2) *Journal of Sustainable Development in Africa* (2012).

113. See Amin Hanudin, E-Business from Islamic Perspectives: Prospects and Challenges 13(3) *Journal of Internet Banking and Commerce* (2008).

114. See id.

matters of financial intermediation as against innovation¹¹⁵. This is a positive that may get into the perception and choice of Nigerians for Islamic banking as an optional form of financial intermediation. The determination of the government to revamp the ailing infrastructure with which the country is identified and the substantial investments in such critical areas such as railways, roads, power and so on, as well as the emphasis on Public Private Partnerships (PPP), affords the chances for Islamic banks to take part using revived confidence and balanced financial setting¹¹⁶.

The continuing financial sector reform has greatly resulted in the stabilization and restoration of confidence in the Nigerian financial system. Islamic banking institutions should take advantage of this revived confidence reposed in the stable financial environment¹¹⁷. The Zero-interest administration in Islamic banking provides a veritable attraction and workable alternative for investors who are strangled by the high lending rates that are charged by traditional banks¹¹⁸. There continues to be a growing choice for ethical investments, services, and products by discerning Muslims and non-Muslims alike. Islamic banking has been considered amenable with the ethical orientation and belief systems of this sort of people¹¹⁹. The licensure of Lotus Capital Plc., the first Islamic operator of the capital market, was done by the Securities and Exchange Commission. The effective IPO of the company evinces the soaring popularity and acceptance by Nigerians of Islamic finance as some value proposition¹²⁰.

115. See Noor, A. Islamic banking: present and future challenges *Journal of Management and Social Sciences*, at 1-10 (cited in note 111).

116. See Baljeet Kaur Grewal, Islamic finance in the global financial system 146, Occasional Paper Series European Central Bank – Eurosystem, 18-39 (2013)

117. See Malik Shaukat, Malik Ali, Mustafa Waqas, Controversies that make Islamic banking controversial: An analysis of issues and challenges 2(1) *American Journal of Social and Management Sciences* (2011).

118. See *id.*

119. See Baljeet Kaur Grewal, Islamic finance in the global financial system 146, Occasional Paper Series European Central Bank – Eurosystem, 18-39 (2013).

120. See Saleh, A. S & Zeitum, R The Development of Islamic Banking in Lebanon: Prospects and Future Challenges *Review of Islamic Economics* (cited in note 112). See also Oyeniran, B. Can Islamic banking work in Nigeria? *Journal of Sustainable Development in Africa* (cited in note 112).

The swift growth and developing wealth in the Middle East are backing the desire for assets in the area and other world regions. Given the positive market setting and side opportunities available in Nigeria, it is expected that Nigeria will be perceived as a safe destination for investors. Novel approaches in Islamic banking and finance are offering acceptable options to traditional finance, causing it to be likely for corporates and investors to attract capital from a developing pool of Islamic liquidity on the global scene and make investments in Islamic products.¹²¹ The substantial number of Nigerians who, due to religious beliefs, attempt to set the money aside the formal banking system, has resulted in a high level of cash kept outside the banking system. Further, this raises the chances for Islamic banks to greatly flourish in the country as a result of their conformity to the religious perceptions of Muslims.

6.2. The challenges to Islamic Banking in Nigeria.

There are a range of challenges that needs to be addressed for the successful emergence and operation of Islamic banking in Nigeria. A number of these challenges are as follows:

The absence of knowledge, technical capacity, and skills in the regulation and supervision of Islamic banks spells a huge challenge for the prospects of Islamic banking in Nigeria¹²². The absence of Sharia-compliant liquidity management instruments also constitutes another challenge¹²³. Islamic banks do not have the capacity to invest their excess liquidity in interest-oriented instruments that are liquidity management instruments in the market. This puts them at some competitive flop regarding their traditional counterparts¹²⁴. Likewise, the present interbank industry and the instruments that are used by

121. See id at 32

122. See Ariss Rima Turk, Sarieedine Yolla, Challenges in implementing capital adequacy guidelines to Islamic banks 9(1), *Journal of Banking Regulation*, (2007).

123. See M. Akram, M. Rafique and H. Alam, Prospects of Islamic Banking: reflections from Pakistan, 1 (2) *Australian Journal of Business and Management Research* 125 (2011), at 21 (cited in note 2).

