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Legal and Regulatory Framework for Corporate Governance of Islamic Banks in Nigeria and Malaysia: A Review of Literature

Ahmed A. Muhammed-Mikaaeel* and Aishat Abdul-Qadir Zubair**

Abstract

Legal and regulatory framework for corporate governance of Islamic Banks in Nigeria has received bellyful of criticisms from several quarters owing to various claims of their inadequacy and unsuitability. Worse still, report has it that Islamic Banks in Nigeria enjoys no special legislation for its corporate governance contrary to what obtains in similar clime. The foregoing thus prompted this research by literature review approach. Relying purely on doctrinal method, this article examines the legal and regulatory framework for corporate governance of Islamic banks in Nigeria and Malaysia vide review of existing literature. From the literature reviewed, the research finds that Islamic banks in Nigeria were subjected to laws which were originally conceived for the corporate governance of conventional banks in Nigeria; that there is no single legislation enacted specially for corporate governance of Islamic banks in the country contrary to the case in Malaysia; that the existing legal and regulatory framework for corporate governance of Islamic banks in Nigeria are not only defective and unsuitable but also have the potentials to defeat the purpose for which Islamic banks were established. The research thus recommends that it is high time Nigeria borrowed leaf from Malaysia by enacting a special legislation for the corporate governance of Islamic Banks in the country.

Key Words: Corporate Governance; Islamic Banks; Legal and Regulatory Framework; Nigeria; Malaysia.

1. INTRODUCTION

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Islamic Banks are financial institutions rendering purely Islamic banking services/products.[1] They are different from other conventional banks in the sense that they are faith-based. Invariably, Islamic Banking System is not based on any man-made ideology but divine commandments and principles from Holy *Qur'an* and *Sunnah*.[2] Suffices to say that the establishment of Islamic Banks is an extension of the practices of tenets of Islam and could be safely argued that it is at the exclusive preserve of the adherents of the Islamic faith.[3] The foregoing accounted for the stiff protest against the establishment of Islamic Banks in Nigeria by a sectional part of the Nigerian populace.[4] Despite the stiff protest and campaign against it, Nigeria, like some other common law countries across the globe, witnessed the glorious birth of the Islamic Banking System in the country.[5]

Islamic Banks operate as corporate entities.[6] Of their artificial nature, their corporate governance becomes inevitable. In a general sense, corporate governance has been perceived as the totality of laws, codes, rules, regulations, standards, and guidelines carefully designed to regulate the affairs of a corporate entity in all its ramifications.[7] In Shari'ah parlance, the concept of corporate governance focuses primarily on Shari'ah governance rules and Shari'ah compliance. Thus, from the Shari'ah perspective, corporate governance is the framework, codes, rules, regulations, standards,

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1 Zamir, I., 'Islamic Financial System', *Journal of Finance and Development*, Vol. 2, 3(4), 1997, p. 43

2 Q2: 275

3 This is because Islam, as a total way of lives of Muslims, dictates the kind of business they can engage in and others that they should run away from. The hallmark of conventional banks is deeply rooted in dependency on interest for survival which is the opposite of what Islam preaches. The idea of interest-free financial system originated from Islam as matter of divine commandment.

4 Mustafa, D., Ibrahim, M.Y., and Adewale, A., 'The Establishment and Operation of Islamic Banks in Nigeria: Perception Study on the Role of Central Bank of Nigeria', *Australian Journal of Business and Management Research*, Vol.1 No. 2, 2011, pp. 14-29

5 This materialized as a result of unrelented efforts the proponents of Islamic Financial System with a view to further actualize their religious dictates.

6 Muhammed-Mikaaeel, A. A. 'Application of Corporate Personality Doctrine under the Nigerian Corporate Law and Shari'ah' *Lexigentia*, Vol. 8 (1), 2022, pp.11-16

7 Mizushima, I. 'Corporate Governance and Shari'ah Governance at Islamic Financial Institutions: Assessing from Current Practice in Malaysia' *Retiaku Jeurnal of Interdisciplinary Studies*, Vol. 22, No. 1, 2018, pp. 59-60

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and guidelines designed under the authoritative texts[8] of Shari'ah and in line with *Maqasidus- Shari'ah* (objectives of Islamic law) to regulate the overall affairs of Islamic corporations.[9] This concerns Islamic Banks as Islamic corporations.

The importance of the Islamic corporate governance framework in the life of Islamic Banks cannot be overemphasized. The reason is that it enables Islamic Banks to function maximally under the primary purpose for which they were established.[10] It, therefore, follows that a defective or inadequate corporate governance of Islamic Banks will consequently defeat the purpose for which Islamic Banks were established.[11]

The Central Bank of Nigeria, in a bid to fashion out the legal framework for the establishment, regulation, and supervision of Islamic Banks in Nigeria, came up with a Guideline titled: Central Bank of Nigeria Guidelines on the Regulation and Supervision of Non-Interest (Islamic) Microfinance Banks in Nigeria, 2011,[12] to this effect.[13] According to the Guidelines, the legal framework for regulation and supervision of Islamic Banks in Nigeria includes the Central Bank of Nigeria (CBN) Act, 2007; Banks and other Financial Institutions (BOFIA) Act 1991 (as amended); Regulation on the Scope of Banking Activities and Ancillary Matters No. 3, 2010; Companies and Allied Matters (CAMA) Act 1990 (as amended) as

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8 That is, Qur'an and Sunnah

9 Junaidu, B.M. and Mua'zu, A.S. 'Examining the Regulatory and Institutional Framework on Corporate Governance in Nigeria and Islamic Perspective of on Corporate Governance: A Comparative Analysis' *International Journal of Business & Law Research*, Vol. 2, No. 2, 2015, pp. 88-95.

10 *Ibid*

11 Khan, A., *et al*, 'Comparative Analysis of Regulatory and Supervisory System of Islamic Banks: Evidence from Pakistan, Malaysia, Bahrain and United Kingdom' *Mediterranean Journal of Social Sciences*, vol. 6, No. 2, 2015, pp. 629-640

12 This Guidelines appear to be a parent legal framework amongst others because from the very nature of the Guidelines, it is designed in such a way that it is indispensable by any Floated Islamic Bank in Nigeria.

13 This came into effect vide a letter titled: the 'Circular on the Guidelines for the Regulation and Supervision of Non-Interest (Islamic) Microfinance Banks in Nigeria' with Reference No. FPR/DIR/GEN/CIR/06/016 dated April 5, 2017 duly signed by Director, Finance Policy and Regulation Department of Central bank of Nigeria, Abuja.

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well as any Guidelines that may be issued by the Central Bank of Nigeria from time to time.[14]

The Guidelines subjected Islamic Banks in Nigeria to the corporate governance framework available in the relevant provisions of the Banks and other Financial Institutions (BOFIA) Act 1991 (as amended), Companies and Allied Matters (CAMA) Act 1990 (as amended) as well as corporate governance Codes issued by any Institutions recognized by law.[15] The inevitable question, therefore, is whether the available legal framework for corporate governance of Islamic Banks in Nigeria can guarantee its growth as evidenced in other jurisdiction(s)[16] similar to Nigeria. The answer is negative. The reason is that, the available legal frameworks[17] for corporate governance of Islamic Banking in Nigeria were conceived purposely for the operation of the conventional banks. More so, the foundation of the Nigerian banking system is deeply rooted in an interest-based economy.[18] As unique as Islamic Banks are across the universe, Islamic Banks in Nigeria too ought to be subjected to corporate governance codes modeled in line with Quran and Sunnah as against the conventional corporate governance codes.[19] Because, this is the foundation of Islamic Banks and in fact, the concept of corporate

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14 See section 1.2 of the Central Bank of Nigeria Guidelines on the Regulation and Supervision of Non-Interest (Islamic) Microfinance Banks in Nigeria, 2017 (hereinafter referred to as the CBN Guidelines, 2017).

15 See section 10.0 of the CBN Guidelines, 2017

16 Malaysia and Sudan operate dual legal system similar to what is obtainable in Nigeria. The secularity of these countries has not prevented them from developing special legal frameworks for corporate governance of Islamic Banks in their countries. This has positively led to springing up of many Islamic Banks in the countries. Malaysian situation also brings forth conversion of Conventional Banks into full fledge Islamic Banks.

17 This includes the Central Bank of Nigeria Bank Guidelines for the Regulation and Supervision of Non-Interest (Islamic) Microfinance Banks in Nigeria, 2017; the Central Bank of Nigeria Act, 2007; the Banks and other Financial Institutions Act, 1991; the Companies and Allied Matters Act, 1990; the Nigerian Deposit Insurance Corporation Act, 2006.

18 Abikan, I.A., 'The Legal Framework for Islamic Banking in Nigeria' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publishers Limited, Kano, 2013) pp. 106 - 119

19 Choudhary, S., 'OECD Principles and Islamic Perspectives on Corporate Governance', *Review of Islamic Economics,* Vol. 12, No. 1, 2009, pp. 33-37. See also, Kasim N., Nuhtay, S.N., and Salman A.S., 'Comparative Analysis on AAOIFI, IFSB BNM Shari'ah Governance Guidelines', *International Journal of Business and Social Science,* Vol. 4, No. 15, (2013), pp.2-4

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governance has irreconcilable implications under conventional law and *Shari'ah*.[20]

Furthermore, what can be described as the clear-cut legal framework for Islamic Banks in Nigeria is the extant Central Bank of Nigeria Guidelines. The Guidelines, at best, remain administrative rules and regulations which cannot compete with any Act of the National Assembly in terms of enforcement. In case of conflict with other Acts of the National Assembly to which Islamic Banks are subjected, provisions of Acts will automatically be given preference. Owing to the Nigerian constitutionally secular doctrine,[21] the Central Bank of Nigeria resorted to the formulation of Guidelines for Islamic Banks because a sectional part of the Nigerian society fears that having a full-fledge Shariah Compliant Act of the National Assembly for the corporate governance of Islamic Banks in the country will Islamize Nigeria.[22] Thus, it is not gainsaid that the lack of a full-fledge Shari'ah Compliant Legal Framework constitutes challenges to the continued existence and growth of Islamic Banks in Nigeria.[23]

It is instructive to note that Malaysia, which enjoys dual legal systems of common and Islamic laws (with significant dominance of common law rules as in the case of Nigeria[24]) has in place a robust legal framework for corporate governance of Islamic Banks in the country.[25] The extant Islamic Financial Services Act, 2013 in

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20 *Ibid*, p. 34-37. See also, Akhtar, S., 'Shariah Complaint Corporate Governance', being a paper presented at the *Annual corporate Governance Conference*, Dubai, November 27, 2006, pp.12-45.

21 Osita, N.O., 'Is Nigeria a Secular State? Law, Human Rights and Religion in Context', *The Transnational Human Rights Review*, Vol. 1, 2014, pp. 135-178

22 This is borne out of the religious sentiment in the country as against the objectivity of the issues touching on religious relevance as duly guaranteed by the Constitution of the Federal Republic of Nigeria, 1999, As Amended.

23 This is discernible in the sense that, since 2011 when CBN granted license to JAIZ Bank to commence operation as full-fledge Islamic Bank in Nigeria, no other Islamic Banks have sprung up as such except the Taj Bank that was just granted regional license. This is a period of about 8 years ago. This of course has shown no appreciable growth of Islamic banks in Nigeria.

24 Malaysia even subscribed to constitutional supremacy pursuant to article 44 of their Federal Constitution. See generally Arun, K., 'Malaysia: Legal System', published by *International Society of Admiralty and Arbitration Lawyers (ISAAL)*, 2017 available at www.isaal.org accessed on 10th July, 2019.

25 This is Islamic Financial Services Act (IFSA), 2013.

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Malaysia has been appraised as the next level of Shari'ah-compliant commitment.[26] Malaysia achieves this through the operation of Islamic Banks in the country despite its secular nature.

Against the above background, this paper seeks to focus on the review of the existing literature on the legal framework and regulations for corporate governance of Islamic Banks in Nigeria and Malaysia as well as reviewing further literature on the challenges bedeviling Islamic Banks in Nigeria with a view to drawing lessons for Nigeria.

2. LITERATUR REVIEW

Quite several academic scholars have engaged in robust discussions and debates on one aspect or the other of the subject matter of this paper. The works of these scholars will be briefly reviewed. Thus, in reviewing the available literature, a thematic approach shall be adopted. Hence, the available literature is reviewed under the following heading thus: (1) The Origin, Nature, Purpose, and Concept of Islamic Banking/Financial System; (2) The Legal and Regulatory Frameworks for Corporate Governance of Islamic Banks; and (3) The Challenges Bedeviling Islamic Banks in Nigeria.

2.1 *Origin, Nature, Purpose, and Concept of Islamic Banking/Financial System:* Wilson's[27] work readily comes to mind. He examines the Evolution of the Islamic Financial System, by clarifying, contrary to the general notion that the Islamic Financial System sprung to compete with the conventional financial system, that the Islamic financial system is part and parcel of Islam as a religion. He contends further that Islam forbids Muslims from undertaking financial transactions that are not lawful. He recounts that interest-based transactions had for a long time been illegalized under Shari'ah from the clear provisions of the Qur'an and Sunnah.

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26 IFSA, 2013 emphasizes an all-round Shari'ah compliant approaches to Islamic Banking industry. See Muhammed, A.L., and Hafas, F, 'Islamic Financial Services Act (IFSA) 2013 and the Shari'ah-Compliance Requirement of Islamic Finance industry in Malaysia', *International Journal of Islamic Finance,* No. 10, Vol. 1, 2018, p. 97

27 Wilson, R., 'The Evolution of Islamic Financial System' in Archer, S. and Karim, R.A.A., *Islamic Finance and Growth,* (London: Euromoney Books, 2002) p.23

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Zamir[28] discusses the concept of the Islamic financial system by bringing out the salient features of the financial system under Shari'ah. He gave an insight into the origin of the idea of the Islamic banking system and argues that the system of banking under Shari'ah is unique in nature having been deeply rooted in the divine injunctions from the Holy Quran and the practices of the Prophet Muhammad (SAW) and his companions during their lives. Abdullahi[29] examines the purpose of the Islamic Banking System with that of conventional Banks. He observed that in many respects, both Islamic Banks and Conventional Banks are similar in terms of operation. He however contends that Islamic Banks have a unique purpose which is to set up banking services with the percepts of Shari'ah.