124. See Dusuki, Wajdi AsyrafAbozaid Abdulazeem, A Critical Appraisal on the Challenges of Realising MAQAeID AL – SHARI AH in Islamic Banking and Finance 15(2) *IIUM Journal of Economics and Management*, (2007).

the Central Bank for monetary policy activities are all based on interests with no equivalent government securities or some other money market instruments that comply with the Sharia, all of which are important to prevent a liquidity challenge for Islamic banks when they get into operation.

Another is the dearth of Islamic insurance (Takaful) to secure investments of Islamic banks against a myriad of risks and aid the development of the industry in that order¹²⁵. Knitted to this challenge is the deficiency of a deposit insurance plan for depositors protection of Islamic banks. What is more, is the lack of knowledge of auditing and accounting requirements required for Islamic financial groups. The balance-sheet framework of Islamic banks is special, and even though the work of the Accounting and Auditing for Islamic Financial Institutions (AAIFI) regarding accounting and auditing standards for Islamic banking products is within reach, it becomes necessary to train traditional accountants and auditors in applying these standards¹²⁶.

Moreover, the absence of a strong and holistic legal framework, particularly at the level of adjudicating conflicts relating to Islamic finance deals, groups, or products remains a challenge. In discharging its conventional role as a lender of last resort, the CBN offers loans to banks at liquidity crunch time. Islamic banks may not legitimately take advantage of such a facility due to such funds being often offered based on interest. Therefore, there is the need to plan and execute an interest-free structure for such help.¹²⁷ Also, the lack of Sharia scholars who are knowledgeable in traditional economics, accounting, law, banking and finance puts severe limitations on the regulatory Sharia compliance arrangement¹²⁸.

Double taxation which would be put on Islamic banks due to stamp duties and capital gains tax that are all deductible upon transfer of assets is also a challenge to the practice of Islamic finance in Nigeria.

125. See *id.*

126. See Abikan Ibrahim, *Constitutionality of Islamic Banking in Nigeria* Justice Idris Legbo Kutigi (eds) *Contemporary Issues in Islamic Jurisprudence*. Benin: Rawel Fortune Resources (2009).

127. See *id.*

128. See Ahmad, A., Humayoun, A. A. & Hassan, *An Analysis of Function Performed by Islamic Banking: A Case of Pakistan* 17(1) *European Journal of Social Sciences* (2010).

Islamic banks are faced with a huge challenge since their financial position is based on assets. For instance, in home financing, Islamic banks possess assets either via construction or sale contract, and they make stamp duty for that¹²⁹. When they resell such assets to a customer via markup sale or some lease that ends with ownership deal, another stamp duty gets charged for the asset transfer¹³⁰. Other jurisdictions, including Luxembourg and the UK, have altered their tax legislations to prevent Islamic banks from getting affected by double taxation on assets they get for financing ends.

Some other challenge posed as far as taxation is concerned vis-à-vis Islamic banking is that profits made from the financial instruments provided by Islamic banks are not afforded the tax relief obtained by debt instruments in traditional finance. Debt instruments released in Nigeria are presently exempted from taxes accounting on income tax and Value-added Tax (VAT). In the same manner, interest payments on loans advanced are offered the same relief. The same position should be given to receivables in an Ijarah-based and Murabahah financing¹³¹.

There exists some evident misunderstandings regarding Islamic banking in Nigeria being used as an Islamizing tool to make Nigeria, a secular country, kowtow to the whims of Islam. With the mounting ethno-religious dichotomies, the country presently experiences; it is imperative to properly enlighten people to reconsider these objections. This is in light of the fact that religious tensions have turned out to be a volatile challenge over the years in the country. The tardiness in showing the right attitude towards the idea will jeopardize the whole idea and defeat the purpose of the introduction and indeed, the sustenance of Islamic banking in the Federation.

129. See Ningsih A., Disemadi H., Breach of contract: an Indonesian experience in akad credit of Sharia banking, *Jurnal Wacana Hukum Islam dan Kemanusiaan* at 91 (cited in note 63).

130. See Ariss R.T., Sarieddine Y. Challenges in implementing capital adequacy guidelines to Islamic banks *Journal of Banking Regulation*, (cited in note 122).