Ayub[30] delves into the understanding of the concept of Islamic finance and contends that the idea of Islamic financing comes to fore due to the dictate of the tenets of Islam on the subject matter. He concluded that Islam encompasses every aspect of Muslims of which finance is not an exception. Chapra[31] argues that it is necessary to have an Islamic separate system of the economy by way of banking and finance. He investigated the services rendered by the conventional banks vis-à-vis that of Islamic Banks. He concluded that establishing a separate and special Islamic system of economy is a necessity for the adherents of Islam owing to certain injunctions from the Qur'an. Mohammed and Chong[32] posit that economics and finance are essential parts of human life. They argue that the conventional concepts of economics and finance are age-long across the globe. After comparing the two concepts with what is obtainable

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28 Zamir, I., 'Islamic Financial System', *Journal of Finance and Development*, Vol. 2, 3(4), 1997, p. 43

29 Abdullahi, M.I., 'A Theoretical Introduction to Islamic Banking and Financing' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publishers Limited, Kano, 2013) pp. 18 - 32

30 Ayub, M., *Understanding Islamic Finance* (England: John Willey & Sons Ltd., 2008), p. 45

31 Chapra M.U., 'The Financial Crisis: Can Islamic Finance help?' *IIUM Journal of Socioeconomics*, 29 (2000) pp.21-37

32 Mohammed, M.Z. and Chong, R., 'The Contract of Bay' Al-Islam and Istisna' in Islamic Commercial Law: A Comparative Analysis', *Labuan e-Journal of Muamalat and Society*, Vol. 1, 2007, pp.21-28

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under Shari'ah, they assert that the concepts of economics and finance are deeply rooted under Shariah from many decades ago.

Obaidullah[33] examines the nature of services rendered by Islamic Financial Institutions. He contends that the services rendered by Islamic Financial Institutions are regulated by Shari'ah though with certain similarities to what is obtainable with conventional financial institutions. He, therefore, argues that the services being rendered by Islamic Financial Institutions are what distinguishes them from conventional banks. Saleem[34] examines the foundation of Islamic transactions from a theoretical point of view. After consulting several literatures, he contends that the foundation of the Islamic transaction is traceable to the practices of Prophet Muhammad, (SAW) during his lifetime though with modifications in line the societal changes. Adewusi[35] investigates the mode of operations of Non-interest Banking and Financial Institutions. He contends that Non-interest Banking and Financial Institutions have an affinity with Islamic Law based on many warnings against Muslims deterring them from involving in any transaction that is interest-based. Kuran[36] investigates the late emergence of Islamic Discipline-based economics in India. He observed that Muslims are minorities in India and the aftermath of colonialism in the country led to the late emergence of Islamic Discipline-Based economics. He concludes that with the positive progression on the part of the Muslims in India, much clamor for Islamic-based economics is on the increase having regard to dictates of the Islamic faith.

Zaidi[37] studies Stabilization and Growth in an Open Islamic Economic. He looks at the origin of the Islamic economic system and

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33 Obaidullah, M., *Islamic Financial Services* (Jeddah: King Abdulaziz University Press, 2005) pp. 23

34 Saleem, M.Y., *An Introduction to the Theoretical Foundation of Islamic Transactions* (Revised Edition, Selangor: Ilmiah Publishers, 2010) pp. 45-47

35 Adewusi, Y., 'Non-Interest Banking and Financial Institutions' Paper presented at the International conference on Non-Interest Banking Organized by the Central Bank of Nigeria in Collaboration with the Islamic Development Bank (IDB), Transcorp Hotel, Abuja, 2011, pp. 1-15.

36 Kuran, T., 'Islamic Discipline Economics emerged in the late Colonial India' *Islamic Economic Bulletin*, 12(6), 2002, pp.34-44

37 Zaidi, I., and Mirakhor, A., 'Stabilization and Growth in Open Islamic Economy', *Review of Islamic Economics*, 1(2), 1991, pp. 1-20.

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the challenges being faced in the modern economy. He contends that the system of the economy under Shari'ah is open and transparent and that strict adherence to the underlined principles of Shari'ah would guarantee economic stability and growth in any society. In the same vein, Siddiqi[38] argues that Islamic Economics is the solution to the current crisis the world over. He observes that conventional economics is mostly capitalist-based ideology which emphasizes profits in form of interest, especially in Financial Institutions. He contends that interest has a worsening effect and compounds problematic situations. Hence, he makes a recommendation for the adoption of the zero-interest ideology of the Islamic financial system. Aziz[39] posits that to build a progressive Islamic banking sector, recourse shall always be had to the pristine Islamic tenets being the foundation of the Islamic Banking system. He contends that in the modern setting, the necessity to have an Islamic banking system conforming to societal changes is inevitable but that this should not derail the Islamic banking expert from compliance with tenets of Islam as far as it affects the financial institutions and transactions.

Rosley[40] investigates the performance of Islamic Banks and Mainstream Banks in Malaysia. He examines their performance from a profit-making perspective. He argues that Mainstream Banks are prone to making more profits than Islamic Banks. However, he observes that the performance of Islamic Banks in the country is nothing to write home about despite their interest-free ideology. Aburime and Alio[41] discuss the concept of Islamic Banking from a theoretical and practical perspectives to draw insights for Nigeria. In the course of their research, they confirmed that Islamic Banking System is a special banking system springing from divine legislation.

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38 Siddiqi, M.N., 'Current Crisis and Islamic Economics', *Radiance Views Weekly*, Vol. XLVI, No. 38, 2009, pp. 52-65

39 Aziz, Z.A., 'Building a progressive Islamic Banking Sector- Charting the way forward', paper presented at Seminar on 10-Year Master Plan for Islamic Financial services Industry, Putrajaya, Malaysia, 2005, pp. 1-20.

40 Rosley, S.A., 'Performance of Islamic and Mainstream Banks in Malaysia', *International Journal of Social Economics*, Vol. 30(12), 2003, pp. 1249-1265.

41 Aburime, U.T. and Alio, F., 'Islamic Banking: Theories, Practices and Insights for Nigeria', *International Review of Business Research Papers*, 5(1), 2009, pp. 321-339

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They recommend that for the Banking system to achieve its aim and objective, it must not lose concentration from its origin. Ahmad, *et al*,[42] conducts an empirical investigation into the service-based perception of Islamic Banks in Pakistan. Their research did a thorough analysis of the various quality services offered by Islamic Banks in the country from the perception of the Banks-Customer's services. They rated high the quality of the services offered by the Bank in the sense that in most cases they are devoid of uncertainty which brings untold hardship to most Banking transactions. Zubair[43] while acknowledging the increasing boost to the Malaysian Islamic finance industry and the sophistication experienced in the industry with regard to product development, concludes that the stability and reliability experienced in the industry are as a result of the strengthened dispute resolution mechanisms put in place.

Bley and Kuehn,[44] in the same vein, carried out similar research but within the jurisdiction of the United Arab Emirates. They investigated students' knowledge and perception of extant Banks in the United Arab Emirates. They achieve this by comparing the Conventional and Islamic Banking systems. Their research revealed that non-charging of interest is what mostly distinguishes Islamic Banks from Conventional Banks. Haron, Ahmad, and Planisek[45] investigate banks' patronage from Muslims and non-Muslims factor. They discovered that most Muslims usually patronize Islamic Banks for religious satisfaction. They also observed that non-Muslims do patronize Islamic Banks due to quality service delivery. Sambo and Akanbi[46] while discussing Sulh

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42 Ahmad, A., Rehman, K., Saif, I., and Safwan, N., 'An Empirical Investigation of Islamic Banking in Pakistan based on Perception of Service Quality', *African Journal of Business Management*, 4(6), 2010, pp. 1185-1193.

43 Zubair, A. A. 'An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia' *Jurnal Hukm Novelty* Vol. 11(2), 2020, pp. 164-178.

44 Bley, J., and Kuehn, K., 'Conventional versus Islamic Finance: Student Knowledge and Perception in the United Arab Emirates', *International Journal of Islamic Financial Services*, 5(4), 2004, pp. 5-10.

45 Haron, S., Ahmad, N., and Planisek, S.L., 'Bank Patronage: Factors of Muslim and non-Muslim Customers', *International Journal of Bank Marketing*, 12(1), 1994, pp. 32-40

46 Sambo, A.O., and Akanbi, M.M., 'Sulh as A form of Dispute Resolution' in Adnan Trakic and Hannifah Haydar Ali Tajuddin (eds), *Islamic Banking and Finance:*

(amicable settlement) as a form of Dispute Resolution for Islamic Banking Dispute emphasized that Islamic Banks are faith-based and thus every mechanism to be applied in the course of their operations must have traces from the religious tenets as espoused in the Qur'an and Sunnah. In the same vein, Oseni's[47] research also leads credence to the position of Sambo and Akanbi and added that in the occasion of emerging current trends, the nature of Islamic law vis-à-vis Islamic Banking system shows dynamism that can contend with the current and future challenges.

The above literature gave an exposition into the origin, nature, purpose, and concept of Islamic banking/financial system. With the above backdrop, it is thus expedient to consider literature on the legal and regulatory framework for corporate governance of Islamic Banks in Nigeria and Malaysia being the central theme of this paper.

2.2 ***Legal and Regulatory Framework for Corporate Governance of Islamic Banks in Nigerian and Malaysia:*** Mustafa, Ibrahim, and Adewale[48] examine the establishment and operation of Islamic Banks in Nigeria with a particular focus on the role of the Central Bank of Nigeria. They lauded the establishment of Islamic Banking in Nigeria despite a parochial campaign against it before the approval and licensing by the Central Bank of Nigeria. They contended that what prompted the agitation for the establishment of Islamic Banks from the Holy Quran is also available in Christendom from Biblical provisions and suggested that issues surrounding the emergence of Islamic Banks in Nigeria should not be viewed as all Muslim affairs but as issues that concern both the adherents of Islam and

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Principles, Instruments and Operations, the Malaysian Current Law Journal Sdn Bhd, Malaysia, 2012, p. 373.

47 Oseni, U.A., 'Dispute Resolution in Islamic Banking and Finance: Current Trends and Future Perspectives' Paper presented at the International Conference on Islamic Financial Services: Emerging Opportunities for Law/Economic Reforms of Developing Nations, 6-8 October, 2009, University of Ilorin, Kwara State, Nigeria, jointly organized by the Department of Islamic Law, Faculty, University of Ilorin, Ilorin, Nigeria and Islamic Research and Training Institute (IRTI), IDB Group, Jeddah, Saudi Arabia, pp. 1-25.

48 Mustafa, D., Ibrahim, M.Y., and Adewale, A., 'The Establishment and Operation of Islamic Banks in Nigeria: Perception Study on the Role of Central Bank of Nigeria', *Australian Journal of Business and Management Research,* Vol.1 No. 2, 2011, pp. 14-29

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Christianity. Before they concluded, they looked at the role of the Central Bank of Nigeria in the supervision and regulation of Islamic Banks in the country. Having acceded that the Central Bank of Nigeria occupies the topmost position for the role of supervision and regulation of Islamic Banks in Nigeria, they suggested that the Central Bank should engage in more research driven approach with a view to exploring the emerging area of Islamic Banking system. Thus, the Central Bank of Nigeria Guidelines on the Regulation and Supervision of Non-Interest (Islamic) Microfinance Banks in Nigeria, 2017[49] is the parent legal framework for the corporate governance of Islamic Banks in Nigeria. The Guidelines subjected Islamic Banks in Nigeria to corporate governance framework contained in the Banks and other Financial Institutions (BOFIA) Act 1991 (as mended), Companies and Allied Matters (CAMA) Act 1990 (as amended) as well as corporate governance codes issued by any Institutions recognized by law.[50]

Abdul[51] examines corporate governance and Islamic banking in Nigeria. In his research, he looks at Islamic banking and the legal environment in Nigeria. By so doing, he analyzes the key laws regulating bank operation in Nigeria vis-à-vis Islamic bank. These laws are the Banking Act, 1969, Banks and other Financial Institutions Act (BOFIA), 1991 and the Central Bank of Nigeria Act, 2007. After analyzing the relevant provisions of these laws, concluded that many difficulties may arise when establishing an Islamic bank in compliance with laws and rules originally conceived for conventional banks and therefore suggested that for Islamic banks to thrive within legal requirements of the extant law in Nigeria, Islamic banks need to be giving special consideration to be

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49 See the 'Circular on the Guidelines for the Regulation and Supervision of Non-Interest (Islamic) Microfinance Banks in Nigeria' with Reference No. FPR/DIR/GEN/CIR/06/016 dated April 5, 2017 duly signed by Director, Finance Policy and Regulation Department of Central bank of Nigeria, Abuja.

50 See section 10.0 of the CBN Guidelines, 2017.

51 Abdul, O.Y., 'Corporate Governance and Islamic Banking in Nigeria' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publishers Limited, Kano, 2013) pp. 151 - 164

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able to conduct their activities maximally. Abikan,[52] in the same vein, discusses the legal framework for Islamic banking in Nigeria. He extensively investigates the viability of Islamic Banks under the Banks and other Financial Institutions Act (BOFIA), 1991, the Central Bank of Nigeria Act, 2007 and the Nigerian Deposit Insurance Corporation Act, 2006. He pointed out various hindrances in the laws that are capable of great disservice to the successful operation of administration of Islamic Banks in Nigeria. He concluded that there is need for amendments of the relevant laws with a view to having a workable legal framework for Islamic banking in Nigeria.