131. See Manangin, S. Aburaera, S. Nawi, S. Sampara, S. The nature of Murabahah financing in Islamic banking *IOSR J. of Humanities and Social Science (IOSR-JHSS)* at 19 (cited in note 100). See also Dusuki, A. W. & Abozaid, A. A critical appraisal on the challenges of realizing MAQAeID AL – SHARI AH in Islamic Banking and Finance *IUM Journal of Economics and Management*, (cited in note 124).

7 *Suggestions.*

The three arms of government need to tackle the issue of setting up and operating Islamic banking in Nigeria quite similar to the way the UK has been able to successfully address theirs. The stakeholders would need to be objective and, at the same time, as innovative as possible to find ways to better integrate the inclusion of Islamic banking amid the mainstream secular banking that the economy currently practices. The respective attitudes on the part of the jurisdictions are not without implications. In Indonesia and the UK, Islamic finance has been greatly exploited to cater to interests that conventional finance practice may be incapable of. Nigeria needs to emulate this approach by developing clear methods and legislations that will help it assume the appropriate direction for the prospects of Islamic banking to benefit its relevant citizenry who develop an interest in it.

More so, the Central Bank of Nigeria must deploy all feasible ways to bring about enlightenment to the masses on the necessity for Islamic banking as well as its objectives in the country. Perhaps, these stakeholders need to drive home the message that Islamic banking is not a weapon to proselytize the non-Muslims emphasizing on its liberal terms and conditions. The Nigerian non-Muslim masses and even certain Muslim need to be properly educated on the nuances of Islamic banking practices. This may have to do with the solicitation of religious groups and interests all over the country so as to intensify the public campaign for the adoption of Islamic banking as part of the mainstream banking jurisprudence and practice in Nigeria.

Further, more modules, concepts, learning, people and other forms of resources need to be magnanimously harnessed to ensure that Islamic banking practice in Nigeria is well supported and may flourish. For instance, even most Islamic scholars are not well-schooled enough in the intricacies of the practice not to talk of the participating stakeholders should the practices be welded into the major banking and financial systems of the country. There is a gross lack of trained minds across all sectors that are versed in the art and practice of Islamic banking in Nigeria in spite of its open embracement in developed economies. This needs to be addressed if the good of Islamic banking is to see the light of day to the maximal desirable extents.

It is pleasing to discover that the Nigerian, Indonesian and English jurisdictions have a measure of leniency and embracement of the policy and practice of Islamic banking and finance each based on the contexts of their socio-legal realities. Even as such, it is discovered that elaborate systems would need to be developed to help improve the operations of the Islamic banking and finance idea in the respective jurisdictions. From the foregoing analysis, it appears that Indonesia and the UK have been on the heels of ensuring that pragmatic steps are designed to help appropriate Islamic law in the jurisdiction. Truly, the UK maintains a "no obstacles but no special favors" stance but has designed its financial and regulatory in such a way as to make its processes forward-looking. While Nigeria still dithers in calling its approaches mere "guidelines", Indonesia floating a traditional system legislates for Islamic banking and finance practices preferring to take things seriously by referring to them as "Laws".

Moreover, each of these jurisdictions should ensure a more custom-based Islamic banking and finance system that can unabatedly develop alongside the constantly featured conventional finance system. The world is now talking about education technology, financial technology, biotech, insurance technology and a number of other emerging areas of endeavors intersecting between finance, technology and the law. It is highly important that the respective jurisdictions give room for stakeholders, in theory and practice, to develop mechanisms by which Shariah and other Islamic provisions can bode well with these innovative areas of human endeavor. Thereby, Islamic banking and finance practice will not be unduly left behind as the world advances.

8 Conclusion.

This work has attempted to assess the comparative situation of Islamic banking and finance in Nigeria, Indonesia and the UK to suggest rooms for improvements. A critical outlook of Islamic banking is thereafter brooded upon which resulted in thoroughly scanning the associated prospects and the challenges that concern the practice and regulation of Islamic Banking in Nigeria against the backdrop of the level of progress achieved in Indonesian and English markets. It is opined that in view of the analysis, the benefits of a bolder

embracement of Islamic banking favor the Nigerian economy above the challenges. However, this is not to conclude that resolving these challenges will not be herculean. Seeing the mounting challenges that confront the Nigerian jurisprudence on the matter which remains multifaceted with varying circumstances and realities it is fitting to mention that an urgent need lies in closing these gaps with the right regulatory attitude and administrative attention.