Alaro[53] contends that Shari'ah supervision remains a challenge for Islamic banking in Nigeria. He pointed out certain fundamental lacuna in the Banks and other Financial Institutions Act (BOFIA), 1991. These include failure to make provisions for the constitution of Shariah Advisory Board and non-inclusion of the requirement for the establishment, composition and qualification of the member of the Shari'ah Advisory Board in the Memorandum and Article of Association of the prospective Islamic Banks in Nigeria. Abikan[54] further contends that, though the Deposit Insurance Scheme which Islamic Banks are expected to participate in pursuant to the Nigerian Deposit Insurance Corporation Act, 2006 is similar to the Cooperative Insurance permissible under Islamic law with evidence from Qur'an and Sunnah, he therefore argues that some of the practices of the scheme are repugnant to the basic principles of Islamic Banking system. Some of the practices which he sees as being repugnant to Islamic banking principles include investment of the scheme funds in interest yielding Federal government security, payment of interest as penalty for late payment of premium, attraction of interest of the liquidity support given to ailing bank in

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52 Abikan, I.A., 'The Legal Framework for Islamic Banking in Nigeria' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publishers Limited, Kano, 2013) pp. 106 - 119

53 Alaro, A.A., 'Shariah Supervision as a Challenge for Islamic banking in Nigeria' in Oloyede, I.O., *et al*, (eds.), *Al-Adl (The Just), Essay in Honour of Islam, Islamic Law and Jurisprudence* (Ibadan: NAMLAS, 2009) 59-65.

54 Abikan, I.A., 'Islamic Banks' Participation in Deposit Insurance Scheme: A Legal Appraisal' *NDIC Quarterly Journal of the Nigerian Deposit Insurance Corporation*, Vol. 21, No. 1, 2011, pp. 17-43

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Nigeria. Abikan concluded that all the foregoing practices contradict the principle of zero tolerance for (riba) interest under Islamic banking system. Shahran[55] argues that the concept of Islamic corporate governance clothes Islamic Banks with a set of Shari'ah rules which govern their operation and monitor the role of all players. Thus, governance of Islamic banks cannot deviate from the divine guidance enshrined in the scripture being the foundation of the emergence of Islamic banking system.

Chouldhary,[56] on his part, examines the Organization for Economic Co-operation and Development (OECD) Principles and Islamic Perspectives on Corporate Governance as they relate to Islamic Banks. He highlights and compares the OECD principles of corporate governance on one hand and the Islamic principles of corporate governance on the other hand. He contends that though OECD principles of corporate governance seeks to achieve effective corporate governance, it should not be confused as the same with principles of Islamic corporate governance because Islamic corporate governance codes are derived from divine sources which are faith-based with parallel implications from the conventional corporate governance codes. He therefore subscribes to subjecting Islamic Banks to Shari'ah Compliant Corporate Governance Codes. Mahmoud, Omolola and Ibrahim[57] evaluated the adequacy of the regulation of the Central Bank of Nigeria which is the parent legal and regulatory framework for Non-Interest (Islamic) Banking in Nigeria. In the course of their research, they observed that the foundation of banking system in Nigeria is interest-based which is against the tenets of Islamic religion. Hence, some vestiges of it still reflect in the Central Bank of Nigeria Guideline for the regulation of Islamic Banks in Nigeria. They, therefore recommended a separate legislation solely dedicate to the operation of Islamic Banks with a

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55 Shahran, L.A., Corporate Governance in Islamic Perspectives, 5th International Islamic Finance Conference: "Thirty-Five Years On – The Future of Islamic Finance" 3 & 4 September, 2007, The Ritz Carlton, Kuala Lumpur, Organized by Monash University Malaysia and Institute of Bankers Malaysia.

56 Choudhary, S., 'OECD Principles and Islamic Perspectives on Corporate Governance', *Review of Islamic Economics*, Vol. 12, No. 1, 2009, pp. 33-37

57 Mahmoud, A.H., Omolola, A.O. and Ibrahim, J.Y., 'The Need for a Robust Non-Interest Banking Legal Framework in Nigeria', *Nigerian Journal of Accounting and Finance*, Vol. 5, 2013, pp.118-149.

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view to foster development of the Banks in Nigeria. Adam and Al-Aidaros[58] are of the view that Shari'ah Supervisory/Advisory Board has the primary role of ensuring that Islamic Financial Institutions (IFIs) inculcate Shariah teaching and full disclosure in all their endeavours with a view to attracting public confidence in corporate governance of IFIs. They opined that the hall-mark of Shariah Supervisory Board's role is to realize the practice of Shariah corporate governance by IFIs with full internalization of all Shariah principles. They recommend that the framework of Shariah Supervisory Board should be based on the provision of Qur'an Chapter 2 verse 282 and the Shariah principles of *Amanah* and *Taqwa*.

Junaidu and Mua'zu[59] did a comparative analysis of Islamic perspective on corporate governance vis-à-vis the regulatory and institutional framework on corporate governance in Nigeria. In their analysis, they examined the relevant provisions of Companies and Allied Matters Act (CAMA) with respect to corporate governance and statutory duties of Directors. In the same vein, they analyzed different codes of corporate governance in Nigeria such as the 2003 Code of Best Practices on Corporate Governance in Nigeria; the 2006 Code of Corporate Governance for banks in Nigeria in Post-Consolidation; and 2011 Code Corporate Governance in Nigeria. From Shariah perspective, they opine that Islamic corporate governance is dependent on the position of Quran, Hadith and Fiqh. They play great emphasis on the provisions Quran chapter 2 verses 282-283 as the bedrock of transparency and disclosure in Islamic corporate governance. They conclude that the concept of Islamic corporate governance is wider than that of the conventional corporate governance because accountability in the conventional setting is only to the shareholders; whereas that of Islamic setting transcends accountability not only to shareholders but also to Al-Mighty Allah.

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58 Adam, S.B. and Al-Aidaros, A. 'A Proposed Framework for Shariah Supervisory Board (SSB) Practice of Islamic Banks' *Kebbi Journal of Accounting Research (KEJAR)*, Vol. 1, No. 1, 2020, pp. 28-36.

59 Junaidu, B.M. and Mua'zu, A.S. 'Examining the Regulatory and Institutional Framework on Corporate Governance in Nigeria and Islamic Perspective of on Corporate Governance: A Comparative Analysis' *International Journal of Business & Law Research*, Vol. 2, No. 2, 2015, pp. 88-95.

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Abdul Azeez[60] considers the Legality of Islamic Banking in Nigeria from a critical approach. He explores the arguments of the protagonists and antagonists of the Islamic Banking in Nigeria from four separate perspectives. He contends that the antagonists of Islamic Banking in Nigeria argues that the establishment of Islamic bank remains illegal because of the variation in the definition of 'Non-Interest Financial Institution' between BOFIA, 1991 and Non-Interest Financial Institution (NIFI) Guideline, 2011. According to the antagonists, section 6 of BOFIA, 1991 defines Non-Interest Financial Institution as 'a bank which transacts investment or commercial banking business and maintains profit and loss sharing accounts', while NIFI Guideline defines Non-Interest Financial Institution to mean 'a bank or other Financial Institutions under the Central Bank of Nigeria (CBN) which transacts banking business, engages in trading, investment and commercial activities as well as provisions of financial products in accordance with the Shariah principles and rules of Islamic commercial jurisprudence.' The author reconciled the position that what is important is the main objectives of the two definitions as against the differences in the wordings. Abdul Azeez further neutralizes the arguments of the antagonists that there would be discrimination in the treatment of non-Muslims in the services of the Islamic Banks. He contends that the contention is a mere lack of understanding of the operation of Islamic law of transaction of which Islamic Banking is one of its branches. According to him, the Islamic law of transaction i.e., *al-mu'amalat* does not in any way preclude non-Muslim from transacting under its purview as was exemplarily practiced during the time of Prophet Muhammad (SAW). On the contention of the antagonists that Islamic Bank is illegal in Nigeria on the ground that the composition of the Shari'ah Advisory Council to the Central Bank of Nigeria on Banking matters has the tendency of violating the federal character as some geo-political zones are likely to miss out in view of the requirements of the Guideline. The author contends that all the six geo-political zones in Nigeria are blessed with experts in

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60 Abdul Azeez, M.O., 'The Legality of Islamic Banking in Nigeria: A Critical Approach' *Research-Gate,* available at http://ssm.com/abstract=1941010 accessed on 20 November, 2019, pp. 1-26.

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Islamic law, hence, the contention is of no moment. And lastly, on the contention of the antagonists that introduction of Islamic Banking in Nigeria will Islamize Nigeria, he cleared the air that the contention is laughable and illogical having regards to the operation of Islamic Banks in other jurisdictions with similar legal system with Nigeria.

Arun[61] engaged in fact-finding discussion on the legal systems obtainable in Malaysia. He argues that Malaysia has a dual legal system of Common Law and Shari'ah. He contends further that notwithstanding the duality of Malaysian legal systems, common law enjoys dominance over the Islamic law. He specifically cited the extant article 44 of the Federal Constitution of Malaysia which establishes the supremacy of the Federal Constitution in the country. Despite the foregoing, Islamic Banks in Malaysia enjoy robust legislation for their corporate governance as orchestrated below. Mohammed and Hafas[62] review the Islamic Financial Services Act (IFSA), 2013 of Malaysia vis-à-vis its compliance with Shari'ah. They contend that IFSA, 2013 emphasizes a total Shariah compliant efforts of Islamic finance industry through four dimensional areas of Shari'ah governance framework, Shariah standards for each contract used in Islamic financial transactions, pre-emptive measures to address issues of concern within IFIs that may affect the interest of the depositors and policyholders, and the effective and efficient functioning of Islamic financial intermediation. They commend the IFSA, 2013 as the next level of Shari'ah commitment which serves as a model for other countries across the globe. The significance of the work of Muhammed and Hafas to the intended research is that it shows that despite the secular nature of Malaysia and the apparent dominance of Common law in the country, they were still able to come up with a robust Shari'ah compliant legal framework in line with Shari'ah standards for the corporate governance of Islamic Banks in the country.

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61 Arun, K., 'Malaysia: Legal System', published by *International Society of Admiralty and Arbitration Lawyers (ISAAL)*, 2017 available at www.isaal.org accessed on 10th July, 2019.

62 Muhammed, A.L., and Hafas, F, 'Islamic Financial Services Act (IFSA) 2013 and the Shari'ah-Compliance Requirement of Islamic Finance industry in Malaysia', *International Journal of Islamic Finance*, No. 10, Vol. 1, 2018, p. 97

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Mizushima[63] examines corporate governance vis-à-vis Shari'ah governance in Islamic financial institutions through assessment of the current practice in Malaysia. He gave an insight into the western connotation of corporate governance especially from organization of Economic Corporation and Development (OECD) perspective. He spotted that the difference between corporate governance and Shari'ah governance is the narrow aspect of Shari'ah compliance and risk management. The study reveals that Shari'ah governance was first introduced in Islamic banks ahead of other Islamic financial institutions. Istrefi[64] undertook study of corporate governance in Islamic financial institutions. It was a theoretical study the traditional and Islamic corporate governance. The study reveals essential differences between the conventional corporate governance and Islamic corporate governance. While comparing the models of the conventional corporate governance with that of Islamic corporate governance, he emphasizes that the conventional corporate governance is basically material driven geared towards adding values to the shareholders throughout the corporation existence. Conversely, he pointed out that the unique and distinctive features of Islamic corporate governance is borne out of the fact that it is premised on concept of existence of God in corporate administration and absolute reliance on Islamic principles enunciated from the authoritative texts.

Syarif[65] embarked on the analytical study of Islamic financial institutions and regulatory framework with a view to drawing lesson between Malaysian and Indonesian experience. The study adopts descriptive qualitative model to analyze the regulatory framework of Islamic financial institutions in Malaysia and Indonesia. The study reveals that in the two countries, there are adoption of dual regulatory framework for the conventional and Islamic financial institutions. He therefore concludes that the Central Bank in

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63 Mizushima, I. 'Corporate Governance and Shari'ah Governance at Islamic Financial Institutions: Assessing from Current Practice in Malaysia' *Retiaku Journal of Interdisciplinary Studies*, Vol. 22, No. 1, 2018, pp. 59-84

64 Istrefi, V. 'Corporate Governance in Islamic Financial Institutions' Journal of Governance and Regulation, Vol. 9, Issue 2, 2020, pp. 75-82

65 Syarif, F. 'Regulatory Framework for Islamic Financial Institutions: Lesson learnt Malaysia and Indonesia' *Journal of Halal Product & Research*, Vol. 2, Nomor 2, 2019, pp. 79-84.

Malaysia and Indonesia play dual regulatory role with respect to the affairs of Islamic financial institutions and that of the conventional institutions. Bouheni and Ammi[66] investigate the special features of Islamic banking governance. They opine that Islamic banking governance principally observes the practice of prohibition of *riba* (interest), *gharar* (excessive risk) and promulgation of profit and loss sharing regime. Just like the conventional banks guided by fully institutionalized components, Islamic banking governance cannot divorce itself from certain components such as Shari'ah Board, Shari'ah Review Units, amongst others. The study reveals that the products of Islamic banking are determined by its governance principles which products must be lawful and transacted on the principles of profit and loss sharing. Bouheni and Ammi confirm that the product of Islamic banking does not only attract Muslims but also non-Muslims.

Sadek, *et al*,[67] whose study adopts qualitative and case study approach, did the review of the current principles of corporate governance in Malaysian Islamic financial institutions. The study emphasizes that Islamic banks' governance approach stems from Shari'ah authoritative texts with freedom, *Tawhid* and *Taqwa* as the bedrocks. The study reveals that notwithstanding the foregoing, Islamic banks in their corporate governance practice do face certain challenges ranging from financial distress, poor supervision, corruption, fraud, poor leadership etc. this made the authors to conclude that Islamic banks, as a specie of Islamic financial institutions, is not free corporate governance failure resulting from governance conundrums. The authors recommended that corporate governance of Islamic financial institutions in Malaysia should not divorce itself from core Islamic values derivable from the primary sources of Shari'ah in line with the objectives of Shari'ah. Sulaiman, *et al*,[68] equally focused on Malaysia with respect to corporate

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66 Bouheni, F.B. and Ammi, C. 'Banking Governance: What's Special about Islamic Banks?' *Journal of Applied Business Research*, Vol. 31, No. 4, pp. 1621-1629

67 Sadek, D.M., *et al*, 'Islamic Corporate Governance in Islamic Financial Institutions' *International Journal of Academic Research in Business & Social Sciences*, Vol. 8, No. 4, 2018, pp. 1-10

68 Sulaiman, M. *et al*, 'Corporate Governance of Islamic Financial Institutions in Malaysia' 8th International conference on Islamic Economic and Finance,

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governance of Islamic financial institutions. They theorized that global Islamic banking activities can only thrive with good governance practices. The study appreciates the role of Islamic International Organizations like Accounting and Auditing Organization of Islamic financial Instructions (AAOIFI) and Islamic Financial Services Board (IFSB) in setting standards, guidelines and framework for Islamic financial institutions. They however, cautioned that what is expedient is to ensure that IFIs do actually comply with the laid down standards, guidelines and framework. The survey and index of 16 banks operating in Malaysia confirmed cases of non-compliance with the Islamic international standards for corporate governance and thus make case for future research in this aspect.

Alatassi and Letza,[69] while examining best practices in banks' corporate governance with respect to Islamic banks as a reference point, alluded to the effect that despite the growth of Islamic finance since its introduction to the banking world, its corporate governance framework is still at developmental stage. The study thus theorized that the concept of stewardship in the conventional corporate governance framework can be inculcated into the Shari'ah governance for maximum performance. The study reveals that Shari'ah governance of Islamic banks focuses on real assets which in turn guaranteed prudency and sustainable future confidence as against the conventional approach which primarily focuses on debt management. Bello and Zubaedy[70] did a critical analysis of Malaysian Islamic banking finance from Shari'ah governance perspective. The study examined the Malaysian model of Shari'ah governance in Islamic finance industry. It analyzed the establishment, appointment and process of Shari'ah Governance Board in Malaysia with particular emphasis on the enabling legal framework. The study concluded that in the field of Islamic finance

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organized by Center for Islamic Economic and finance, Qatar Faculty of Islamic Studies, Qatar Foundation, 2013, pp. 1-20.

69 Alatassi, B. and Letza, S. 'Best Practice in Bank corporate Governance: The Case of Islamic Banks' *Economic Business Review*, Vol. 4, No. 18, 2018, pp. 115-133

70 Bello, S.A. and Zubaedy, A.A. 'Shariah Governance framework Model for Malaysian Islamic Banking and Finance: A Critical Analysis' *IOSR Journal of Business and Management*, Vol. 17, Issue 10(1), 2015, pp. 09-19

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industry across the universe, Malaysia has a robust regulation-based model.

Chowdury and Shaker[71] discussed Malaysian Islamic banks' Shari'ah governance framework. In their study, they highlighted major challenges faced by Islamic banks in the Shari'ah governance implementation which include challenge of governance system and agency conundrum. By way of comparative approach, the study further highlighted differences between Shari'ah governance and conventional governance. The study reveals that inadequate knowledge among Islamic scholars as well as misinterpretation of Shari'ah rules are the major challenges being faced by Islamic banks in the implementation of Shari'ah principles and rules. Khan, *et al*,[72] did a critical comparative analysis of regulatory and supervisory system of Islamic banks in selected countries like Pakistan, Malaysia, Bahrain and United Kingdom. The study took cognizance of the core regulatory framework phenomenon which reveals that the positions of Islamic scholars and policy makers have occasioned conflicts thereby aggravating Shari'ah governance problems. The study reveals that Malaysia and Bahrain have made a sharp departure from what is obtainable in other climes by enacting indigenous Shari'ah governance system. The study reveals further that Islamic banks in Pakistan and United Kingdom are still under the conventional setup with little or no effort made to challenge the effectiveness of the existing regulatory framework in the two countries. The study concluded that objectives and effective operation of Islamic banks cannot be achieved in a conventional based Islamic regulatory framework.

Shinkafi, *et al*,[73] examined strategies of legal and regulatory framework of Islamic banking system in Malaysia with a view to make reflection for Nigeria. They are of the view that Malaysia has

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71 Chowdhury, N.T. and Shaker, F. 'Shariah Governance framework of Islamic Banks in Malaysia' *International Journal of Management Sciences and Business Research*, Vol. 4, No. 10, 2015, pp. 115-123

72 Khan, A., *et al*, 'Comparative Analysis of Regulatory and Supervisory System of Islamic Banks: Evidence from Pakistan, Malaysia, Bahrain and United Kingdom' *Mediterranean Journal of Social Sciences*, vol. 6, No. 2, 2015, pp. 629-640

73 Shinkafi, A.A. *et al*, 'Legal and Regulatory Strategies of Islamic Banking System in Malaysia: A Reflection for Nigeria' *Journal of Economic Information*, Vol. 17, Issue 1, 2020, pp. 40-55

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massively promulgated a number of robust legislations which in turn strengthened its legal strategies for regulatory framework of Islamic banks. The study singled out *Mu'amalat* bench as one of the legislative achievements to cater for determination of Islamic and Shari'ah governance related matters by the specialized Court. The study concluded that Malaysia over the years has evolved international best standard and best practices for legal and regulatory framework of Islamic banking system thereby serving as reflection for Nigerian Islamic banking industry. Issa[74] examines the concept of corporate governance of Islamic Banks from global perspective with emphasis on Emirate Islamic Bank as a case study. He traces the origin of Islamic Financial system and the concept of corporate governance from Islamic perspective. He argues that corporate governance codes that could make Islamic Banks achieve their primary objectives are the corporate governance codes that are fully Shari'ah compliant. In the same vein, Akhtar[75] observes that most Islamic Banks in common law dominated countries are subjected to conventional corporate governance framework just like other non-Islamic Banks. He contends that for the floaters of Islamic Banks to fulfil the divine commandments relating to Islamic Banking system, they must strive to govern the affairs of Islamic Banks with full-fledge Shari'ah compliant corporate governance codes.

Thus, as noted above, the challenge of having a suitable Legal and Regulatory Framework for corporate governance of Islamic banks is not only peculiar to Nigeria but with most common law dominated countries. Existing literature revealed that Nigeria is not yet serious with Islamic Banking operations and their governance especially in the aspect of lack of enactment of a special legislation for legal and regulatory framework of the Banks' corporate governance. The exposition by the literature review shows that Malaysia meant the business when it comes to Islamic Banking governance. This is evidenced by enactment of a special legislation

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74 Issa A., 'Corporate Governance in Global Islamic Financial Institutions (Emirate Islamic Bank is the case Study)', *International Journal of Education and Research*, Vol. 3, No. 11, (2015), pp. 125-136.

75 Akhtar, S., 'Shariah Complaint Corporate Governance', being a paper presented at the *Annual Corporate Governance Conference*, Dubai, November 27, 2006, pp.12-45.

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for legal and regulatory framework of Islamic Banks in the country. Thus, this portends lesson for Nigeria especially with various challenges being faced by Islamic Banks in Nigeria as the focus of the next section of this paper centered on.

2.3 Challenges bedeviling Islamic Banking in Nigeria:

Shehu[76] while examining the Issues, Challenges and Opportunities for Islamic Banking and Finance in Nigeria, itemized the challenges facing Islamic in Nigeria to include issue of product standardization; paucity of qualified/skilled manpower in the field of Islamic banking and finance; the need to have modeled corporate governance of Islamic Banking in Nigeria in line with standards and best practice; and dominance and inevitable influence of Conventional Banks in Nigerian Banking sector. He propounds that if these challenges are not tackled, they will continue to affect the out-put and growth of Islamic Banks in Nigeria. Deji,[77] in the same token, posits that there are two major challenges contending with Islamic Banking in Nigeria. She identifies lack of awareness and technical-know-how as well as lack of interbank money market operation. She contends that the CBN and other stakeholders will encounter difficulties in regulating Islamic Banking in Nigeria as a result of lack of technical-know-how. The need to recruit experts in the field of Islamic banking and finance will go a long way in tackling the challenge. With respect to the challenge of interbank money market, Deji argues that by the very nature of Islamic banks vis-à-vis conventional banks, the Islamic Bank cannot participate in the existing interbank money market because it is extremely interest-based.

Mustafa and Ibrahim[78] researched on the Stakeholder perception of the emergence and challenges of Islamic banking and

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76 Shehu. U.R.A., 'Islamic Banking and Finance in Nigeria: Issues, challenges and Opportunities' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publishers Limited, Kano, 2013) pp.34-45.

77 Deji, S.M., 'Feasibility of Introducing Islamic Banking in Nigeria' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publishers Limited, Kano, 2013) pp. 59-69

78 Mustafa, D., and Ibrahim, M.Y., 'The Emergence of Challenges of Islamic Banking and Finance in Nigeria: A Stakeholder Perspective' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria* (Benchmark Publishers Limited, Kano, 2013) pp.85-104.

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Finance in Nigeria. They contended that one of the main challenges facing the emergence of Islamic banking in Nigeria is Islamophobia with respect to non-Muslims Nigerian populace who have insisted that Nigeria is a secular country. However, this perceptive challenge, according to the opinion of this researcher, is parochial.[79] More so, Abikan,[80] while examining the legal framework for Islamic banking in Nigeria contends that the interest-based operation of the Central Bank of Nigeria remains the biggest challenge. He argues that the extant law requires the Central Bank of Nigeria to pay interest on both cash reserve and special deposits. Abikan argues further that the Central Bank of Nigeria is authorized by law to grant temporary advances to ailing banks in Nigeria[81] which grant is done at an interest rate usually determined from time to time by the Apex Bank. He therefore concluded that this practice is inimical to the object of Islamic banking which seeks to avoid interest in all ramifications.

In the same token, Momodu[82]examined legal framework for Islamic banking and finance in Nigeria. in his work, he reviewed the relevant provisions in the Central bank of Nigeria Act as well as that of Banks and Other Financial Institutions Act. He commends the efforts of the Central Bank of Nigeria which culminated into the release of the Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria, 2011. Notwithstanding the release of the Guidelines, he is of the view that the CBN Advisory Council of Experts (ACE) which replaces the erstwhile Shari'ah Advisory Committee, has not been able to secure a separate and full-fledge Shariah compliant legal framework for Islamic banking and finance in Nigeria with a view to

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79 There has been successful operation of Islamic banking in Malaysia with the same secularism doctrine as Nigeria and nothing has shown that the country has been Islamized.

80 Abikan, I.A., 'The Legal Framework for Islamic Banking in Nigeria' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria,* pp. 106 - 119

81 Islamic Banks, in the course of their operations, may fall victim of this and if they approach the Central Bank of Nigeria for such grant, interest imposition by the Central Bank will deter Islamic Bank from completing the transaction thereby preventing the Bank from taking benefit of the grant in that critical situation.

82 Momodu, D. 'Legal Framework for Islamic Banking and Finance Nigeria' *Electronic Journal of Islam and Middle Eastern Law,* Vol. 1, 2013, pp. 160-169.

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aiding smooth operation of Islamic banking industry in Nigeria. Sambo and Abdulkadir[83] examined Shari'ah, Constitutional Challenges and the adjudication of Islamic Financial Dispute in Nigeria. The duo pointed out various challenges in Nigeria legal system affecting the adjudication of Islamic banking disputes in Nigeria. They argue that the major challenge in Nigeria, especially with the Constitution, is the inability to recognize Shari'ah as a separate and distinct legal jurisprudence thereby resulting in Non-Islamic Experts adjudicating on Islamic banking disputes. They recommended that any-would-be-judge to hear and determine matter relating to Islamic banking dispute in Nigeria must not only be learned in Islamic law but also be a scholar of Islamic law with sufficient knowledge in Islamic finance. In the same vein, Wopa-Owolabi and Zubair[84] observed that Nigeria's present jurisdiction of the court on matters of Islamic finance is a daunting challenge to the continual thriving of the industry. This is because according to them, the shari'ah court which ordinarily ought to have jurisdiction on Islamic banking and finance matters in the country has its jurisdiction limited only to Muslim personal matters, leaving the faith of litigants in Islamic finance dispute in the hands of common law trained judges and lawyers alike.

In all, the review of literature has significantly shown that the Nigerian model of corporate governance of Islamic banks in Nigeria is not adequate and suitable for the effective management and success of Islamic banks in Nigeria. The reason being that the existing legal framework to which Islamic Banks are subjected to were originally enacted for the operation of the conventional interested-based banking system. Thus, there is need to have in place a robust legal and regulatory framework for corporate governance of Islamic banking in Nigeria. The bull needs to be taken by the horn. Mere release of guidelines by the Central Bank of Nigeria with respect to the Legal and Regulatory Framework of Islamic Banks in

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83 Sambo, A.O., and Abdulkadir, A.B., 'Shari'ah, Constitutional Challenges and Adjudication of Islamic Finance Disputes in Nigeria' in Dandago, K.I. et al, (eds), *Essentials of Islamic Banking and Finance in Nigeria*, pp. 120-133.

84 Wopa-Owolabi, K.M and Zubair, A. A. 'Paradigm Shift in the Management of Islamic Finance Disputes in Nigeria Amidst Covid 19 Pandemic' *Ife Juris Review IFJR*, Part 1 (Jan. April) ISSN 0794-1048 pp.67-78

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Nigeria without more continues to show kid's glove attitude towards the needs and yearnings of Islamic Banks in Nigeria. Pace set by Malaysia is therefore indispensable.

3. CONCLUSION AND RECOMMENDATIONS

By way of review of existing literature, this paper has given an insight into the fact that Islamic Banks are not just established for business and profit purposes but to fulfil divine injunctions[85] which dictate and regulate the nature of business Muslims should engage in. In the same token, it has been showcased that these divine injunctions are not equally silent on the corporate governance of Islamic Banks. However, in Nigeria, Islamic Banks are treated like conventional banks by subjecting them to legal framework originally designed for corporate governance of the conventional banks that are interest-based. The reason for this may not be divorced from the secular nature of the country. Fortunately, another secular nation which is Malaysia has a legal regime that accorded separate and special legislation for Islamic Banks. It is on this basis that it is recommended that Nigeria should borrow a leaf from the Malaysian model of Shari'ah governance which is indeed a robust regulation-based model. It is further recommended that as it is applicable in Malaysia, the National Assembly in Nigeria should enact a separate legislation solely for the corporate governance of Islamic Banks in Nigeria to be modelled in line with Quran and Sunnah and *Fiqh* of Islamic transactions as they are the most appropriate for the continued existence and growth of Islamic Banks in Nigeria. If the foregoing is complied with, various challenges bedeviling Islamic Banks in Nigeria would be greatly tackled.

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[85] See Q2:275, Qur'an 42: 38, Q2:283, Q3:159

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